

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 363 OF 2007

Dated the 30th September, 2008

CORAM:-

**HON'BLE Dr. K.B.S. RAJAN, MEMBER (JUDICIAL)
HON'BLE Dr. K.S. SUGATHAN, MEMBER (ADMINISTRATIVE)**

P.N. Raveendran Pillai,
S/o late Narayana Pillai,
Retd. Postal Assistant,
Pandanad, Residing at Athira House,
Perissery PO, Chengannur-689 126.

[By Advocate: Mr Hariraj]

.. Applicant

-Versus-

1. Union of India, represented by the Secretary to Government, Department of Posts, Ministry of Communication, New Delhi.
2. Chief Post Master General, Kerla Circle, Thiruvananthapuram.
3. Superintendent of Post Offices, Thiruvalla.

...Respondents

[By Advocates: Mr Varghese Johan for Thomas Mathew Nellimoottil]

This application having been heard on 22nd August, 2008 the Tribunal delivered the following -


ORDER

(Hon'ble Dr. K.S. Sugathan, AM)

Applicant is aggrieved by the order dated 25th May, 2007 issued by the 3rd respondent directing him to remit over payment of

pay and allowances amounting to Rs. 94,065/- and commuted value of pension amounting to Rs.6,004/- on re-fixation of his basic pension (Annexure-A1). The applicant was an Ex-combatant Clerk in the Indian Air Force from 13.1.67 to 31.01.82 and had completed 15 years of service. Thereafter he was reemployed as Postal Assistant in the Postal Department in the pay scale of Rs. 260-480/- on 06.8.84. As the respondent did not give him proper pay fixation on re-employment, he filed OA No.661/93 which was allowed by this Tribunal on the basis of a Full Bench decision in OA 3/1989. In compliance of the directions of this Tribunal, the applicant's pay was fixed by order dated 13.7.94 at Rs.396/- in the pay scale of Rs. 260-480/-. The fixation was subject to the SLP filed before the Hon'ble Supreme Court.

[2] Subsequent to the disposal of the appeal preferred against the order in OA 661/93 the respondents revised the pay fixation of the applicant downwards to Rs. 324/-w.e.f. 6.8.84, the date of his initial appointment as Postal Assistant (Annexure-A5). Aggrieved by the aforesaid downward revision of pay the applicant filed OA No.153/98. The said OA was allowed in favour of the applicant and the respondents were directed to revise the pay of the applicant in terms of the provisions of Rule 16(2) of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 giving him benefit of increments for the entire service as Combatant Clerk for 15 years. The judgment of this Tribunal in OA 158/98 was challenged in the Hon'ble High Court of Kerala in OP No. 16443/2001(S), but the OP was dismissed by the Hon'ble High Court on 15th September, 2006. After the dismissal of the OP, the respondent issued the impugned



order at Annexure-A1. The applicant has sought for the following relief in this OA.:

"i]. to quash Annexure-A1.

i(a)]. to quash Annexure-A10,

ii]. to direct the respondents to re-fix basic pay of the applicant at the stage of Rs.396/- wef 16.8.1984 in pay scale of 260-480 with all consequential benefits and to draw and disburse arrears of pay and allowance, pension and pensionary benefits to the applicant,

iii]. grant such other reliefs as may be prayed for and the court may deem fit to grant, and


iv]. grant the costs of this Original Application. "

[3] The respondents have contested the OA. In the reply statement it is stated that the applicant's pay was fixed at Rs.396/- in response to the directions in OA 661/93. The aforesaid pay fixation was subject to the outcome of the SLP. In the light of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 7929/96 the applicant's pay fixation was re-examined and pay was fixed at Rs. 324/- as per Annexure-A5 order. Against the said order the applicant filed OA 153/98 and this Tribunal while allowing the said OA directed the respondents to re-fix the pay of the applicant in terms of Rule 16(2) of the CCS (Fixation of pay of Re-employed Pensioners) Orders, 1986, giving him the benefit of increment for the entire service as Combatant Clerk. The said order was challenged in the Hon'ble High Court by the respondents by filing OP No.16443/01, which was dismissed by order dated 15.9.2006 with a direction to comply with the direction of the Tribunal and fix the pay in accordance with the Rule 16(2) of the

CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986. As per Explanation No.2 of the aforesaid Rule 16 (2) only Rs.15/- out of the pension can be ignored and accordingly his pay was fixed. This has been explained in Annexure-A10 issued in response to the Annexure-A9 representation of the applicant. The applicant himself had relied on Rule 16 of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, hence he cannot now take a stand that Rule 16(2) is not applicable to him as he joined the service before 01.7.86. It has been further stated that the over payment arose as a result of the implementation of the order of this Tribunal in OA No.153/98, because Rule 16(2) clearly provides for deduction of pension from the pay fixed under this Rule after ignoring Rs. 15 only.

[4] We have heard Mr. M.R. Hariraj for the applicant and Mr. Varghese John for Mr. Thomas Mathew Nellimoottil. We have also perused the record.

[5] The argument of the applicant is that Annexure-A2 order of this Tribunal in OA 661/93 is binding on the respondents and therefore, his pay ought to be fixed at the same level at which it was shown in Annexure-A3 order dated 13.7.94. We are unable to accept the contention of the applicant because the order at Annexure-A2 cannot be seen in isolation. The order in OA 661/93 was challenged by the respondents in Hon'ble Supreme Court. The Appeal was disposed of in terms of order in Civil Appeal Nos.4077-78 of 1992 (DG of Posts -v- B Ravindran). On the basis of the aforesaid decision of the Hon'ble Supreme Court the respondents revised the pay fixation vide their order dated 12.11.1997. The



applicant then challenged the revised fixation of his pay in OA No. 153/98. While disposing of this OA 153/98 the Tribunal had analysed the previous history of the case and on the basis of reliance placed by the applicant on Rule 16 (2) of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, the Tribunal issued direction that the applicant is entitled to have his pay fixed in accordance with the provisions contained in Rule 16 of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986. This order of the Tribunal has upheld by the Hon'ble High Court of Kerala. Therefore, the applicant is now not entitled to the relief based on Annexure-A2 order of this Tribunal. We shall now see the specific provision of Rule 16 of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986. Rule 16 speaks fixation of pay of Ex-Combatant Clerks/ Storemen. Rule 16 reads as follows:

"16. Fixation of pay of Ex-Combatant Clerks/Storemen.

(i) In partial modification of the provisions contained in Orders 4 and 5 above, Ex-Combatant Clerks on their re-employment as Lower Division Clerks or Junior Clerks in the Civil posts and Ex-storemen in the Armed Forces on their re-employment as Storemen in Civil Posts shall have the option to get their pay fixed under Orders 4 and 5 above or in accordance with the procedure indicated in sub-para (2) below:

EXPLANATION-

- (i) The option once exercised is final. The re-employed pensioner should be asked to exercise the option within the period of three months from the date of his re-employment.
- (ii) Ex-Combatant Clerks and Storemen referred to in this Order will include reservists released at their own request or on compassionate or medical grounds.

(2) Service rendered as Combatant Clerks and Storemen in Armed Forces shall be treated as equivalent to service as Lower Division Clerk/ Junior Clerks and Storemen respectively in Civil posts, irrespective of the pay drawn in those posts in the Armed Forces. The initial pay in such cases shall be fixed in the time-scale of the reemployed posts at a stage



equivalent to the stage that would have been reached by putting in the civil posts, the number of completed years of service rendered in the posts in the Armed Forces. The pay so fixed will not be restricted to the pre-retirement pay. The fixation of pay in these cases shall be done by invoking the provisions of Fundamental Rule 27.

EXPLANATION -

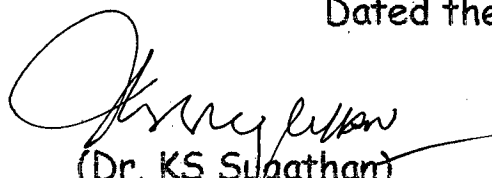
- (i) For the purpose of calculation of completed years of service rendered in the Armed forces the non qualifying service in the Armed Forces will not be taken into account.
- (ii) Pension as defined in Order 3(1) above shall be deducted from the pay fixed under this rule after ignoring Rs. 15 thereof and only the net pay is payable.
- (iii) If the resultant amount does not correspond to a stage in the scale applicable to the re-employed post, pay may be fixed at the next lower stage and the difference allowed as personal pay to be absorbed in future increases of pay.
- (iv) Where the pay in such cases is fixed below the minimum of the pay scale of the re-employed post, as a result of adjustment of amount of pension drawn by him from the Army in excess of Rs.15 per month, increases in pay may be allowed after each year of service at the rate of increment admissible as if the pay has been fixed at the minimum till the minimum of the scale is reached. Thereafter, subsequent increments may be granted in the scale of the re-employed post in the usual manner."

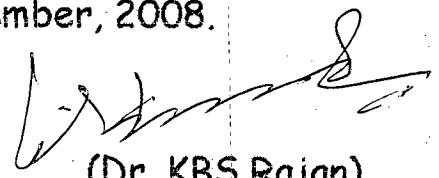
[6] It would be seen from the above extracts that as per Rule 16 (1) Ex-combatant clerks / Storemen on their reemployment shall have the option to get their pay fixed under Orders 4 and 5 or under Rule 16(2). Rules 4 and 5 provide for ignoring the whole amount of pension in the case of those who are holding the post below the Commissioned Officer rank while fixing the pay on re-employment. Rule 16(2) provides for granting of increment for each year of completed years of service in the military employment. The re-employed officers are therefore entitled to either of the two benefits according to this Rule, and not for both. In the present case, the applicant has been given the benefit of increment for

each completed years of service in the previous employment. However, after fixing the pay taking into account the increments for the previous service, the respondents can reduce the pay so fixed, by the amount of pension ~~minus~~ after ignoring the amount of Rs.15/-, which is required to be ignored as per Explanation (ii) of Rule 16(2) of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986. During the course of argument, learned counsel for the applicant submitted that ignorable amount of Rs. 15 has since been revised, however, no such order has been produced before this Tribunal. If the ignorable amount of pension applicable in the case of employees covered by Rule 16(2) has been revised subsequently, the applicant is always at liberty to take up the matter with the respondents, who in turn will have to revise their calculation accordingly. However, on perusal of the available material, we do not find that there is merit in the prayer of the applicant that he ought to have given the benefit of order in OA No.661/93 (Annexure-A2) by ignoring the directions of this Tribunal in OA 153/98, which has been upheld by the Hon'ble High Court of Kerala.

[7] For the reasons stated above the OA is dismissed. No order as to costs.

Dated the 30th September, 2008.


(Dr. KS Sugathan)
Member (Administrative)


(Dr. KBS Rajan)
Member (Judicial)