

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 26.4.1990

P R E S E N T

HON'BLE MR.S.P.MUKERJI - VICE CHAIRMAN

AND

HON'BLE MR.N.DHARMADAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.440/89

N.Janardhanan Nair - Applicant

Versus

1. Union of India rep.
by The Secretary,
Ministry of Defence,
New Delhi.
2. General Manager,
Heavy Vehicles Factory,
Avadi, Madras.
3. Controller of Defence
Accounts, 9, Chittaranjan
Avenue, Calcutta-13. - Respondents.

Mr.M.Rajagopalan - Counsel for applicant

Mr. P.Santhoshkumar, ACGSC- Counsel for respondents

O R D E R

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

This is the third time the applicant has come to the Tribunal in connection with the fixation of his initial pay as on 4.3.1964 when he was re-employed as an Ex-Serviceman, as Supervisor A (NT) in the Heavy Vehicle Factory, Avadi. In this application dated 21.7.1989, he has challenged the impugned order dated 25th August, 1988, praying that the respondents be directed to refix his pay by counting his entire Army service, including war service for the purpose of increments in the pay scale of the post of Supervisor-A

to which he was re-employed. His further prayer is that, he should be given the maximum of the pay scale from the date of his re-employment with arrears. The material facts of the case have been summarised as follows.

2. The applicant retired from the Army after more than 22 years of service on 30.6.1964, while he was working as Havildar Clerk. On 4.3.1964 while he was on leave pending retirement, he was appointed as Supervisor-A in the Heavy Vehicles Factory, Avadi in the pay scale of Rs.205-7-240-8-280. He was given the minimum of the pay scale at Rs.205/- along with the military pension that he was drawing. At the time of his retirement he was given the Honorary Rank of Naib Subedar also. At the time of his retirement, he was drawing a pay of Rs.141/-. His initial pay at the minimum of the pay scale of the post of Supervisor at Rs.205/- was fixed in accordance with the Ministry of Defence instructions dated 15.7.60. After his re-employment, he exercised his option to forego his military pension and other retiral benefits, in lieu of getting his military service added to his civilian service for the purpose of pension after he retires from civilian service. In the bargain, he had to refund the military pension and service gratuity which he had already received on retirement from military service. His grievance is that, once he had refunded the military pension and gratuity, his military service should also

be considered for granting him increments in the pay scale of the Supervisor in accordance with the afore-said instructions of the Ministry of Defence dated 15.10.1970. His representations having failed to give him relief, he filed a Writ Petition in the High Court of Kerala, which was transferred to this Tribunal and disposed of by the judgment dated 30.7.1987 in TA 329/86. A copy of the judgment has been appended as Annexure-A6. In that judgment, "the respondents were directed to fix the initial pay of the applicant on re-employment in the light of the O.M. dated 15.7.1960, after making the assessment in the light of what has been stated earlier. As regards the allowances of Rs.12 per mensem being paid to the applicant as a result of the conferment of the honorary rank of Subedar, it shall not be treated as part of his service pension". After the judgment was delivered, the respondents passed a non-speaking order on 5th March, 1988 (Annexure-A7) rejecting ~~the~~ re-fixation of his initial pay. Thereafter, the applicant filed a Contempt Petition No.K-5/88. ~~While~~ the Contempt Petition was pending, the respondents passed the impugned order on 25th August, 1988 (Annexure-A8), giving the reasons for not allowing him any increments at the time of fixing his initial pay in 1964. The Contempt Petition was disposed of on 8.12.1988 by the order at Annexure-A9 to which one of us was a party. The Contempt Petition was closed with the direction that, if the applicant is aggrieved by the assessment of

his Military service for fixation of pay, he can file an Original Application. Thus the applicant has come for the third time before us challenging the order dated 25.8.1988(Annexure-A8). His contention is that the respondents have refused to give him advance increments in the scale of Supervisor by wrongly deciding, that the post of Havildar Clerk, Class-I held by him in the Army is not comparable^{with}, but lower in duties, responsibilities and status than the post of Supervisor to which he was re-employed. He has argued that the post of Havildar Clerk is the highest Non-Gazetted Officer in the Army. He has also repeated his prayer that he should be given the benefit of increment of his War service between 1942 and 1946, and that his pay on 1964 should have been fixed as a fresh entry with 22 years of previous service.

3. The respondents have stated that, as Havildar Clerk, the applicant was getting a pay of Rs.141/- whereas on re-employment he was given a basic pay of Rs.205/- of the at the minimum pay scale. Accordingly there is no undue hardship on him. They have also stated that, counting of Military service for civil pension for which the applicant had refunded, the Military pension and gratuity has nothing to do with fixation of initial pay on his re-employment which is to be done in accordance with Ministry of Defence OM dated 15.10.1960. They have explained that the detailed examination of the duties

...5/-

and responsibilities of Havildar Clerk and those of Supervisor showed that the Supervisor's post was of higher responsibilities than that of Havildar Clerk.

4. We have heard the arguments of the learned counsel for both the parties and have gone through the documents carefully.

5. The applicant's case was ^{once} decided by a Single Bench of this Tribunal in TA 329/86 by the judgment dated 30.7.1987. A copy of this judgment is at Annexure-A6. "The respondents were directed" to fix the initial pay of the applicant on re-employment in the light of the OM dated 15.7.1960....." This OM dated 15.7.1960 had been appended as Ext.P5 by the applicant, i.e. Original Writ Petition which was transferred to this Tribunal and given No.TA 329/86. The relevant extracts from the Ministry of Defence OM of 15.7.1960 are quoted below:

"Copy of Government of India, Ministry of Defence, New Delhi. O.M.No.2(54)/58/5801/D(C.I) dated 15.7.60.

Sub: Fixation of pay of re-employed pensioner-general policy thereof.

In supersession of all earlier orders on the subject, the Government of India have decided that the following procedure should be adopted in fixing the pay of pensioners/military pensioner, including officers pensioned off or retired on contributory Provident Fund and from services of the State Governments, local bodies, Port Trusts etc., administered by Govt. Railways, Defence estimates etc. on their re-employment to the civil posts paid from Defence Service Estimates.

a) Re-employed pensioners should be allowed only the latest prescribed scales of pay, that is, no protected time scales much as those available to pre 1931 entrants should be extended to them.

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.

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.

For the purpose of the above sub clause, a military pensioner who retired as a JCO or OR will be deemed to be appointed to a comparable civilian post if the pay of the military post with the emoluments mentioned under Note 3 below sub paragraph (c) is equal to or more than minimum of the pay applicable to the civil post." (emphasis added)

Note 3 below sub paragraph 'C' referred to above reads as follows:

"NOTE:3. For the purpose of determining the pre-retirement pay of re-employed Military, Naval and Air Force pensioners, the following items of emoluments will respectively be taken into account:-

Army (JCOs, NCOs, ORs).

Old pay Code

Basic pay,
Grade/trade/technical/Corps pay
Proficiency pay.

War Service increments
Deferred pay
Personal allowance.
(Ris/Sub.Major)
Extra Duty Pay."

New Pay Code

Pay (including deferred pay)
Rank appointment pay
Increments of pay for length of Good Service pay.

The basic question to be decided for fixation of initial pay above the minimum of prescribed pay scale of the post to which the applicant was re-employed, is whether fixing his pay at the minimum of Rs.205/-, the applicant can be said to have suffered "undue hardship". If there is undue hardship, then he will be allowed to get one increment for each year of service rendered in Military post not lower in rank than that of Supervisor, to which post he was re-employed. In the transferred Writ Petition the applicant before us gave the details of the pay and allowances as also monetary value of other perks that were admissible to Havildar Clerk-I on 1964 when he retired in that capacity. He gave the break-up as follows:

<u>Pay of Hav/Clerk Class I in 1964</u>		<u>Pay of Supervisor 'A' in 1964</u>
Trained Soldier Class I Group 'B'	Rs. 109.00	Scale of pay Rs. 205-7-240-8-280
Rank pay as Havildar	Rs. 20.00	<u>Rs. 205.00</u>
GS pay after 9 years service	Rs. 12.00	
Increment after 10 years	Rs. 5.00	
Compensation in lieu of rations	Rs. 60.00	
-do-of quarters	Rs. 16.00	
-do-of conservancy & W/C service	Rs. 36.00	
-do-Haircutting & washing	Rs. 2.00	
	<u>Rs. 260.00</u>	

It may be recalled that, he retired from Military service on 30.6.1964, but was re-employed as Supervisor in the scale of Rs.205-280/- at Avadi Factory w.e.f. 4.3.1964. Therefore, without any break in employment w.e.f. 4.3.64

he started drawing in the civilian post, the following pay and allowances as indicated on page-2 of Annexure-A8

"Basic	- Rs.205.00
DA	- Rs. 35.00
HRA	- Rs. 30.75
CCA	- Rs. 16.40

	Rs.287.15"
	=====

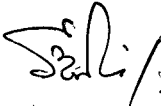
From the comparison of all emoluments and benefits as enjoyed by him according to his own showing as Havildar Clerk and the pay and allowances given on re-employment as Supervisor, it will appear that, even before he formally relinquished the Military service his emoluments as Supervisor increased to Rs.287.15 while in the Army he was getting Rs.146/- in monetary terms and Rs.114/- in kind with the total of Rs.260/-. Therefore, even if his total Military pension is ignored, on re-employment he was remunerated to the extent of Rs.27.15, more than what he was getting in cash and kind at that time in the Army. Therefore, we find that by being given the minimum of pay scale of Rs.205/- as Supervisor no hardship much less "undue hardship" has been caused to the applicant.

6. The applicant seems to be under a misapprehension that, since he had agreed to forego Military pension and gratuity, he is entitled to count that service for increments at the initial stage of re-employment. By refunding the Military pension and gratuity, the applicant has become entitled ^{to} add his Military service to his civilian service for the purpose of civilian pension

that he will draw. Refund of Military pension has nothing to do with counting Military service automatically for increments. Even otherwise, there is nothing to show that service as Havildar Clerk which he had rendered in the Army can be considered to be equivalent or higher in the rank than that of Supervisor to which post he was re-employed. So as to entitle him to count his service as Havildar Clerk for increment in the pay scale of Supervisor.

7. In the facts and circumstances, we see no merit in the application and the same is rejected. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER

 26.4.90
(S.P. MUKERJI)
VICE CHAIRMAN

26.4.1990

R.A. No. 78/90.....

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by _____

N. Janardhanan Nair (Applicant/

Respondent in OA/TA No. 440/89) seeking a review of
the order dated 26-4-90 passed by this Tribunal in the
above noted case.

As per Rule 17(ii) and (iii), a review petition shall
ordinarily be heard by the same Bench which passed the order,
and unless ordered otherwise by the Bench concerned, a review
petition shall be disposed ^{of} by circulation where the Bench
may either dismiss the petition or direct notice to be issued to
the opposite party.

The Review petition is therefore, submitted for orders
of the Bench consisting of Hon. Shri S.P. Mukerji, V.C.
and Hon. Shri N. Dharmadas, Member (7-1)
which pronounced the order sought to be reviewed.

25/6

I have added a
sentence in the beginning
There has been no delay on the
applicant's part in filing of judgment on 29.5.90 + filed the RA on 20.6.90. (within 30 days)

Hon. Shri S.P. Mukerji

Yes to Hon. Shri S.P. Mukerji
V.C.

Hon. Shri N. Dharmadas

Hon. Shri N. Dharmadas

25/6
N. Dharmadas (JM)

I agree with
N. Dharmadas
25.6.90

Hon. Shri N. Dharmadas may kindly see.
MP for condonation of delay if any allowed.
We have gone through the RA and
connected papers. Our judgment date
26.4.90 was passed when the applicant
had approached courts for the third
time. Our judgment dealt in detail the
various overruns which he is repeating in the RA. No error
apparent on the face of record or new material has been produced
or shown by him to warrant a review. No review on merits is
permissible. Review is not an appeal. There is no force in the RA
which may be rejected by circulation without bothering the respondents
again. 25/6/90