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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
BOMBAY - 400 001

O.A. No. 660/87

Anant Hari Ranade
Om Anand Building
Near Bhoir Wadi
Mahatma Phule Road
Vishnu Nagar
Dombivali(W)
PIN 421 202

.. Applicant

V/s.

1. Union of India
through Director General Post Offices
Postal Board
Dak Tar Bhavan
Parliament Street
New Delhi 110001
2. The Post Master General
Maharashtra Circle
Bombay 400001 .. Respondents

CORAM: HON: SHRI JUSTICE U C SRIVASTAVA, V.C.
HON: SHRI P S CHAUDHURI, MEMBER (A)

APPEARANCE

MR. D V GANGAL
ADVOCATE
FOR THE APPLICANT
MR. V M BENDRE
(FOR MR. P M PRADHAN)
ADVOCATE
FOR THE RESPONDENTS

JUDGMENT:
(PER: P S CHAUDHURI, MEMBER(A))

DATED: 13 -09-1991

This application under section 19 of the Administrative Tribunal's Act, 1985 was filed on 8.10.1987. In it the applicant who is working as Office Assistant under Senior Superintendent of Post Offices, Bombay City, South Division is seeking a declaration that he is entitled to the fixation of his pay at Rs. 332/- in the pay scale of Rs.260-480 on 12.1.1978 and connected and consequential reliefs.

2. The applicant joined the Army on 4.3.1963 as Telecommunication Mechanic. He was promoted as Naik Gr.I Mechanic. He was discharged on medical grounds on 7.8.1972 but was declared fit for a civil post. He was not in receipt of any pension but received invalid gratuity of Rs.2818.10. He applied for a clerical post in the

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Postal Department and was selected against the special quota reserved for Ex-service men. He was appointed in the Postal Department as Postal Assistant with effect from 13.1.1978 in the pay scale Rs.260-480. He contended that his Army service had not been taken into account when fixing his initial pay and that had this been done his initial pay in this scale would have been Rs.332 on 13.1.1978. He submitted representations to this effect on and after 13.2.1978 but these were rejected. Being aggrieved he filed this application.

3. The respondents have opposed the application by filing their written statement. We have heard Mr. D V Gangal, learned counsel for the applicant and Mr. V M Bhandre, holding the brief of Mr. P M Pradhan, learned counsel for the respondents.

4. The applicant's grievance pertains to the initial fixation of his pay in the scale Rs.260-480 and so we have to look at the instructions governing this fixation. The first instruction that we have to look at is OM dated 25.11.1958 issued by the Ministry of Finance (Department of Expenditure). This OM was issued in supersession of all earlier orders on the subject. The portion of ^{it} which is relevant for deciding the applicant's case says :

"... 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 the 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 the higher stage by allowing one increment for each year of service which the officer has rendered before retirement ^{age} not lower than that in which he is reemployed".

5. The next instruction that we have to look at is the P&T Director General's letter dated 8.3.1982. The relevant portion of this letter says :

"The fixation of initial pay of the defence service pensioners on their re-employment in the P&T Department is normally dealt with under the provisions of Govt. of India, Ministry of Finance Memo No.8(34)-Estt.III/57 dated 25.11.58. Under these orders, the initial pay of the re-employed official could be fixed at a higher stage than the minimum of the time scale by allowing one increment for each year of service which the official had rendered before retirement in the defence services in a post not lower than that in which he is re-employed in the P&T department. For this purpose only such service in the defence services wherein the pay drawn was equal to or more than the minimum of the re-employed time scale of pay was taken into account for purpose of fixation. This position was liberalised under No.F-6(8)-E.III/63 dated 11.4.63 in respect of ex-combatant Clerks who were recruited as LDCs or Time Scale Clerks in the P&T Dept. after their release/retirement from the Armed Forces by allowing the initial fixation above the minimum equal to the number of completed years of service as Combatant Clerks (excluding service as recruit Clerk) in the armed forces."

6. We may mention here that the applicant had worked as a Combatant Naik, Telecommunication Mechanic in the Army, ~~which trade is~~ in Group B and that the clerical cadre in Army is also Group-B and that he had submitted his application for fixation of his pay ~~within~~ three months from the date ~~of~~ of his re-employment.

7. We next take a look ~~at~~ what was the pay and allowances drawn by the applicant at the time of his retirement ~~from~~ ^{the} Army. It is not disputed that this was Rs. 236.50 comprising of basic pay (inclusive of service increments), rank pay, Dearness Allowance and Interim relief.

8. We may finally take a look at the Comptroller and Auditor General of India's letter dated 7.5.1975, para 2 of which says :

"In the case of (i) persons who retired before 1.1.1973 and re-employed after 1.1.1973, and;
(ii) persons who retired after 1.1.1973 on the pre-revised scale of pay.
The pre-retirement pay will be the basic pay plus dearness pay plus dearness allowance and interim relief drawn from 31.12.1972."

9. The only question which arises for ^{thus} ~~decision~~ in this case is whether on the basis of the rules, regulations and instructions the applicant is entitled to have his initial pay fixed at a higher ~~stage~~ ^{than} the minimum of the time scale on which he was appointed by allowing him one increment for each year of service in his previous employment.

10. It is the applicant's case that the scale Rs.260-480 came into existence as a result of the IIIrd Pay Commission and so the pay of his Army post also in terms of the IIIrd Pay Commission is what should be taken into account. The pay scale of his Army post in terms of the IIIrd Pay Commission was Rs.235-311 to which has to be added the various allowances that he would have been entitled ^{to} ~~and~~ ^{the} would make it equal ~~to~~, if not higher than, scale Rs. 260-480.

11. The respondents countered this submission by submitting that his pay had been fixed at the minimum of the scale, i.e., Rs.260 in the scale Rs.260-480, as the last pay drawn by him at the time of his retirement was Rs.236.50 which is less than ^{the} minimum of the scale Rs.260-480. For this they relied on the sentence "for this purpose only such service in the defence services wherein the pay drawn was equal to or more than the minimum of the

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re-employed time scale of pay was taken into account for purpose of fixation".

12. To resolve this dispute we have to go to the circulars, relevant portions of which we have reproduced earlier. The circular of 1958 permits of fixing the pay 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. It is true that the IIIrd pay commission scales intervened between the applicant's retirement and his reemployment. But there is no way in which we can hold that the scale of his pay in which the applicant was working before his retirement was not lower than the scale in which he was reemployed. This has been made quite clear in the letter dated 7.5.1975 that we have quoted earlier.

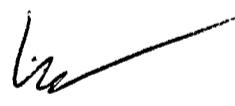
13. The applicant's next submission was that the circular of 1982 provided for an exception for Combatants, and that he was in the Army as a Combatant. But this submission must be rejected straight away. The exception is not for Combatants but is only for Combatant Clerks. We find nothing wrong with this distinction because this exception applies to Combatant Clerks recruited as Lower Division Clerks or Time Scale Clerks in the Postal Department. In other words it applies to clerks in the Army appointed as Clerks in the Post & Telegraph Department. The applicant was appointed in the Clerical grade in the P&T but his previous service in the Army was not as a Clerk.

14 The Applicant's final submission was three other persons appointed in the P&T Department had been given the benefit ~~of~~ which has been denied to him. But on going through these three cases we find that two of the ~~persons~~ appointed ^{weve} as Telegraphic Office Assistants which is a cadre quite distinct from the post to which the applicant was appointed. Hence their cases are not ~~on~~ all fours with the applicant. The third case, viz., P R Sawant, pertains to a person who, we were told across the bar, was a Combatant Clerk in the Artillery. Any increments given to him ~~with~~ when fixing his initial pay cannot be faulted because his case is squarely covered by the circular of 1982. On the same basis, his case is quite distinct from that of the applicant. Hence this ~~submision~~ of the applicant must be rejected.

15 In this view of the matter we see no merit in the application and are of the opinion that it deserves to be dismissed.

16 The application is accordingly dismissed. In the circumstances of the ~~case~~ there will be no order as to costs.


(P S CHAUDHURI)
MEMBER(A)


(U C SRIVASTAVA)
VICE CHAIRMAN

13. 9. 1991