

**Central Administrative Tribunal
Jodhpur Bench: JODHPUR**

Original Application No. 279/2003

Date of Decision: 18.05.2004

The Hon'ble Mr. J K Kaushik, Judicial Member

The Hon'ble Mr. G R Patwardhan, Administrative Member

Om Prakash Tandon, S/o Sh Kala Ram, r/o Khaireri, Tehsil- Rohtak,
Dist. Rohtak (Haryana)

: Applicant.

Rep. By Mr. H.S. Sidhu : Counsel for the applicant.

VERSUS

1. The Union of India through the General Manager, North Western Railway, H.Q. Jaipur.
2. F.A. & C.A.O, North Western Railway, Jaipur.
3. The Deputy Chief Accounts Officer/T, H.Q, North Western Railway, Jaipur.
4. Accounts Officer, (TA), North Western Railway, JODHPUR

: Respondents.

Mr. Manoj Bhandari : Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member:

Shri Om Prakash Tandon has assailed the order dated 12.09.2003; Annex. A/1 and has inter alia prayed for quashing the same and also for a direction to the respondents to re-fix his pay as per the sub-para 2 of Order 16 of the Orders, 1986, with payment



of arrears of difference along with interest at the rate of 18% per annum.

2. The case was listed for admission today. Keeping in view the urgency of the matter as well as the short controversy involved, we propose to decide the same at the admission stage. We have heard the learned counsel for the parties and have carefully perused the records of this case.

3. As far as the factual matrix of the case is concerned there is hardly any quarrel. The applicant served in the Indian Army as Combatant Clerk during the period from 27.10.76 to 30.09.92 and took retirement while holding the post of Clerk (GD)- group 'B' in the rank of Havildar. After his retirement he got the opportunity for re-employment and he was re-employed on the post of Junior Accounts Assistant-cum-Typist (Clerical cadre) in the pay scale of Rs. 1200-2040 vide letter dated 16.10.97(Annex. A/4). His pay was fixed at the minimum of the pay scale i.e. at Rs. 1200/- . While in the Army, he was drawing basic pay of Rs. 1330/- as per his PPO (Annex. A/3). He submitted a representation for fixation of his pay as per order 4 (d) (i) and Order 16 sub para 2. But the prayer was turned down vide communication dated 12.09.2003 on the ground that he was not holding the post of Lower Division Clerk/Junior Clerk. It is also averred that the applicant is not drawing dearness relief (sic D.A.) on the pension. It is also averred that in his present duty he is typing and assisting the Senior Section Officer (Accounts) and other such work assigned to him. He has also passed the Appendix II-A (IREM)



examination in the year 1998. The applicant submitted number of representations but no heed was paid. One Shri Hari Ram Choudhary, who was re-employed as Ticket Collector, was given the benefit of refixation as per sub-order 2 of Order 16 of the Orders 1986, but the applicant has been denied the same. The Original Application has been filed on multiple grounds mentioned in para 5 and its sub-paras.

5. As far as the variances are concerned, it has been averred in the reply of the respondents that the re-fixation of higher pay can be done to those ex-servicemen who have been appointed as Lower Division Clerk in the pay scale of Rs. 950-1500/Rs.3050-4590 whereas the applicant was appointed one grade higher in the Railways as Junior Accounts Assistant in the pay scale of Rs. 1200-2040/Rs.4500-7000. The case of the applicant is quite distinguishable since he was re-employed in the post of Junior Accounts Assistant-cum-typist and once he accepted the said appointment, he cannot ask for re-fixation of pay on the lower post. Passing of Appendix II examination is a pre-requisite condition for confirmation in the post of Junior Accounts Assistant-typist and therefore the claim of the applicant has been rightly rejected and this Bench of the Tribunal would not like to interfere in this case.

6. As regards the pay fixation in respect of Shri Hariram Chaudhary, who was employed as Ticket Collector, that post is equivalent to the post of LDC and the applicant cannot take advantage of the same.

7. A short rejoinder has been filed on behalf of the applicant controverting the facts and grounds advanced in the reply. An additional affidavit in support of the reply has been filed wherein certain circulars of the Railway Board have been annexed. Incidentally, we may mention here that the circulars or letters of the Railway Board are not required to be filed with pleadings and could have been produced directly to the Court. If at all the circulars or letters which were considered to be essential and to be placed on record, the same could have been done by annexing the same with the reply. The respondents are expected not to repeat/adopt such practice in future.

8. The learned counsel for the parties have reiterated their pleadings and the grounds enunciated therein. The learned counsel for the applicant has laid great emphasis on the point that the applicant is doing clerical job and basically he is performing the job of clerk and therefore he ought to have been given re-fixation as per sub order 2 of Order 16 of the Orders 1986. On the other hand, the learned counsel for the respondents has submitted that he had not been appointed on the post of LDC or Store Keeper, to whom such benefit is admissible. The applicant has been appointed to an higher post and the said post is not included in the order 16 of the Orders of 1986. Therefore, the applicant does not have any claim whatsoever and the O.A is misconceived.

9. We have considered the rival submissions made on behalf of both parties. To appreciate the controversy involved in this instant case, we find it expedient to extract the very provision of sub order 2 of Order 16 of Orders 1986, which is the very basis of the claim. It reads as under:

" 16 Fixation of pay of Ex combatant clerks/storeman

(i) In partial modification of the provisions contained in orders 4 and 5 above ex-combatant clerks on their re-employment as Lower Division Clerks or Junior Clerks in the Civil Posts and posts Ex-storemen in the Armed Forces on their re-employment as Storemen in civil posts shall have the option to get their pay fixed under orders 4 a and 5 above in accordance with the procedure indicated in sub para (2) below:

Explanation:

(i) The option once exercised is final. The re-employed pensioner should ask to exercise the option within the period of three months from the date of his re-employment.

(ii) Ex Combatant clerks and sotremen referred to in this order will include reservists released at their own request or on compassionate or medical grounds.

(2) Service rendered as Combatant Clerks and storemen in Armed Forces shall be treated equivalent to service as lower division clerks/junior clerks and storemen respectively in civil posts, irrespective of the pay drawn in those posts in the Armed forces. The initial pay in such services shall be fixed in the time scale of the re-employed posts at a stage equivalent to the stage at would have been reached by putting in the civil posts the number of completed years of service rendered in the posts in the Armed Forces. The pay so fixed will not be restricted to the retirement pay. The fixation of pay in these cases shall be done by invoking the provisions as fundamental Rules 27.

A bare reading of the aforesaid provisions reveals that on re-employment, ex combatant clerk as LDC or Junior Clerk shall have the pay fixation as per sub-para 2 of Order 16. It is stated that the above provisions are meant for Clerk/ Junior Clerk and Storemen. In the instant case, it is the admitted position that the applicant has been appointed on the post of Junior Accounts Assistant-typist and that too



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in the pay scale of Rs. 1200-2040. This scale has been revised to Rs. 4500- 7000. On the other hand the scale of pay for the post of Junior Clerk/ Clerk/Storemen is Rs. 950-1500 (Rs. 3050-4590). Thus the applicant's case is not covered by the aforesaid order and the fixation of his pay at the minimum of the scale is in consonance with the relevant rules. If that be so, no fault can be fastened with the action of the respondents and the claim of the applicant as such cannot be sustained. We may incidentally make a note here that from 1997 onwards, as per the recommendations of the 5th Pay Commission, dearness relief is admissible on the pension for ex-servicemen also. The only condition is that one has to not get the benefit of any fixation (known as hardship cases)by adding the increments for the number of years one has served as Combatant Clerk in the armed forces and since the applicant is not entitled to get the benefit of service rendered as Combatant Clerk in the Army, he is entitled for dearness relief on pension. However, the same is not the subject matter before us and we are not required to examine the same.

10. In the premise, the OA sans merit and fails. The same stands dismissed accordingly but there shall be no order as to costs.

Sig.
(G.R. Patwardhan)
Administrative Member

J K Kaushik
(J K Kaushik)
Judicial Member.

Jsv.

Rec'd copy
Ques
2/6/04

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RJ
4/6/04
for H. S. Sidiq (Adv.)