

CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 199 OF 2006

Dated 1st January 2008

CORAM:-

HON'BLE SMT. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR GEORGE PARACKEN, JUDICIAL MEMBER

Krishnan T.A.,
S/o late TA Sankaran,
Office of the Postmaster General,
Northern Region, Kerala Circle,
Calicut-673 011,
Residing at Mangalasserry House,
Balusserry PO, Kozhikode District.

.. Applicant

[By Advocate: Mr OV Radhakrishnan, Sr, & Mr Antony Mukkath)

-Versus-

1. Director General(Posts),
Dak Bhavan, New Delhi.
2. Chief Postmaster General,
Kerala Circle, Thiruvananthapuram.
3. Postmaster General,
Northern Region, Kerala Circle,
Calicut-673 011.
4. Director of Accounts (Postal),
Kerala Circle, GPO Building,
4th floor, Thiruvanthapuram.
5. Union of India,
Represented by its Secretary,
Ministry of Communications,
Department of Posts Bhavan,
New Delhi.

.... Respondents

[By Advocates: Ms Mini R Menon, ACGSC)

This application having been heard on 3rd December, 2007
the Tribunal delivered the following -

ORDER

(Ms. Sathi Nair, Vice Chairman):

The applicant is an Ex-serviceman re-employed as Postal Assistant in the office of 2nd respondent and has assailed Annexure-6 and Annexure-A/10 letters denying the benefit of fixation of pay in re-employment as stipulated in Annexure-A/8 and A/9 orders of the Ministry of Finance and Ministry of Defence respectively. The applicant has prayed for the following reliefs:-

- i. to declare that the applicant is entitled to have his pay fixed on his re-employment as Sorter in the Department of Posts with effect 19.07.1984 in the scale of pay of Rs. 225-5-260-6-290-EB-6-308 at the higher stage of Rs.308/- by allowing one increment for each year of service which the applicant had rendered before retirement in the post of Store Keeper (Technical) in the rank of Naik which post is not lower than that in which he is re-employed in terms of Annexure -A/8 and A/9 OM dated 08.03.1983 and Corrigendum dated 24.10.1983;
- ii. to call for the records leading to Annexure A-4, A-6, A-10 and the Directorates letter No.1-10/2003-PA (PEA/1806) dated 25.5.2005 referred to in Annexure-A-6 to the extent they adversely affect the applicant in the matter of fixation of pay on re-employment to the post of Sorter on 1907-1984 and to set aside the same;
- iii. to issue appropriate direction or order directing the respondents to re-fix the initial pay of the applicant in the cadre of Sorter with the start of Rs.308/- in the scale of pay of Rs. 225-5-260-6-290-EB-6-308 with effect from 19.7.1984 and to regulate his pay accordingly;
- iv. to issue appropriate direction or order directing the respondents to grant the applicant all consequential benefits on re-fixation of his initial pay with the start of Rs. 308 in the cadre of Sorter including periodical increments, subsequent to pay revision benefits and arrears of pay and pay the arrears within a time frame that may be fixed by this Hon'ble Tribunal;
- v. to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case; and
- vi. to award costs to the applicant. "

✓

2] The brief facts of the case are that the applicant was in the Military Service working as a Store Keeper (Technical) in the rank of Naik and he was discharged from the Army on 29.1.'82. At the time of discharge, the applicant was drawing basic pay of Rs. 295/- and was in the substantive rank of Naik/Store Keeper (Technical) w.e.f. 10.7.'73. Thereafter, he was re-employed as Sorter in the office of the Deputy Director of Accounts (Postal) Kerala Circle, Trivandrum on 19.7.84 vide Annexure-A/2. Since the Government had imposed a ban on fixation of pay of re-employed ex-servicemen as per letter dated 02.9.83, the applicant's pay was not fixed till the ban was lifted as per order dated 30.12.85, vide Annexure-A/4 letter dated 17.2.97 all the Heads of Circles were requested to examine all the affected cases of re-employed military persons in their Circle and the the applicant submitted Annexure-A/5 representation dated 24.3.97 requesting for fixation of his pay by treating Military Service as qualifying service. Consideration of his representation has resulted in the issue of the impugned Annexure-A/6 order.

3] The applicant has further stated that the basic order applicable in respect reemployed pensioners prior to 01.7.86 is the Annexure-A/8 order. According to this order the initial pay on reemployment should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is reemployed and 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 rendered before retirement in a post not lower than that in which he is reemployed. The Ministry of Defence had earlier issued Annexure-A/9 OM dated 08.2.1983 and Corrigendum dated 24.10.1983 stating that the quantum of entire pension may be ignored in fixing their pay on re-employment in civil posts in the case of persons below Commissioned Officers rank. The submission of the applicant is that his pay should have been fixed in accordance with these orders as per details shown below:

"The last pay he was drawing at the time of discharge from Military Service was Rs. 340.50 (295+37.50+8). Therefore, in case, his initial pay is fixed at the minimum of the pay scale of Rs. 225/- admissible to Sorter that would cause hardship to the applicant. For mitigating his hardship, his pay is required to be fixed by allowing one increment for each year of service, he had rendered before retirement. The pension of the applicant to be payable on his discharge from Military service was determined to be Rs. 185/- as evidenced by Annexure-A-1. The entire amount of Pension was to be ignored for fixing his initial pay on the reemployed post of Sorter. The pay of the applicant in the reemployed post of Sorter on 19.07.1984 is, therefore, liable to be fixed as under:

1) Pay last drawn before retirement (Basic pay Rs.295/-+Class pay Rs.34/-+GS pay Rs.8)	Rs.340.50
2) The scale of pay prescribed for the post in which the applicant has been reemployed.	Rs.225-308
3) Pension Equivalent of retirement Gratuity Granted on retirement	Rs. 22.36
4) Pensionary benefits which should be Taken into account for the purpose of Pay fixation (entire pension to be ignored)	Rs. 22.36
5) The pay would be fixed at Rs. 225+22.36	Rs.247.36

(The fixation of pay at the minimum of the scale would cause hardship as the initial start of the scale is lesser than the last pay drawn at the time of retirement. Therefore, the applicant is entitled to have his pay fixed at a higher stage by allowing one increment for each year of service he had rendered before retirement in a post not loser than that in which he is reemployed. Therefore, the applicant is entitled to have his pay fixed at the maximum of the pay scale by allowing 18 advance increments on the basis of the service rendered by him before retirement.

- 6) Eligible advance increment for 18 years at the rate
Of Rs.5/- for each year of service in the Military Rs. 90/-
- 7) Actual pay to be allowed initially in the Rs.315/-
scale of Rs.225-308
- 8) The pay to be fixed on re-employment in the scale of
Rs.225-308 is to be restricted to the maximum
Stage of the scale. Rs.308/-"

4] The applicant has contended that after reemployment in the post, the initial pay has to be fixed as per the Annexure-A/9 order and the question of granting advance increment arises if there is any hardship and if there is no hardship no advance increment can be granted. According to the applicant, Annexure-A/10 is only administrative instructions issued by the Department of Telecom and that cannot modify the Annexure-A/9 OM dated 8.2.'83, which is an executive direction issued invoking the power of the President of India in exercise of the powers under Article 73 read with 77 of the Constitution of India. It is further stated that Annexure-A/4 and A/6 are also administrative instructions, which cannot have retrospective effect in governing the fixation of pay of persons reemployed long before the date of issue of these instructions at the department level. The applicant in short has contended that his case is squarely covered by Annexure-A/9

order and he is entitled to have his pay refixed in the re-employed post by granting advance increment for the military service rendered and also ignoring the entire pension and PEG.

5] Respondents have filed a brief reply statement contending that the pay of the applicant was fixed in accordance with the Rules and orders of the Government of India. As per para 2 under decision 11 (Chapter 3 of Swamy's Re-employment of Pensioners) there is no hardship in the case of the official on applying the conditions stipulated therein for hardship; that the pay at the reemployed scale plus pension (whether ignorable or not) is less than the past pay drawn in the military post i.e. Rs. 225/- minimum of the time scale) + Rs. 185/- (whether ignorable or not) + Rs. 22.36 (whether ignorable or not) comes to Rs. 432.36, which is evidently more than his last pay of Rs. 340.50 in the military post at the time of reemployment and therefore, the pay fixed at the minimum stage of Sorter cadre i.e. Rs. 225/- is in order. It is also mentioned that the applicant has got only 12 years and not 18 years of service in the military.

6] Rejoinder has been filed by the applicant reiterating the averments made by the applicant and also refuting the averments of the respondents as incorrect. It has been pointed that the respondents are admitting that the Annexure-A/9 order is applicable for pay fixation of the applicant. The Government of India letter dated 30.12.2005 relied on by the respondents is contrary to the directions contained in Annexure-A/9, therefore, Annexure-A/6 order is liable to be ignored. The applicant has

further stated that he had 18 years of compatible Army service to his credit and it would have to be taken into account while granting the advance increment.

7] We have heard Mr OV Radhakrishnan, Senior counsel for the applicant and Mrs Mini R Menon, for the respondents.

Learned Senior counsel for the applicant has submitted that the case of the applicant is squarely covered by the earlier order of this Tribunal in OA No.3/89 and 15/89, which was also confirmed by the Hon'ble Supreme Court, but the respondents state that the order of the Tribunal is applicable only to the applicants therein. However, it is pointed out that by Annexure-A/12 the respondents have called for information in the case of the applicant based on the order of the Hon'ble Supreme Court upholding the order of this Tribunal in order to assess the financial implications. The applicant has retired from service on 31.5.2006 and no relief has been granted to him so far. Learned counsel for the respondents reiterated the averments made in the reply and also produced the instructions of the Department issued vide letter dated 30.12.2005 relied on by the respondents.

8] We have gone through the pleadings and the earlier orders of this Tribunal referred to above by the senior counsel. We find that the issue raised by the applicant herein is covered by the decision in OA 3/89 and 15/89, which has followed the Full Bench decision arising out of deference made as a result of difference of opinion which arose between the decision of Single Bench dated 30.9.1986 in OA K-129/88 and the Division Bench, to

which it had been referred. Paras 18 and 19 of the above judgment contain the decision of the Full Bench, which makes the position clear and are extracted below:-

"18. In view of the difference in opinions between us and the judgment of the Single Member Bench dated 30.9.1986 in OA K-129/88, the following two issues were referred to the Hon. Chairman for constituting a Full Bench.

(a) Whether for the purpose of granting advance increments over and above the minimum of the pay scale of the re-employed post in accordance with the OM of 25.11.58 (Annexure-IV in OA 3/89), the whole or part of the military pension of Ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the orders dated 16.1.1964 (Annexure-V) of 19.7.1978 (Annexure V-a) and of 8.2.1983 (Annexure-VI) can be taken into account to reckon whether the minimum of the pay scale of the reemployed post plus pension is more or less than the last military pay drawn by the reemployed Ex-serviceman.

(b) If yes, i.e. if it is decided that ignorable pension also has to be reckoned for the purpose of advance increments, whether the orders issued to this effect in 1985 or 1987 can be given retrospective effect to adversely affect the initial pay of Ex-serviceman who were re-employed prior to the issue of these instructions.

19. The Full Bench consisting of Sri B.C.Mathur, Hon. Vice Chairman, Sri P.K.Kartha, Hon. Vice Chairman and Sri N. Dharmadan, Hon. Member in their judgment dated 13.3.1990 in OA 3/89. OA 15/89, OA-K 288/88 and OA-K 289/88 answered the aforesaid two issues as follows:

"(a) We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of the re-employed post in accordance with the 1958 Instructions (Annexure IV) in OA 3/89), the whole or part of the military pension of ex servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983 (Annexures V, V-A and VI respectively), cannot be taken into account to reckon whether the minimum of the pay scale of the reemployed post plus pension is more or less than the last military pay drawn by the re-employed ex-servicemen.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1970 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen, who were reemployed prior to the issue of these instructions."

9] From the final order in OA 3/89 and 15/89 it is also seen that some orders of the Department of Posts including the order dated 30.12.1985 on which the respondents now rely were challenged in the above O.A.s on the ground that it was not in accordance with the basic order of the Government of India providing for the benefits of drawing advance increments for the military service and also for ignoring the pension element in the fixation of pay of the applicants. Overruling the Single Bench order, it was held that the orders were not clarifications of the earlier orders and that by no stretch of imagination it can be said that clarificatory letters have effect of subsequent instructions varying or altering the earlier instructions. It is also held that clarificatory orders cannot be operated retrospectively if it affects the statutory rights and these orders including the order dated 30.12.85 were quashed.

Annexure-A/10 letter dated 10.8.87 have been issued in the wake of the decision conveyed to the Department of Personnel with reference to OM dated 30.12.85. As this OM itself had been already held to be illegal and against the Rules it is strange that the respondents are still relying on that OM even after 15 years of rendering the judgment in OA 3/89 and 15/89 dated 30.3.1990 by the Division Bench, which has been as mentioned earlier upheld

by the Hon'ble Supreme Court. The Instructions so issued should have been repealed or modified by now. We wonder why the respondents are still continuing to take action on the basis of such Instructions affecting the interest of the employees.

10] Coming to the facts of the case, admittedly, it can not be denied that the applicant who was reemployed on 19.7.84 in the civil service was covered by the Ministry's OM dated 8th February, 1983 and corrigendum dated 24th October, 1983(Annexure-A/9) which should have been taken into consideration for fixing his pay on reemployment. This exercise does not seem to have been undertaken at the appropriate time, may be due to reason pointed by the applicant that there was some kind of ban imposed by the Government, but the Respondents did not advert to this fact at all in their reply statement. There is also no doubt that this Memorandum has only referred to the mode of regulating the quantum of pension while fixing the pay on reemployment. The basic orders regarding procedure to be adopted while fixing of pay of pensioners as provided by Annexure-A/8 had not undergone any change by issuance of the Annexure-A/9. Sub para (b) of Annexure-A/8 prescribes as follows:

(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. "

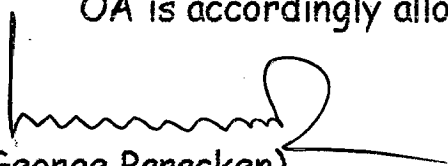
2

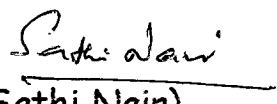
The stipulation regarding reckoning of pension has been enumerated in Clause (c). Annexure-A/9 in our view only brought out changes with reference to sub para (c) of this order and the provisions of sub para (b) remains the same and the undue hardship had to be assessed while fixing the pay scale. The stand of the respondents is that the Annexure-A/9 corrigendum amounts to linking the hardship clause to the quantum of pension while fixing the pay of reemployed pensioner (Ex-servicemen) which does not seem to be the intention of the original order. Hardship can arise out of several circumstances, for example, even in the case of the applicant he was in a higher scale of pay in the Military Service and the fixation of pay in the lower scale at Rs. 225-308/- to which scale he was reemployed ignoring the total amount of pension he was drawing could be definitely a case which can be considered as causing hardship. However, sub paras ^{and} 2.43 of para 3 of the Annexure-A/9 would suggest that the Government intended to give full benefit by giving advance increment to all military re-employed persons. It is clearly contemplated that the order should be beneficial to the employees, who are re-employed after 21.5.1983 and intended to get their pay re-fixed in the revised orders. Therefore, viewing from this angle, factually and legally the stand taken by the respondents is unreasonable and not at all in accordance with the spirit of the Rules. These and similar clarifications given earlier have already been held to be contrary to the declaration as contemplated in sub para (b) of Annexure-A/8 Memorandum. They are also against the spirit of the

stipulations in Annexure-A/9 Memorandum and as we have already stated, in any case, cannot be given retrospective effect in the case of the applicant, who had been reemployed prior to issue of the Instructions dated 30.12.88 and 10.8. 1987.

11] In the light of the above discussions, following the Full Bench decision and the orders in OA 3/89 and 15/89, Annexure-A/6 letter dated 16.6.2005 is quashed and set aside and consequently Annexure-A/10 letter dated 10.8.1987 is also declared to be not applicable in the case of the applicant. Accordingly, we declare that the applicant is entitled to have his pay fixed in the post w.e.f. 19.7.1984 in the scale of pay of Rs. 225-5-260-6-290-EB-6-308/- by allowing one increment for each year of service the applicant had rendered before retirement in terms of the Annexure-A/8 OM and in terms of Annexure-A/9 OM dated 8th February, 1983 and also the Corrigendum dated 24.10.1983. The Respondents shall re-fix the pay of the applicant accordingly and grant him all consequential benefits, including pay revision, arrears etc. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

OA is accordingly allowed. No order as to costs.


(George Paracken)
JUDICIAL MEMBER


(Sathi Nair)
VICE CHAIRMAN