

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

O.A.No. - 198 -
T.A.No. 68 of 1986.

DATE OF DECISION 24.12.1986

Kirpal Singh Pratap Singh Applicant/s.
Grewal.
- Advocate for the Applicant/s.

Versus

Union of India and Others Respondent/s.
Ministry of Defence & Finance
Mr. M. I. Sethna Advocate for the Respondent(s).

CORAM:

The Hon'ble Member (A) S.P. Mukerji
The Hon'ble Member (J) M.B. Mujumdar

1. Whether Reporters of local newspapers may be allowed to see the Judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether to be circulated to all Benches? No

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY.

Transferred Application No. 68/86.

Kirpal Singh Pratep Singh Grewal
Flat No. 716, Sector No. II,
C.G.S. Colony, Guru Tegh Bahadur Singh Nagar,
Antop Hill,
Bombay - 400 037.

... Applicant.

V/S

- 1) The Chief of the Naval Staff,
Naval Head Quarters,
New Delhi.
- 2) The Flag Officer Commanding-in-Chief,
Western Naval Command,
Shahid Bhagat Singh Road,
Bombay.
- 3) The Minister of Defence,
Govt. of India,
Central Secretariat,
Shastri Bhavan,
New Delhi.
- 4) The Minister of Finance,
Govt. of India,
Ministry of Finance,
Central Secretariat,
Shastri Bhavan,
New Delhi.

... Respondents.

Coram: Hon'ble Member(A) S.P. Mukerji

Hon'ble Member(J) M.B. Mujumdar

Appearances:

1. Applicant in person.
2. Mr. M.I. Sethna
for Respondents.

ORAL JUDGEMENT:

(Per Member(A) S.P. Mukerji)

Date:- 24.12.1986

The petitioner who is a retired UDC was working as UDC in the Naval Stores Depot at Ghatkepar moved the High Court of Judicature at Bombay under article 226 of the Constitution of India on the 7th January, 1980 praying that the impugned order dtd.

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29th August, 1979 (Ex. 'I' to the petition) may be quashed and the Respondents be directed to refix his salary and seniority w.e.f. 2nd January, 1942. The petition stood transferred to the Tribunal under Section 29 of the Administrative Tribunals Act.

2. The relevant matrix of the facts are simple and can be summarised as follows: The petitioner worked as a civilian School Master in Boys' Battalion of the Army from 2.1.1942 to 12.10.1946. He was discharged from there w.e.f. 30th October, 1946. He was appointed in Vehicle Depot at Dehu Road on 6th November 1946 and on his appointment his pay as a LDC was fixed at the minium of the pay scale at Rs. 45/- per month. He was transferred to the Navy w.e.f. 12th February, 1954 as a LDC and retired as a UDC on 31st May, 1980. The main question about his case is related to break in service between 13th October, 1948 when he was discharged from the Boys' Battalion and 6th November, 1946 when he was appointed in the Vehicle Depot at Dehu Road. After a number of representations the respondents condoned the break in service for the purpose of seniority only in accordance with the order of 28th December, 1965. The petitioner's plea is that this condonation should have been given for the purpose of fixation of pay also so that his pay on his joining the Vehicle Depot at Dehu Road from 6th November, 1946 should not have been fixed at minium of Rs. 45/- per month but increments should have been given to him by taking into account his service as Civilian School Master between 2nd January, 1942 to 12th October, 1946. The respondents argument is that since the condonation

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was done for the limited purpose of the seniority the benefit of increments cannot be given.

3. We have heard the arguments of both the learned counsels and gone through the documents carefully. It is admitted that the respondents condoned the aforesaid break in service for the purpose of seniority and on the basis of the seniority so given to him the petitioner got promotion as UDC in 1966. The argument of the learned counsel for the respondents is firstly that since the cause of action arose in 1946 the petition is hopelessly time barred and even if the delay is ignored the condonation of break in service being a matter of administrative discretion and having been given to the petitioner on humanitarian ground for the purpose of seniority only the Petitioner has no legal right to claim benefit of higher pay by counting his service between 1942 to 1946 for the purpose of reckoning his pay as LDC from 12th October, 1946. We have had occasion to go through the relevant file and Service Book of the petitioner. We are particularly impressed by the contents of the letter written by the Chief Ordnance Officer to the CDA Southern Command on 21st May, 1977 vide Ex. 'P' to the petition. Para 2 of which can be quoted as follows:-

cc The full facts of the case are as under:-

- (a) Shri KS GREWAL was employed as Civilian School Master from 02 Jan 42 to 12 Oct 46 at Royal Sappers and Miners KIRKEE. He was discharged from there w.e.f. 13 Oct. 46, being rendered surplus to requirement.
- (b) He was appointed as 'C' Gde Clerk in the late Vehicle Depot DEHU ROAD w.e.f. 06 Nov 46 - on his appointment his pay was fixed at the minimum in the pay scale attached to

LD Clerk i.e., Rs. 45/- per month.

CC 'C' Gde Clerk i.e., Rs. 45/- per month.

- (c) He was transferred to Headquarters Artillery Centre DEGLALI, NASIK w.e.f. 15 May 53 as Civilian School Master under the surplus and deficiency scheme.
- (d) He was again transferred to Navy w.e.f. 12 Feb 54 as LDC under surplus and deficiency scheme.
- (e) His break in service from 13 Oct 46 to 05 Nov 46 was condoned and he was given seniority in the LD Clerk Gde from 20 Jan 42 in accordance with Naval Headquarters letter CP(A)/0734 dated 28 Dec. 65. An entry to this effect has been made on page 10 of a service book part II. On the basis of his revised seniority he was promoted to UDC w.e.f. 21 May, 1966.
- (f) He was represented that his pay should have been fixed as 'C' Gde Clerk in CVD DEHU after giving him the benefit of his previous service as Civilian School Master from 01 Jan 42 to 12 Oct 46.
- (g) Army HQ vide letter No. A/04616/Cen/OS 8(c) (ii) dated 09 Mar 77 (copy already forwarded under this depot letter No. 906/78/EST(NI-1) dated 30 Mar 77) have directed to fix the pay of the individual on his appointment as 'C' Gde Clerk in CVD DEHU after giving him the benefit of past service as Civilian School Master from 02 Jan 42 to 12 Oct 46. Accordingly the pay fixation of the individual on his appointment as 'C' Gde Clerk under CDS (RPP)

Rules 1947 has been submitted.

4. From the above it is very clear that the Army Head Quarters had themselves as late as on 30th March, 1977 directed that the pay of the petitioner on his appointment as 'C' Grade Clerk in CVD Dehu Road should be fixed after giving him the benefit of past service as Civilian School Master between 1942 to 1946. In any case this communication dispels any doubt about the question of limitation so far as this petition is concerned. This shows that the question of revision of petitioner's pay had been under active consideration and had virtually been accepted by the authorities as late as in May, 1977. Unfortunately for the petitioner at such an advanced stage his case was rejected by the Army Head quarters in consultation with the Ministry of Defence and Finance as is ^{revealed} ~~levelled~~ from the Naval Stores Depot letter of 29th August, 1979 (Ex. 'R' to the petition). The two grounds of rejection can be pertinently quoted as follows :-

"(a) This cannot be accepted in the absence of either the service documents for the period from 02 Jan. 42 to 11 Oct. 46 or any other proof to verify this service;

(b) There is no legal or moral compulsion to admit the claim."

5. To us it appears that both the aforesaid grounds are unconvincing. We have seen the Service Book of the petitioner and find that on page 14 of the Service Book the pay of the petitioner on his discharge as Civilian School Master was recorded as Rs. 75/- per month with DA pf Rs. 16/-. The same is mentioned on the discharge certificate the original of which also is available on the service book. The year to year pay and increments

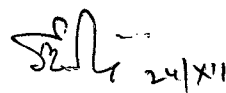
the petitioner had earned after he joined the Vehicle Depot at Dehu Road have been clearly indicated in the Service Book. In view of these facts and documents there is no reason for the respondents to reject the petitioner's request and Army Head Quarter's recommendations of counting his service between 1942 to 1946 for the purpose of increments, merely on the ground that service documents were not available or there was no proof to verify his service. The simple question is to allow him increments in the pay scale of LDC by taking his service from 2nd January, 1942 to 11th October, 1946 into account. To our mind this does not call for any further documents or records beyond what had already been verified and accepted by the Respondents in the Service documents.


6. In the facts and circumstances discussed above and relying on the fact that the respondents themselves had condoned the break in service for the purpose of seniority and also on the fact that the Army Head Quarter themselves had found merit in condoning the break for the purpose of pay also, we allow the petition and direct that the respondents should re-fix the pay of the petitioner as 'C' Grade Clerk in Vehicle Depot at Dehu Road after taking into account his service from 2nd January, 1942 to 12th October, 1946 for the purpose of fixing his final pay as 'C' Grade Clerk. His pay for the subsequent period as also his pension and retirement benefits should be calculated accordingly on the basis of the revised pay scales as and when they came into effect as also on the basis of the promotions/increments in accordance with the service rules in force on relevant dates. The respondents are directed to complete the process of

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refixing his pay and pension and of payment of arrears, if any, to the petitioners within a period of 6 months.

There will be no orders as to costs.


(S.P. MUKERJI)
Member(A).


(M.B. MUJUMDAR)
Member(J).