

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.NO.94/2001

Thursday, this the 12th day of December, 2002.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

G.Narayanan Thampy,  
Palazy House,  
Ennakkadu,  
Alleppey-689 624. - Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. The Regional Deputy Director,  
Song & Drama Division,  
Ministry of Information & Broadcasting,  
A Wing, Ground Floor,  
Kendriya Sadan,  
Koramangala, 2nd Block,  
Bangalore-560 034.
2. The Director,  
Song & Drama Division,  
Ministry of Information & Broadcasting,  
Government of India,  
Soochana Bhavan,  
CGO Complex,  
Lodhi Road,  
New Delhi-110 003.
3. Union of India represented by  
Secretary to Government of India,  
Ministry of Information & Broadcasting,  
New Delhi.
4. The Secretary to Government of India,  
Ministry of Defence,  
New Delhi. - Respondents

By Advocate Mr R Prasanth Kumar, ACGSC

The application having been heard on 23.10.2002 the Tribunal  
on 12.12.2002 delivered the following:

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant in this case is aggrieved by the delay in refixing his pay with effect from 1973 reckoning his previous service in Territorial Army under the Ministry of Defence before he was appointed as Lower Division/in the MInistry of Information & Broadcasting(Song & Drama Division) wherefrom he retired as Upper Division Clerk on superannuation on 31.12.95. He is also aggrieved by the consequent denial of the benefit of refixation of pension.

2. The applicant served the Territorial Army from 31.5.60 to 23.11.69. On his discharge from the Military Service, he was appointed as LDC on ad hoc basis in the I&B Ministry. He served as LDC between 24.11.69 and 25.9.70 under the Ministry of I&B. He was then called back to Territorial Army where he served another term upto 1.4.73. Consequent on the disembodiment of the Territorial Army Regiment, he was released from service and was directed to report to the Administrative Officer, Ministry of I&B, New Delhi for joining duty. But due to some doubt regarding his right to rejoin the organisation as LDC without satisfying the procedure of being sponsored by the Employment Exchange or selected by the SSC, his re-entry as LDC in the I&B Ministry was delayed. Eventually, the applicant was offered temporary post of LDC on a pay of Rs.110/- in the scale of Rs.110-180. The applicant's Military service was, after a number of representations, reckoned as qualifying service for pensionary benefits (A-6 dated 26.2.96). However, no pay fixation which was claimed as

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a corollary thereto was allowed. The applicant's representation dated 8.8.87 (A-7) was not acted upon. A series of further representations followed thereafter. Still there was no action. Meanwhile, the applicant retired on superannuation as UDC from the Ministry of I&B(Song and Drama Division), Bangalore on 31.12.1995. By his representation dated 9.9.99(A-9), the applicant brought to the notice of the 2nd respondent the relevant facts regarding his Military service, his appointment as LDC under the Ministry of I&B in continuation thereto, the orders allowing the Military service to be reckoned for purposes of pension and his claim for pay fixation with reference to the pay drawn by him as on 11.6.73 etc. By letter dated 26.6.2000(A-10), the Grievance Officer attached to the office of the 2nd respondent required the applicant to furnish further information so that his case might be processed. The applicant duly complied with the same by his letter dated 5.7.2000(A-11). The applicant made one more representation to the Deputy Secretary(Admn.) in the Ministry of I&B with the request to settle his old case of pay fixation without further delay. Since there has not been any response to this, the applicant has filed this O.A. seeking this Tribunal's order directing the respondents to take expeditious action to redress his grievance regarding fixation of pay reckoning his Military Service and pay drawn while in Military service in accordance with law and to pay the applicant the arrears that flow therefrom with interest at the rate of 18% per annum.

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3. The respondents have filed a reply statement opposing the O.A. which, according to them, is hopelessly barred by limitation. It is stated that the applicant has claimed pay fixation with effect from 11.6.73. Though he retired on superannuation on 31.12.95, the applicant never claimed refixation while in service. The applicant wanted his Military service to be considered for pension benefits and it was granted accordingly. On his return from Territorial Army, there was a break of more <sup>than</sup> two months and the applicant was given a fresh appointment as LDC with a specific scale. Having accepted it without demur, the applicant could not at this distance of time, seek pay fixation with effect from 1973, according to the respondents.

4. We have heard Shri M.R.Hariraj, learned counsel for the applicant and Shri R.Prasanth Kumar, learned ACGSC for the respondents. According to Shri Hariraj, the applicant's case was not hit by bar of limitation. It is a pay fixation matter which is of recurring nature. It would have repercussions on his pension and as such it has got continuing effect even after his retirement. Further, the learned counsel would submit that the applicant's claim did not affect anybody's settled right. Learned counsel for the applicant would rely on the basic order in respect of regulation of pay on re-employment of retired officers prior to 1.7.86 as appearing under Chapter 3 (page 54 of Swamy's Compilation on Re-employment of Pensioners(Civilians and Ex-servicemen) and would contend that the applicant had brought the relevant facts to the notice of the respondents as per representation

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A-7 dated 8.8.97, A-9 dated 9.9.99 and A-11 dated 5.7.2000. Shri Prasanth Kumar, learned ACGSC, on the other hand, would contend that though the applicant's Military service was considered for the purpose of pensionary benefits, there was no question of pay fixation with effect from the date on which he joined the Ministry of I&B as LDC in June 1973 since that was a fresh appointment on a specific scale. The applicant never raised the issue of any pay fixation at that time and in any case, the scale being specific, and the applicant, having accepted the fresh appointment which was given to him after considerable deliberations as a special case, could have no valid right to agitate the matter after a lapse of more than 25 years. The matter was therefore irrecoverably barred by limitation. Even on merits, no claim could be entertained since the scale of LDC allowed to him was Rs.110-180 and he had accepted the scale and got his promotion as UDC therefrom before his retirement. The O.A. was therefore liable to be dismissed, the learned counsel would urge.

5. We have carefully considered the pleadings on record and the arguments for and against the claim for refixation of pay with effect from 11.6.93.

6. With regard to the contention that the O.A. is barred by limitation, we hold that the same is not a sound argument. It is true that the pay fixation matter relates to 1973 and as such it is a very old matter, almost 25 years with reference to his A-7 representation but the matter was certainly under consideration as is evidenced by A-10 dated 26.6.2000 from the

Grievance Officer, Sound and Drama Division, Ministry of I&B, which states thus:

"On enquiry from DD(Admn.) it is learnt that your pay at the time of joining the S&DD was fixed at Rs.260/- as basic pay. Your LPC shows that your basic pay was Rs.241/- Please let me know the factual position so that the case may be processed for a definite outcome."

(emphasis supplied)

The above observation of the Grievance Officer would show that the matter was to be processed on the basis of further information and that no definite outcome had been reached as on 26.6.2000. The applicant's A-11 dated 5.7.2000 was in reply thereto. This was followed by A-12 reminder letter dated 4.4.2000 which contains reference to a letter from the Government of India dated 22.9.2000 although a copy thereof is not on record before us. It is seen that by that letter the Song and Drama Division of the Ministry or I&B had been directed to settle the old case of pay fixation without delay. We are not sure as to the genuineness and content of the alleged letter dated 22.9.2000 but receipt of A-11 and A-12 is not specifically denied. All that is stated by the respondents is that the last of the reply given by the respondents was A-10 dated 26.6.2000. Learned counsel for the respondents did not also advert to this aspect. No submission controverting it was however, made. Therefore, the contention regarding bar of limitation is rejected. Even otherwise, pay fixation matter without involving anybody's settled right is a continuing cause of action, particularly, in view of the fact that it has implications regarding the applicant's pension and pensionary benefits.

7. We find that the applicant had already served the Territorial Army for a period of 9 years between 1960 and 1969 before he got the appointment as LDC on ad hoc basis under the Ministry of I&B. It is also seen that shortly thereafter he was recalled to the Territorial Army and continued to serve the Army upto 1.4.73. The theory of re-appointment on discharge from the Army as advanced by the respondents does not appeal to us. What we see from the record does indicate that the order of the applicant's release (referred to as disembodiment in Military parlance) from Territorial Army was under intimation to the Ministry of I&B. As per the Release order, the applicant was directed to report to the Administrative Officer, Ministry of I&B, New Delhi for joining duty. A-1 makes the position clear. Paragraph 2 of A-1 letter from the concerned Military authorities to the Administrative Officer, Ministry of I&B, New Delhi is extracted hereunder:

"Consequent on disembodiment of the Regiment, No.11857928 Nk/SKT GN Thampy has been disembodiment from service of 2 Apr.73(FN) and directed to report to Administrative Officer, Ministry of Information and Broadcasting Shastri Bhawan, New Delhi-1 for joining the duty. He may please be absorbed in your department or in subordinate offices vide Army HQ Letter No.69393/GS/TA3(b) dated 17 Jan 72 being an Ex-serviceman."

Thus it is clear that both the Military and Civilian Departments were aware that the applicant was to be absorbed in the Ministry of I&B or any subordinate office as he was an Ex-serviceman. In our opinion, the applicant had a right to be considered for regular appointment and posting on his release from the Territorial Army. The interval of two

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months' or so between his release as in A-1 and the offer of LDC's post in Song and Drama Division of Ministry of I&B(A-2) could not be construed as a serious break in service, nor can it be considered that the applicant was given fresh appointment without reference to his earlier Military service. As we see the matter, not only his Military service between 1969 to 1973, but his ad hoc service as LDC in the Ministry of I&B between 1969 and 1970 was considered while giving him a posting as LDC with effect from 11.6.73. In this connection, it is worthwhile to examine as to how the respondents themselves have considered his case. The statement made in paragraph 3 of the reply statement is relevant. After observing that it was not possible to take the applicant back in the Ministry without the jurisdiction of giving through Employment Exchange or Staff Selection Commission, the respondents state:

"But at the same time, the other ad hoc employees appointed along with the applicant in 1969 had subsequently been absorbed on regular basis in the subordinate offices of the Ministry of I&B. Had the applicant continued in the Ministry of I&B as ad hoc LDC and not recalled for Army service, he would also have been absorbed on regular basis in one of the subordinate offices of the Ministry. Therefore, a special case was made for appointment of the applicant against a clerical post in the Ministry of I&B in relaxation of the normal recruitment procedure. The applicant was offered a post of LDC on the pay of Rs.110/- in the pay scale of Rs.110-180 in Song & Drama Division, a subordinate office of the Ministry of I&B after obtaining necessary relaxation from the Department of Personnel & A.R. and the Directorate General of Employment & Training (hereinafter referred to in short as DGE & T). He accepted the offer of appointment on the above said pay scale and joined duty on 11.6.1973. From the above background, it is clear that the applicant was appointed as ad hoc LDC in the Ministry of I&B with effect from 24.11.1969 as a fresh candidate through the Employment Exchange. His subsequent appointment as LDC with effect from

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11.6.1973 after after his discharge from the second spell of service in the Military was done in relaxation of the rules for the reason that he was earlier appointed as ad hoc LDC in the Ministry of I&B and services of similarly placed ad hoc LDCs appointed along with him had been regularised by then."

The statement of the respondents to the effect that the applicant's service in the Military from 31.5.1960 to 23.11.69 had nothing to do with his appointment as ad hoc LDC is not sound according to us. The respondents themselves have recognised that had the applicant continued with the Ministry of I&B, he also would have been absorbed on regular basis. It would therefore be illogical and incorrect to argue that the applicant is a new appointee. A-1 makes it abundantly clear that on release the applicant was to be absorbed in suitable capacity matching his seniority position in the Army. This was not done. It is true that the matter was not taken up by him. Applicant is not seeking any relief against anybody nor has ~~he~~ claim any repercussion on the position of anybody's settled seniority. We therefore hold that the applicant's pay ought to have been fixed in accordance with the basic orders concerning regulation of pay during re-employment as contained in Chapter 3 of Swamy's Compilation of Re-employment of Pensioners. The relevant extracts of sub clause (a) and (b) of the Basic Order(1) are reproduced below:

"(a) Re-employed pensioners should be allowed only the prescribed scale of pay, that is, no protected time scales such 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,

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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."

From the above it is clear that the pay of the applicant ought to have been fixed in accordance with the existing instructions to start with. However, in view of the fact that the matter has been taken up by the applicant though after considerable lapse of time, it requires to be fixed with effect from that date i.e. from 11.6.73 and subsequently on his promotion as UDC at the appropriate stage. Thereafter the pay on the date of his retirement should be determined in the light of such fixation of pay and his pension also is requires to be refixed. All the pensionary benefits also should undergo consequential revision. With regard to the claim of arrears, we find that the applicant has no justifiable claim for any arrears since the claim regarding fixation of pay was raised for the 1st time by means of a representation dated 8.8.97(A-7). Therefore the benefit in real terms which should accrue to the applicant should be by way of determination of pension and pensionary benefits. We consider it therefore, appropriate to direct the respondents to determine the applicant's pay as on the date of superannuation, determine the pension and pensionary benefits payable to him in accordance therewith and allow his pension with effect from 1.4.95 on the basis of such revised pension. The applicant is entitled to arrears of the balance retiral benefits and differential pension so calculated with effect from 1.4.95. As far as the claim of interest is concerned, we consider it appropriate to direct the respondents to allow interest at the

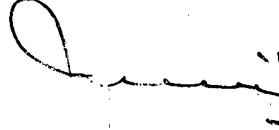
rate of 6% on the arrears of pension and the remainder of the pensionary benefits payable to the applicant in the light of the revised pension with effect from 1.1.98 which is a little over three months after the 1st representation was made(A-7).

8. In the light of the facts explained above, we dispose of this application directing the respondents to revise the applicant's pay with effect from 11.6.73 till the date of his retirement on superannuation in order to arrive at the correct pension payable to him on retirement, pay him the pension and pensionary benefits so determined and to pay simple interest at the rate of 6% on the arrears of pension and pensionary benefits from 1.1.98 till the date(s) of actual payment thereof. The above direction shall be carried out within a period of four months from the date of receipt of copy of this order. There is no order as to costs.

Dated, the 12th December, 2002.



K.V.SACHIDANANDAN  
JUDICIAL MEMBER



T.N.T.NAYAR  
ADMINISTRATIVE MEMBER

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APPENDIX

Applicant's Annexures

1. A-1: True copy of the letter No.214/22/A dt.1.4.73 issued by Major, 144 Regiment, C/o 56 APO.
2. A-2: True copy of the Memo No.12022/1/73-Adm.I dt.11.6.73 issued by the Deputy Director(Admn.), Song and Drama Division, M/o I&B, Delhi to the applicant.
3. A-3: True copy of the representation dt.9.8.90 submitted by the applicant to the 2nd respondent.
4. A-4: True copy of the Memo No.A-20012/1/73-Adm.I dt.27.8.90 issued by the Dy. Director, Govt. of India, Song & Drama Division, M/o I&B to the applicant.
5. A-5: True copy of the representation dt.28.8.90 submitted by the applicant to the Dy. Director, Song & DRama Division, Bangalore.
6. A-6: True copy of the letter No.A-38019/1/90-Adm.I dt.26.2.96 issued by the Dy. Director(Admn.), Song & Drama Division, M/o I&B, New Delhi to the applicant.
7. A-7: True copy of the representation dt.8.8.97 submitted by the applicant to the 2nd respondent.
8. A-8: True copy of the letter No.A-38019/1/90-Adm.I dt.31.8.99 issued by the Asstt. Director(Admn.), Song & Drama Division, M/o I&B, New Delhi to the applicant.
9. A-9: True copy of the representation dt.9.9.99 submitted by the applicant to the 2nd respondent.
10. A-10: True copy of the letter No.4/22(7)/2000-Adm.I Griv. Officer, Song & Drama Division, M/o I&B, New Delhi.
11. A-11: True copy of the reply dt.5.7.2000 submitted by the applicant to Shri B.S.Biswas, Grievance Officer, Song & Drama Division, New Delhi.
12. A-12: True copy of the representation dt.4.11.2000 submitted by the applicant to Shri P.M.Raju, Dy. Secretary(Admn) to the Govt. of India, M/o I&B.