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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No.11/2008**

Date of decision: 12/05/2011.

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.**  
**Hon'ble Mr. Sudhir Kumar, Administrative Member.**

J.P. Jaitmal S/o Late Shri Shree Lal Jaitmal, aged about 53 years, R/o 36-A, Bhairu Villas Sardar Club Scheme, Jodhpur (Raj.). At present working as Office Assistant (Postal Assistant), Postal Stores Depot, Jodhpur in the office of Superintendent, Postal Stores Depot, Jodhpur.

: Applicant.

Rep. By: Mr. P.R. Singh, counsel for applicant.

**Versus**

1. The Union of India, through the Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Director General, Department of Post, Dak Bhawan, New Delhi-110001.
3. The Assistant Director General (Estt.), Department of Post, Dak Bhawan, New Delhi-110001.
4. The Post Master General, Rajasthan Western Region, Jodhpur-342 001.
5. The Senior Superintendent of Post Offices, Jodhpur Division, Jodhpur.
6. The Deputy Director of Accounts (Postal), Jaipur.
7. The Director, Ministry of Personnel, Public Grievance and Pensions, Department of Pensions and Pensioners' Welfare, 3<sup>rd</sup> Floor, Loknayak Bhawan, Khan Market, New Delhi-3.

: Respondents.

Rep. By: Mr. M.S. Godara, proxy counsel for  
Mr. Vinit Mathur, counsel for respondents.

**ORDER**

**Per Sudhir Kumar, Administrative Member.**

The applicant of this case is an ex-Army Hawaldar-Clerk, who had joined the Indian Army and served for 16 years, and retired



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from the post of Hawaldar-Clerk on 31.05.1993, before joining the respondent Department at Jodhpur on 12.01.1994, after undergoing due process of selection. His case was earlier heard and reserved for orders on 16.08.2010, but before the orders could be pronounced, one of the Members of the Bench passed away on 18.09.2010, and the case was thereafter released from the list of heard and reserved cases, and was heard once again and reserved for orders on 14.03.2011.

2. The facts of the case lie in a very narrow compass. While offering appointment to the applicant, the respondents were under obligation to offer him an option of pay fixation to ascertain as to whether the applicant was willing to opt for the applicable pay scale prescribed for the Postal Assistants either as per Clause 4 & 5 or in accordance with Clause 16, of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 (in short, CCS (FPRP) Orders, 1986). The applicant has submitted that in his case no such option was ever called for in time. However, when the applicant later came to know about this requirement, he exercised an option, which was duly considered, and the delay in his exercising the option was condoned through Annexure-A/4 dated 30.04.1997. Since the delay was condoned, the applicant was asked to furnish a fresh option, and he opted for the fixation of his pay as per the provisions of Clause 16 of the above cited CCS (FPRP) orders, 1986, which states as follows:-

**"Clause 16:**

- (1) 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 ex-Storemen in



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the Armed Forces on their re-employment as Storemen in Civil posts shall have the option to get their pay fixed under Orders 4 and 5 above or in accordance with the procedure indicated in sub-para (2) below.

EXPLANATION -

- (i) The option once exercised is final. The re-employed pensioner should be asked to exercise the option within the period of three months from the date of his re-employment.
- (ii) Ex-Combatant Clerks and Storemen referred to in this Order will include reservists released at their own request or on compassionate or medical grounds.

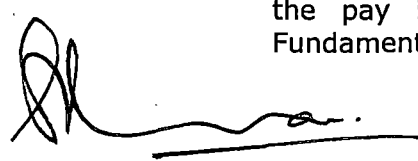
(2). Service rendered as combatant Clerks and Storemen in Armed Forces shall be treated as equivalent to service as Lower Division Clerks / Junior Clerks and Storemen respectively in Civil posts irrespective of the pay drawn in those posts in the Armed Forces. The initial pay in such cases shall be fixed in the time-scale of the re-employed posts at a stage equivalent to the stage that 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 'pre-retirement pay'. The fixation of pay in these cases shall be done by invoking the provisions of Fundamental Rule 27.

EXPLANATION -

- (i) For the purpose of calculation of completed years of service rendered in the Armed Forces the non-qualifying service in the Armed Forces will not be taken into account.
- (ii) Pension as defined in Order 3 (1) above shall be deducted from the pay fixed under this rule after ignoring Rs. 15 thereof and only the net pay is payable.
- (iii) If the resultant amount due not correspond to a stage in the scale applicable to the re-employed post, pay may be fixed at the next lower stage and the difference allowed as personal pay to be absorbed in future increase of pay.
- (iv) Where the pay in such cases is fixed below the minimum of the pay scale of the re-employed post, as a result of adjustment of amount of pension drawn by him from the Army in excess of Rs. 15 per month, increases in pay may be allowed after each year of service at the rate of increment admissible as if the pay has been fixed at the minimum till the minimum of the pay scale is reached. Thereafter, subsequent increments may be granted in the scale of the re-employed post in the usual manner.

(3). In the case of appointment of persons during released leave/terminal leave, their pay may be fixed at the minimum of the scale of pay of the civil post of Lower Division Clerks / Junior Clerks / Storemen and they will draw leave salary separately from the military authorities. Their pay in accordance with the formula mentioned at (2) above will be fixed from the date of their final discharge from the Army.

(4). The power to fix the pay under this order is delegated to the Administrative Ministries / Departments of the Government of India. For this purpose, the Comptroller and Auditor - General of India will have the same powers as the Ministries of the Government of India. Orders fixing the pay in such cases be issued by invoking the provisions of Fundamental Rule-27."



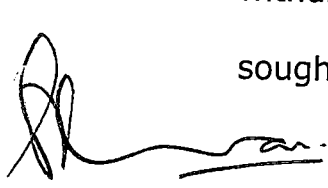
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pay scale. He was thereafter informed through Annexure-A/9 dated 07.03.2003 that a revised fixation of pay was being made applicable in his case, and the revised fixation as at Annexure-A/9 pages 62 to 65A was prepared in his case, and the copy of the note sheet was supplied to him. The applicant represented through his letters dated 03.04.2003 (Annexure-A/10), 24.04.2003 (Annexure-A/11) and 12.06.2003 (Annexure-A/12), but the same remained unanswered. He then submitted another application dated 07.10.2003 (Annexure-A/13) through proper channel, bringing out the case in detail.

5. However, in the meanwhile, the letter dated 25.09.2003 (Annexure-A/14) addressed to the Post Master General, Rajasthan Western Region, Jodhpur, had been received enquiring as to who was responsible for the wrong fixation of the pay of the applicant at the initial stage, and to determine the exact loss to the applicant in case dearness relief as admissible to him after implementation of Fifth Pay Commission is allowed on the pension, and as to whether his request for withdrawal of his option is permissible, and as to how the applicant will be benefitted in case his request for withdrawal of his option is accepted. The reply of the department was sent on 17.02.2004 (Annexure-A/15), and the applicant also thereafter submitted another representation and request on 25.08.2004 for withdrawal of option exercised by him, giving his own computation of the loss likely to be incurred by him in case withdrawal of option is not accepted. Further clarification was sought for through internal departmental correspondence dated

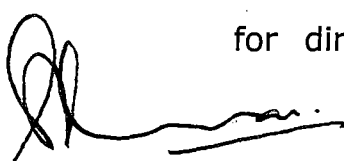


23.11.2005 (Annexure-A/17) and the applicant also further reiterated his request through Annexure-A/18. The departmental reply in regard to the applicant request for withdrawal of his option was sent to Delhi through letter dated 29.06.2006 (Annexure-A/19) which led to the impugned letter/order dated 27.09.2007 being received stating as follows:-

"2. The matter has been examined in consultation with Department of Personnel & Training. It has been observed that pay of both the officials i.e. Shri Jaimal and Shri Khichi was fixed at Rs.1360/- & Rs.1450/- respectively. The unignorable portion of pension amounting to Rs.484/- & Rs.876/- deducted from the pay so fixed as per rule 16 of DOPT O.M. No.3/1/85/Estt.(P-II) dated 31.07.1986 was erroneously allowed in the pay scale of Rs.975-1660 as personal pay which was objected by internal check party resulting recovery of overpaid amount of pay and allowances.

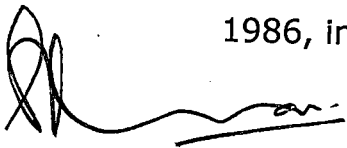
3. These two officials have now requested to withdraw their earlier option of getting the pay fixed under Rule 16 of O.M. dated 31.07.1986 and to get their pay fixed at the minimum of the scale in which they were reemployed viz Rs.975/- to enable them to draw pension & DR separately in terms of orders issued by DOP and PW O.M. No.45/73/97-P & PW (G) dated 02.07.1999. There is no provision of withdrawing or revision the option under this rule. Their request for withdrawing the earlier option to avail of the benefit of pension and DR under O.M. dated 02.07.1999 cannot be agreed to. The concerned officials may be informed accordingly."

6. The applicant has assailed this denial of an opportunity to him to withdraw his earlier option and to enable him to draw pension and dearness relief separately, and has prayed for respondents to be directed not to take into account the enhanced pension in respect of pay fixation under the Fifth Pay Commission, and that respondents be restrained from effecting any recovery in furtherance of their impugned order/letter dated 27.09.2007, and for direction upon the respondents to allow the applicant to



withdraw or revise the option which he exercised on 30.04.1987 vide Annexure-A/4.

7. The respondents filed a detailed reply written statement on 20.10.2008. They explained as to how the delay in exercising of the option was condoned in the case of the applicant, and after such condonation of delay his option was accepted, and the pay of the applicant was fixed at Rs.975/- as on 12.01.1994 by giving him one increment, and later on his pay was fixed in the pay scale of Rs.4000-6000 w.e.f. 01.01.1996. They submitted that later the personal pay of Rs.99/- allowed to the applicant was objected to as irregular, and therefore, the payments made erroneously to the applicant were ordered to be recovered. On passing of such recovery orders, the applicant moved an application for changing or withdrawing his option, which request was rejected as such change/withdrawal of option was not permissible under the rules, and an option once exercised is final. It was submitted that the applicant was appointed under Ex-Serviceman quota on 12.01.1994, and confirmed on 27.03.1996, and in between he was asked to submit an option for fixation of his pay, on 22.03.1995, which he did the same day, and the delay in submitting of the option was later condoned on 30.04.1997. It was, therefore, submitted that there was sufficient time available to the applicant to think about exercise of his option under Clause 16 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, in more than three years' period after his appointment.



8. The respondents further submitted that when on implementation of Fifth Pay Commission recommendations, the fixation of pay of the applicant was re-examined by the Deputy Director of Accounts (Postal), Jaipur, it was noted that as per the option submitted by the applicant under Clause 16 (2) of the above cited orders, the pay of the applicant should have been fixed at the actual net amount payable, arrived at by deducting the pension after ignoring an amount of Rs.15/-, but in contravention to this provision, the applicant had been allowed a personal pay of Rs.99/- to the extent the salary arrived at fell short of the minimum of the stage of pay scale of the applicant's post of the Postal Assistant, which was considered to be irregular. It was further submitted that all the representations submitted by the applicant have been duly forwarded to the appropriate authorities, and that for the effective total service rendered by the applicant of 14 years 07 months and 15 days after deducting his training period in the Army, 14 increments have been allowed correctly in respect of the 14 years of his service in the Army, and that his salary as now computed was correct. The respondents, therefore, prayed that the O.A. was liable to be dismissed.

9. Heard. During the course of hearing, the learned counsel for the applicant submitted a chart of pay fixation of the applicant trying to explain that the pay fixation made in his case was correct and did not suffer from any mistake of computation after taking into account the option exercised by him under Fundamental Rule 22 (1) (a) (2) and under Fundamental Rule 23.



10. We have given our <sup>anxious</sup>~~conscious~~ consideration to the ru. computation as initially allowed on 10.01.1997 through Annexure-A/5, and have compared it with the pay fixation of the applicant as now tried to be given effect to, as given in detail in the note sheet supplied to the applicant, and produced by the applicant at Pages 64 and 65 as a part of Annexure-A/9. Both the computations can be shown in juxtaposed position as follows:-

	Computation of 10.01.1997	Computation of 24.12.2002
5. Stage in the scale of pay by allowing one increment from the minimum for each completed year of service as combatant clerk.	1360	1360
6. Less quantum of Pension -499 Ignorable Portion $\frac{-15}{484}$	(-) 484	(-) 484
6. Stage after deducting the pensionary benefits	876	—
7. Pay fixed in the scale of Rs.975-1600 as on 12.01.1994	876 +PP 99 975	876 *No personal pay is to be allowed in view of explanation IV below Rule 16 (2).

11. Thus, it is seen that in the above revised computation, as proposed on 24.12.2002 by the IFA, and approved on 01.01.2002 by the Post Master General, it was proposed that the pay of the applicant in the pay scale of Rs.975-1600 should be fixed at Rs.876 w.e.f. 12.01.1994, only because Explanation (iv) below the Sub-Clause (2) below Clause 16 of the above cited CCS (FPRP) Rules stated that no personal pay was to be allowed. It is seen that this Rule does take into account the cases where, after adjustment of the amount of pension drawn by a person from the Army in excess

of Rs.15/- per month, may come to be fixed below the minimum of the pay scale of the re-employed post. In such cases, this explanation prescribes that the regular increments would be granted as if the pay of the person concerned has been fixed at the minimum of the pay of the re-employed post, and increments in pay have to be allowed after each years of service at the rate of the prescribed increment admissible, as if the pay has been fixed at much minimum, till the minimum of the pay scale is reached. It is only thereafter that the subsequent increments have to be granted in the scale of pay of the re-employed post in the instalments. Therefore, the contention of the respondents that there is no concept of personal pay being allowed in order to fix the pay at the minimum of his pay scale of the re-employed post by granting a personal pay is correct.

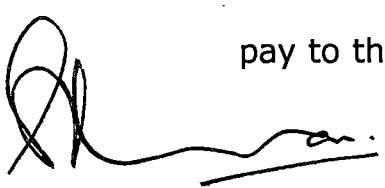
12. It is further seen from the note sheet produced at page 65 of the O.A. that in both computations the pay of the applicant was correctly and appropriately fixed on 12.01.1994 and 01.09.1995 bringing his salary to Rs.1420/-. When this salary was revised under revised pay scale as on 01.01.1996, in the scale of pay of Rs.4000-100-6000, the stage of pay at Rs.4500 has been fixed correctly as per the table prescribed by the Fifth Pay Commission in this regard. Thereafter, the pre-revised pension of Rs.499/- has been taken correctly to be stage at Rs.1538/-, but the ignorable portion of the pension of Rs.15/- has been reduced from revised pension of Rs.1538/- to arrive at the figure of Rs.1523/-, and by deducting this amount of Rs.1523/- from the revised pay as fixed

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on Rs.4500/-, his pay as on 01.01.1996 has again been fixed at Rs.2977/-, below the minimum of the pay scale of Rs.4000-6000.

13. Two questions arise in this case. The ignorable portion of Rs.15/- as prescribed in the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, was with reference to the pre-revised pay scales. It, therefore, has to be seen as to whether the procedure of first arriving at the amount of Rs.1538/- as the revised pension, and then reducing the unrevised ignorable portion of pension of Rs.15/- to arrive at the amount of Rs.1523/- liable to be reduced from the pay of the applicant was proper or not. Another way of computation could have been to relate the unrevised ignorable portion of pension of Rs.15/- as prescribed in the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, only to the original pension of Rs.499/-, and to compute the reduction on account of Military pension only of that amount which would be equivalent to the reducible quantum of pension of Rs.499/- under the revised pay rules, 1997. In that sense the computation made on 24.12.2002 appears to be erroneous.

14. The second aspect is that of the applicability of the Explanation (iv) below sub-clause (2) of Clause 16 of the said Rules, and as to whether that can be applied twice/two times in the case of fixation of pay of any person. In the computation produced at page 64 and 65, it is seen that first the Explanation (iv) below Sub-Clause (2) of Clause 16 had been applied to deny a personal pay to the applicant, and to fix the pay of the applicant at Rs.876/-

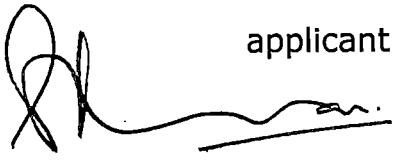


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w.e.f. 12.01.1994 in the scale of pay of Rs.975-1600. Later on, once again, while fixing the revised pay of the applicant as on 01.01.1996, his pay has once again been fixed below the minimum of the pay scale of Rs.4000-6000, by taking ~~the~~ recourse to the same Explanation (iv) below Sub-Cause (2) to Clause 16 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. To our mind it appears that this Explanation could have been applied by the respondent department in the case of the applicant only once, as on 12.01.1994, at the time of his initial joining in the department. hu.

15. Once the applicant had joined the department on 12.01.1994, and his pay as on that date had been fixed as provided for under the Explanation (iv) below Sub-Clause (2) of Clause 16 of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, those Orders cease to be applicable in his case, and those orders cannot be made applicable by the respondent department to a computation of salary in his case once again as on 01.01.1996.

16. Therefore, the fixation of pay as ordered in the case of the applicant through Annexure-A/9, on the basis of which ultimately the impugned order dated 27.09.2007 (Annexure-A/1) has been passed, is set aside, and the respondents are directed to compute the salary of the applicant once again afresh, recognizing fully that the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986, can be applied to the case of the applicant only once, at the time of his initial re-employment as an



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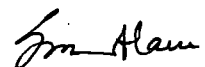
Army pensioner, and they cease to have any applicability in ~~this~~ <sup>his</sup> case thereafter. Once he became a regular employee of the respondent department, his pay under the revised pay rules of 2008 w.e.f. 01.01.2006 will have to be fixed after taking into account only the equivalent of the reducible amount of Rs.484 out of his pension as on 12.01.1994, and nothing else thereafter.

17. With these directions, the O.A. is partly allowed, Annexure-A/1 and Annexure-A/9 are set aside, and the respondents are directed to fix the pay of the applicant afresh once again. Needless to add that if he still feels aggrieved by the fresh fixation of his salary by the respondents, the applicant will have a fresh cause of action to agitate the matter before the appropriate forum afresh.

No order as to costs.



[Sudhir Kumar]  
Administrative Member



[Justice S.M.M. Alam]  
Judicial Member