

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 433/2008

Dated this the 18th day of August, 2009.

C O R A M

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Joseph C. Baby, Head Clerk (Retd.)
Diesel Stores Depot, Southern Railway
Ernakulam Junction
residing at Chittilapilly House
Vappuzha, Chazhur PO
Thrissur District-680 571 ..Applicant

By Advocate Mr. A.D. Raveendra Prasad
Vs

- 1 Union of India represented by
the General Manager
Southern Railway, Park Town
Chennai-3
- 2 The Controller of Stores
Southern Railway Joint Offices
Southern Railway, Ayanavaram
Chennai-23
- 3 Financial Advisor and Chief Accounts Officer
WST, Southern Railway Joint Offices
Southern Railway, Ayanavaram
Chennai-23
- 4 The Deputy Chief Material Manager
General Stores Department
Ayanavaram, Chennai-23
- 5 The Senior Personnel Officer
Southern Railway, Ayanavaram
Chennai-23 .. Respondents

By Advocate Mr. Thomas Mathew Nellimootttil

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

An ex-serviceman and retired employee of Southern Railways has filed this Application for a declaration that he is entitled to pay fixation at a higher stage by granting advance increment for each year of service rendered in the Air Force and for a direction to the respondents to take into account the military service as qualifying service along with the railway service for grant of pension and for consequential benefits.

2 The applicant who served Indian Air Force for 21 years from 15.11.65 to 30.11.1986, was re-employed as Clerk in the Railway on 8.9.90(A1), retired as Head Clerk on superannuation on 30.6.2007 (A2). At the time of retirement from IAF, he was drawing a basic pay of Rs. 1450 (A-5). However, on re-employment his pay was fixed at Rs. 950/- the minimum of the post. As this had caused hardship, he filed this O.A. after his retirement seeking re-fixation of his pay by granting increment to each year of service rendered by him in the Indian Air Force, for reckoning his military service as qualifying service for pensionary benefits and for issue of two sets of post retirement complimentary passes.

3 The respondents in the reply statement submitted that the applicant was appointed as Office Clerk w.e.f. 8.9.90, his pay was fixed at the minimum of the scale of Rs. 950-1500 and he retired from service as Head Clerk on superannuation on 30.6.2007. They submitted that under Rule 34 of Railway Services (Pension) Rules 1993 (Annexure R-1) an ex-serviceman on re-employment in Railway, may on his confirmation in Railway Service opt within one year either to continue to draw military pension or retain gratuity

received or cease to draw pension and refund pension already drawn. In the case of the applicant he had not exercised his option within the period of one year. Hence he was paid all retiral benefits as per the rules and that as he has not completed minimum 20 years of service he is not eligible for post-retirement complementary passes.

4 The applicant has filed rejoinder reiterating the averments in the O.A.

5 The respondents have filed additional reply statement reiterating their stand in the reply statement.

6 We have heard learned counsel on either side and perused the documents.

7 Though the pay of the applicant at the time of re-employment to the post of Clerk in the Railway on 8.9.1990 was fixed at the minimum of Rs. 750/-, till his retirement on 30.6.2007, he had not bothered about hardship or for counting the military service for civil pension. According to the extant rules, he should have given option for counting the military service for Railway pension within three months from his appointment. The applicant has not given any option till his retirement.

8 As regards the fixation of pay by granting one increment for each year of service rendered in the Indian Air Force, the basic order applicable to the applicant is 1(b) of regulation of Pay during Re-employment under Chapter 3 of Swamy's Compilation on Re-employment of pensioners (civilians and Ex-servicemen) which is extracted below:

1(b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

74

In cases where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

9 According to Ministry of Personnel & Training OM No. 3/1/85-Estt. (P-II) dated the 4th April, 1986 the entire pension of personnel below the rank of commissioned officer is ignored in fixing their pay on re-employment. The applicant was drawing a pay of Rs. 1450/- (revised) (A-5) in the Indian Air Force at the time of retirement. On re-employment as Clerk in the Railways, his pay was fixed at the minimum of the scale at Rs. 950/- The military pension received by the applicant is not disclosed. Even if the military pension is Rs.500/- there would not be any hardship. However, the applicant had the option to get his pay fixed under Orders 4 and 5 above or in accordance with the procedure indicated in sub para (2).

As per Order 4

(b)(i) in all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

(b)(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment benefits are fixed at the same stage as the last pay drawn before retirement.....

Therefore, no hardship is caused to the applicant in the fixation of the pay of his at the minimum of the pay in the civilian post. The action of the respondent in accordance with 4(b)(i) is in accordance with rules and cannot be faulted.

10 As per Rule 34 of Railway Services (Pension) Rules, 1993, an ex-serviceman who is re-employed in Railway service has to opt

ty

- a) to continue to draw the military pension or retain gratuity received on discharge from military service, in which case his former military services shall not count as qualifying service, or
- b) to cease to draw his pension and refund the pension already drawn
 - (ii) the value received for the commutation of part of military pension and
 - (iii) the amount of death-cum-retirement gratuity including service gratuity, if any

and count previous military service as qualifying service, in which case the service so allowed to count shall be restricted to a service within or outside the employees unit or department in India or elsewhere which is paid from the consolidated fund of India or for which pensionary contribution has been received by the Government.

Therefore, a re-employed ex-serviceman applying for counting of previous service have to exercise an option for the same within one year from the date of joining the Civil Service or post. He has to refund pension gratuity etc. already drawn from military authorities with interest from the date of their joining the civil service. In such cases half of the military service will be counted towards retirement benefits. In the case on hand the applicant did not exercise his option within a period of one year for reckoning military service for the purpose of reckoning with that of Railway Service for calculating pensionary benefits.

11 As regards post retirement complimentary pass, as per the extant rules, it is available only to retired Railway servants whose non-railway service has been counted along with railway service for pensionary benefits. It is noticed that the applicant submitted a representation only on 29.6.2007 seeking the post retirement complimentary passes.

ty

12 Since the applicant has not opted to cease to draw his pension and refund the military pension already drawn, the value received for commutation of a part of military pension, DCRG including service gratuity if any within one year of service of Railway the question of counting 50% of military service with that of the Railway Service for the purpose of pensionary benefits and granting facilities of passes and medical benefits after retirement, would not arise.

13 In this view of the matter, we do not find any merit in the O.A. it is accordingly dismissed. There shall be no order as to costs.

Dated 18th August, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

kmn


GEORGE PARACKEN
JUDICIAL MEMBER