

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A..No. 558/2002

TUESDAY THIS THE 16th DAY OF MARCH, 2004.

C O R A M

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. H.P. DAS, ADMINISTRATIVE MEMBER

T.N. Ramachandran Iyer
(Ex General Stored Keeper)
Government of India Press, Koratty)
Pensioner, Lakshmi Sadan
7 Jawahar Park, Nethajee Nagar
Kochi, 682 020
Applicant

Vs.

1. Union of India represented by the
Secretary, Ministry of Defence
New Delhi.
2. The Secretary to the Govt. of India
Department of Personnel & Training
Estt. Pay-II Section
New Delhi.
3. The Secretary to the Govt. of India
Ministry of Personnel & Training
Department of Administrative Reforms
and Public Grievances,
5th Floor, Sardar Patel Bhawan
Parliament Street
New Delhi.-110 001
4. Shri J.K.Dadoo
Director (Resettlement)
Ministry of Defence
243 A-Block
Sena Bhawan, New Delhi. Respondents

By Advocate Mr. C. Rajendran, SCGSC for R 1-3

The Application having been heard on 15.12.2003 the Tribunal
delivered the following on 16.3.2004.

O R D E R

HON'BLE MR. H. P. DAS, ADMINISTRATIVE MEMBER

The applicant T. N. Ramachandran Iyer, ex-Sapper Clerk
of the Territorial Army and retired General Store Keeper of the
Government of India Press, Koratty, is at it again. This is his
fifteenth engagement with the courts of the land claiming justice
for himself. He has lost most of the cases so far,

H. P. Das

fighting his battle all along, without legal assistance. Admonished by the courts for his obduracy, penalized for wasting precious judicial time, hit by res-judicata, but never for long. He has been back at it, as now, with a fresh cause for action, at least according to himself. This is a classic instance of how far, how long and how much the law can bear an aggrieved person's repeated calls at its door. For this reason, we have persuaded ourselves to keep aside the burden of a cluttered past so that we can hear his fresh call for justice if any. So, here we are with the case of the applicant.

2. The applicant's simple case now is that by the Government of India, Directorate of Printing OM dated 20.6.90 his pay was fixed at Rs.125 P.M. w.e.f. 30.5.1960 in the pay scale of 110-3-131-4-155-EB-4-175-5-180 by granting him five increments of Rs.3/- per annum taking into account the five years' service rendered by him in Territorial Army, in terms of Ministry of Finance OM No.F.6(8)E/111/63 dated 11.4.63 as amended vide Ministry of Finance OM No.6(8)E III/63 dated 19.1.1965, treating as if he was re-employed w.e.f. 30.5.1960, and this fixation was wrong. His contention is that at the point of issue of the OM dated 20.6.90 of the Directorate of Printing, the original Ministry of Finance OM of 11.4.1963 as modified on 19.1.1965 had been appended with a note of Ministry of Finance OM No.F.4(24)E III(A)/68 dated 7.8.70, by which the original OM of 11.4.1963 had been given retrospective effect from 1.1.1956 instead of 30.5.1960. The OM of the Directorate of Printing, while granting him the benefit of five years of service in the Territorial Army towards civil pension, took away the benefit of pay fixation by failing to act as per the 7.8.1970 OM of Ministry of Finance which allowed him the benefit from 1.1.1956 or from the date of

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his appointment as LDC on civil employment. Since he had joined civil employment on 27.11.1956, the benefit of fixation should have been given to him from that date and not from 30.5.1960. 30.5.1960 was no longer the crucial date of application, as it had been already extended in retrospect upto 1.1.1956. This failure on the part of the respondents led to his pay being fixed at Rs.125/- p.m. on 30.5.1960, while the correct fixation should have been Rs.75/- on 27.11.1956 by adding five increments to the basic pay at the initial stage of the scale. His pay thereafter should have been regulated on this basis.

3. The learned counsel for the respondents took the by-now-familiar line of argument harping on the same theme of applicant being a compulsive litigant seeking relief against an imaginary grievance. The learned counsel stated that concession given to the applicant in civil employment is applicable from 30.5.1960. Raising the barrier of res-judicata the counsel sought to counter any further adjudication in the matter as successive appeals before the courts on the same ground, have been rejected. Yet another line of argument presented by the learned counsel for the respondents was that the concession allowed by the Ministry of Finance OM of 7.8.1970 is only for ex-combatant clerks and not for Territorial Army personnel. This, he stated, was the view of the Department of Personnel. He contended that the applicant has already received the full benefit of concession both in terms of salary and qualifying service for pension and there is nothing more to ask for.

4. We have heard the applicant and the learned counsel for the respondents.

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5. The respondents in the additional reply statement have contended that the prayer of the applicant to fix his pay in terms of Ministry of Finance OMs dated 11.4.63 and 7.8.70 in the same manner as applicable to ex-combatant clerks of the Armed Forces having been contested and adjudicated in a large number of Original Applications and Original Petitions for instance OA No.258 of 1992 of the CAT, Jabalpur Bench, OA 1091/95, OA 132/97, OA Dy.No.3182/00. OA 681/2000, OA Dy.No.6081/2000, OA 726/01 of the Ernakulam Bench of the Tribunal, OA 634 of 1998 of the Mumbai Bench of the Tribunal, OP No.15831 of 1999, and RP No.4/2001 of the Hon'ble High Court of Kerala the present application is barred by principles of res judicata. Therefore before entering into the merits of the case we have necessarily to consider whether the applicant can be permitted to raise that question in this case for adjudication. We have gone through all the judgments referred to in the additional reply statement and copies of which are made available as annexures to the additional reply statement. We find that the crucial question whether in view of the note provided below the Ministry of Finance OM No.F.6(8)-E.III/63 dated 11.4.63 and OM No.6(8)/E.III dated 19.1.65 by the amendment vide Ministry of Finance OM No.F.4(24)-E.III-A/68 dated 7.8.70 whether the applicant would become entitled for re-fixation of his pay with effect from the 1st January, of 1956 or with effect from the date of his appointment in the civil post has not been either specifically raised or considered in any of these cases. Therefore, we are of considered view that the applicant cannot be debarred by operation of the principles of res judicata in raising the question in this application. We note with regret that this crucial aspect had unfortunately missed the attention of everybody in the proceedings referred to in the additional reply

/s/ P. J.

statement. Although the applicant had approached the Tribunal claiming the relief in several applications, may be for the reason that the point was not brought to the attention of the Tribunal there has been an omission to consider this vital question in the earlier cases. It is well settled by now that no party should be prejudiced by the mistake or omission committed by a court. Therefore, the issue which has been specifically raised in this Application as to whether the applicant in view of the note provided by the OM dated 7.8.70 entitled to have his pay refixed with effect from the date of his appointment in the civil service is required to be considered and decided in this application. The claim cannot be rejected at the threshold without consideration on merits as the principles of res judicata would not apply in view of the fact situation.

6. The most important piece of evidence in this case is Government of India Decision (4) below FR 27. FR 27 reads as follows:

"Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a premature increment to a Government servant in a time scale of pay if it has power to create a post in the same cadre in the same scale of pay."

7. A list of orders and decisions appended to FR 27 have, from time to time, gone on clarifying the scope of application of the Rule. Fixation of pay of ex-combatant clerk is one such clarification, which was introduced by Government of India, Ministry of Finance OM No.F.6(8)-E.III/63 dated 11.4.1963, and OM No.6(8)E.III dated 19.1.1965. The full text of this OM is required to be kept in view, and hence is quoted below:

"(4) Fixation of pay of ex-combatant clerks- It has been decided as a special case, that service rendered as a combatant clerk (Sepoy and above and equivalent ranks in

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Navy and Air Force) may be treated as equivalent to service as LDCs/Junior Clerks in Civil Departments irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in posts of LDCs/Junior Clerks in Civil Departments after their release/retirement from the Armed Forces, their initial pay in the posts of LDCs/Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerk.

The pension and pension equivalent of gratuity, if any, which does not exceed Rs. 15* per mensem will be ignored. In respect of pensionary benefits exceeding Rs. 15* per mensem the authority competent to determine the pay will have discretion to ignore Rs. 15* or any smaller amount that it may consider justified depending upon the circumstances of the case.

The power to fix pay as above is hereby delegated to the Ministries of the Government of India. For the purpose of this order, the C&AG will have the same powers as Ministries of the Government of India. Orders fixing the pay in such cases should be issued by invoking the provisions of FR 27.

The above decision will have effect from the 30th May, 1960. Ex-combatant clerks re-employed at LDCs/Junior Clerks in Civil Departments before the 30th May, 1960 under these orders as if they were reemployed from that date. Those who so opt will not be eligible for the benefit of the civil service rendered prior to that date but they may be allowed to retain the benefit of adhoc increments, if any, already earned by them under the Ministry of Home Affairs OM No. 30/53-CS(D) dated the 9th October, 1954. The option should be exercised within six months from the date of issue of this Memo. The option once exercised shall be final.

No arrears as a result of the application of these orders will be admissible for the period prior to the date of their issue."

8. The date of effect of the decision was 30.5.1960, as provided in the text. A note was subsequently provided below this text on the basis of Government of India, Ministry of Finance OM No.F.4(24)-E III(A)/68 dated 7.8.1970.

"NOTE:- The provision contained in the above instructions will have retrospective effect from the 1st January, 1956, instead of the 30th May, 1960.

Ex-combatant clerks re-employed as LDCs/Junior Clerks in Civil Departments xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx may be given an option to get their pay refixed with effect from the 1st January, 1956 or from the date of their appointment, as the case may be whichever is later. The option should be exercised within six months from the

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date of issue of this Memorandum and the option once exercised will be final."

9. Again vide Government of India, Ministry of Finance OM No.F.4(15)E.III(A)/72 dated 25.4.1973 another note was added which provided:

"Arrears as a result of the application of these orders maybe paid with effect from the 1st January, 1962 or from the date of appointment to a civil post as LDCs/Junior Clerks whichever is later subject to the following conditions:-

(i) the employee had been released from the Armed Forces without pension

(ii) the employee is in service on the date of issue of these orders"

10. Now, a reading of the text of the decision along with notes appended to it would show the following:

(a) That as a special case, the service rendered as a combatant clerk may be treated as equivalent to service as LDCs/Junior Clerks in Civil Departments irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in posts of LDCs/Junior Clerks in Civil Departments after their release/retirement from the Armed Forces, their initial pay in the post of LDC/Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years as combatant clerk.

(b) The power to fix pay as above is delegated to the Ministries of the Government of India.

(c) The decision will have effect from 30.5.1960, later modified from 1.1.1956.

(d) Arrears due to retrospective revision of pay would be payable subject to certain conditions.

11. The applicant's case is that he was granted the benefit of five years Territorial Army service in pursuance of only the main OM dated April 1963 as modified by the OM of January 1965, with effect from 30.5.1960, without taking into account the extended retrospective benefit allowed as per the OM of April 1970 appended to the main OM as a note.

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12. We find nothing unreasonable in the claim of the applicant. As a matter of fact, any fair interpretation of the norm of application of the Government of India Decision (4) in totality would necessarily include the notes below the decision. OM of Government of India, Directorate of Printing dated 20.6.1990 was with reference to the OM dated 11.4.1989 from the Manager, Government of India Press, Koratty. These two OMs are crucial to our understanding of the manner in which the norm was actually applied.

(X) - Copy of OM dated 11.4.89

Sub: Initial Fixation of pay-Ex-servicemen re-employed in Civil posts before 1st July, 1986.

Shri T.N. Ramachandran Iyer, Ex General Store Keeper of this Press was initially appointed as LD Clerk on 27.11.1956 in Govt. of India Press, Nasik in the Pay scale of Rs. 60-3-81-EB-4-125-5-130. Prior to his appointment in this department, he had served in the Territorial Army as a Sapper Clerk and he rendered 5 years embodied service from 13th September 1950 to 13th September, 1955 as Sapper Clerk, which is considered equivalent to the post of LDC/Storeman in civil Department. The initial pay of Shri Iyer has not been fixed taking into account the embodied service rendered by him after his appointment in GIP, Nasik. Subsequently he took up the case for counting him military service alongwith his civil service for pension and other retirement benefits, and after a long and protracted correspondence it was decided to count his embodied service of 5 years as per instructions received from Directorate of Printing vide OM NO. 16/13(3)/85-A dated 12.1.1988. In the meantime, Shri Iyer retired from service on superannuation w.e.f. 28.2.1987 (A.N.). The decision for counting his embodied service was received after his retirement and the above period was counted along with his service in this department. Pension and other retirement benefits were re-calculated and paid to him after his retirement. Now Shri Iyer has represented for counting his Military service for the purpose of initial fixation at the time of entry in civil service i.e. 27.11.1956.

In accordance with the instructions for counting the service rendered in military as Ex. combatant Clerk/Storeman, completed years of military service is to be counted towards civil service for the purpose of grant of increments and his pay is to be fixed accordingly. Shri Iyer was drawing initial pay of Rs. 60/- (at the minimum in the scale of Rs. 60-3-81-EB-4-125-5-130) at the time of his appointment. Taking into account of 5

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years of service as Combatant Clerk, 5 increments @ Rs. 3/- each are to be granted to him and his pay is to be fixed at Rs. 75/- w.e.f. 27.11.56. Proposal for fixation of his pay accordingly is sent herewith in the prescribed proforma.

Since the service rendered as Combatant Clerk is treated as not lower than the post of LDC/Storeman in Civil Service, the pay drawn at the time of his retirement/discharge from military is not to be taken into account for the purpose of fixation of his pay in the initial stage Form 23 Certificate of verification of the Service of Shri T.N.R. Iyer (pasted in Service Book Vol.IV) along with Service Books Volume I to IV are also forwarded herewith for further necessary action.

(Y)-Copy of OM dated 20.6.90

Subject: Counting of T.A. Service towards Civil pension and fixation of pay of Shri T.A. Ramachandran Iyer, Ex G.S.K. Government of India Press, Koratty.

Reference OM No. 12017/13/88/CC/1261 dated 1.6.1990 from the Manager, Govt. of India Press, Koratty on the subject mentioned above.

Approval of the competent authority is hereby conveyed to the fixation of pay of Shri T.N. Ramachandran Iyer, Ex G.S.K. Govt. of India Press, Koratty at Rs. 125/- P.M. with effect from 30.5.60 in the pay scale of Rs. 110-3-131-4-155-Eb-4-175-5-180 by granting him five increments @ Rs. 3/- per annum taking into account of his five years of service rendered by him in Territorial Army in terms of Ministry of Finance OM NO. F.6(8)LE/111/63 dated 11.4.1963 dated 19.1.1965, treating as if he was re-employed w.e.f. 30.5.60. However, no arrears will be paid for the period before 11.6.1985.

This issues with the concurrence of the Finance Division of the Ministry of Urban Development vide their U.A. NO.1282/W&E/SA/90 dated 19.5.90.

The Manager is also requested to obtain an undertaking from Shri T.N. Ramachandran Iyer to repay erroneous payment if any (as is done in pay fixation consequent to Pay Commission recommendation). The Manager is requested to take action accordingly under intimation to this Directorate.

The Service Book of Shri T.N. Ramachandran Iyer, Ex. G.S.K. is returned herewith. Please acknowledge.

13. The OM of the Manager, Government of India Press, Koratty, as would be seen, had proposed initial fixation w.e.f. 27.11.1956. The Manager interpreted that if embodied service of the applicant in Territorial Army is to be equated with combatant service in the Army, then the benefit of initial fixation should

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be available on the date of joining i.e. 27.11.1956. But the Directorate of Printing ordered on 20.6.1990, quoting the Ministry of Finance OM dated 11.4.63 as amended by OM of 19.1.1965, granting fixation benefit only from 30.5.1960. Evidently, the Directorate ignored the note of 7.8.1970 appended to the Ministry of Finance OM. Was there a reason for this even when embodied service in Territorial Army was equated to combatant service? There was apparently no basis to ignore this at the point of time of issue of the OM on 20.6.1990. It was only subsequently that the Directorate of Printing in consultation with the Department of Personnel came to a conclusion that the OM dated 7.8.1970 which extended the retrospective effect to 1.1.1956 was applicable only to Ex-combatant clerks released from Armed Forces and not from Territorial Army, as would be evident from the OM of Directorate of Printing dated 24.8.2000. This OM also contained a clarification that the Ministry of Finance OM dated 11.4.1963 was not directly applicable to Ex-Territorial Army personnel, and that it was extended to them as a fallout of Defence Ministry's OM dated 11.6.1985. This only means that since service in Territorial Army became pensionable on completion of 15/20 years of qualifying service, those re-employed on civil posts with lesser periods in Territorial Army would be entitled to count that period towards civil pension. It is because of this that OM of 1963 as amended applicable originally to ex-combatant on re-employment in civil service was made applicable to ex-embodied personnel of Territorial Army.

14. Having given the equation with ex-combatant clerk to this ex-sapper clerk of the Territorial Army, can the respondents now deprive him of the benefit of the date of effect as provided in


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the OM of 1963 as amended in 1970? We do not find any need of a declaration of principle to provide an answer. It is common sense that a rule applied is applied as it is with notes below the rule forming an integral part of the rule, unless the rule itself declares its inapplicability to certain situations or certain persons or in certain contingencies. In other words, if it was decided by the competent authorities that the benefit of five years of embodied service would be given for pay fixation and pension under the OM of 1963 as amended, this part of an amendment cannot be ignored without an express provision to that effect in the rule itself or in the amendment. If the Directorate of Printing, took the 11.6.1985 OM of the Ministry of Defence to mean that the embodied service of a sapper clerk in the Territorial Army now in civil employment would get the same treatment as a combatant clerk of the Army in civil employment in terms of the Ministry of Finance OM of 11.4.1963, then the whole of the OM including its scope would become automatically applicable. Part of an order cannot be ignored while applying the whole of the order. The anomaly created by the selective application of the decision of the Government would become evident from the fact that for the purpose of pension five years of embodied service in Territorial Army has been added to the length of service in civil employment. If this weightage was given for determining qualifying service, then why not for initial fixation of pay on 27.11.1956? Rules do not prohibit it. The moment the OM of 1963 as amended was made applicable to the applicant, amendments that followed also became applicable since expressly not prohibited. Making a distinction between ex-combatants and ex-embodied Territorial Army, after granting equation already would be unreasonable.

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15. In conclusion we direct the respondents to refix the pay of the applicant with effect from 27.11.1956 granting him the increments (at Rs. 75/-), to successively refix his pay accordingly, to make available to him the arrears resulting from such refixations and to recompute and make available to him the revised terminal benefits and pension accordingly directing further that the said exercise should be completed and monetary benefits made available to the applicant within a period of four months from the date of receipt of a copy of this order. The Application is allowed. No order as to costs.

Dated the 16th March, 2004.


H.P.DAS
ADMINISTRATIVE MEMBER

aa/kmn


A.V. HARIDASAN
VICE CHAIRMAN