

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1137/96

Date of Decision : 8th April 2002

N.N.Sinha Applicant

Applicant in person Advocate for the Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R.Shetty for Advocate for the
Shri R.K.Shetty Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library Yes

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.No.1137/96

Dated this the 8th day of April 2001

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S.Tampi, Member (A)

Nriteshwar Nath Sinha,
Senior Store Keeper,
(No.6636368),
Ordnance Depot,
Talegaon Dabhade,
Dist. Pune.

...Applicant

Applicant in person

vs.

1. Union of India
through the Secretary,
Ministry of Defence,
New Delhi.
2. Controller General of
Accounts, R.K.Puram,
New Delhi.
3. Director General,
Ordnance Services,
Army Headquarters,
DHQ PO New Delhi.
4. Commandant,
Ordnance Depot,
Talegaon Dabhade,
Dist. Pune.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

C This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the relief that the pay of the applicant be fixed at the rate of Rs.328/-p.m. w.e.f. 6.3.1974 ignoring the period of his employment as LDC against temporary vacancies from 1.11.1973 to 5.3.1974, sanction of annual increments from 1975 onwards taking into consideration his basic pay as Rs.328/- p.m. w.e.f. 6.3.1974, entitled to receive all his dues/emoluments during the subsequent period on the said basis.

C 2. The applicant served in the ASC (Army Service Corps) as a Clerk GD/SD from 21.2.1963 to 31.10.1973 and took discharge from the Army service on compassionate grounds, was released from Military service w.e.f. 31.10.1973 without any pensionary benefits but was paid the Gratuity amounting to Rs.4062.70. The applicant joined the Territorial Army Group Headquarters, Pune on IAFA-497 as a Lower Division Clerk on 1.11.1973. While serving in the office of the TA Group Headquarters, Pune, he got a call letter from the Employment Exchange, Pune and joined Headquarters, Recruiting Zone, Pune as a Lower Division Clerk on 12.12.1973. He was declared surplus and was provided with an alternative appointment at Ordnance Depot, Talegaon, Dabhade, Dist. Pune as a Store Keeper. Accordingly, the applicant joined

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the Ordnance Depot, Talegaon Dabhade w.e.f. 6.3.1974 vide letter dated 28.2.1974. Since then the applicant is serving there. The last basic pay at the time of release from Army Service was Rs.328.50 p.m. but the basic pay as Store Keeper at the Ordnance Depot, Talegaon Dabhade was fixed at Rs.260/- p.m. w.e.f. 6.3.1974 in the scale of Rs.260-400 under CDS (RP) Rules, 1973, Rule 7. Thus, the applicant was not given any protection of pay and his basic pay was reduced by Rs.68.50 p.m. while fixing the pay. There was no break in service from the day the applicant joined the Military Service on 21.2.1963 till he was posted as Civilian Store Keeper at Ordnance Depot, Talegaon Dabhade on 6.3.1974.

3. The applicant claims that his basic pay ought to have been fixed at Rs.328.50 p.m. in the scale of Rs.260-400 which he was drawing at the time of leaving the Military Service. On re-employment as Civilian Store Keeper, his pay ought to have been fixed giving pay protection. He has been discriminated. His representations and appeals have been turned down. Hence, this OA. for the above said relief.

4. On re-employment, the gratuity paid to the applicant Rs.4062/- was recovered from his salary vide Ordnance Depot, Talegaon Dabhade, Daily Order Part II No.111/11/83 (Annexure-VIII). The Military Service of the applicant was approved by the CDA (Pension) Allahabad for counting for the purpose of pension.

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5. The claim of the applicant is resisted by the respondents on the ground that the applicant is claiming fixation of pay and pay protection upon joining Civilian service w.e.f. 1.11.1973 on the basis of his having completed Army service from 21.2.1963 to 31.10.1973. As the applicant himself has sought discharge from the Army on compassionate ground and has not been discharged by the authorities, the applicant is not entitled to claim pay protection (Exhibit-'R-1', CPRO 107/60). The applicant's representation for protection of his pay at the time of joining Civil Service was rejected vide Army Headquarters letter No. A/04/616/GEN/OS (ii) dated 21.4.1977 (Exhibit-'R-2'). Thus, the case of the applicant is grossly barred by limitation. As the applicant was surplus in the establishment in Headquarters, he was discharged from service w.e.f. 10.2.1974 but he was offered alternative appointment and posted to this Depot as fresh entrant in the post of Store Keeper and placed in the pay scale of Rs.260-400 w.e.f. 6.3.1974 on probation for two years. There was ^{no} ~~no~~ provision to place him in higher basic pay rather to bring at the last basic pay what he was in receipt while in the Army. The claim of the applicant is de hors the rules. There have been breaks in service of the applicant as detailed above, i.e. from 11.2.1974 till 6.3.1974. Mere allotment of same Army number does not give any right to the applicant as it is as per procedure when an Ex-Serviceman on re-employment is appointed in civil capacity. The refund of the DCRG is ordered as the applicant claim that his earlier service in Army should be counted for pensionary benefits which is as per rules (Exhibit-'R-3'). The

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discrimination as alleged by the applicant comparing his case with others is not made out as the case of Ex-Sepoy M.Varghese and P.B.Bhat are based on different footing. The applicant preferred an appeal dated 25.3.1977 which was promptly forwarded to higher authorities which was rejected on 21.4.1977 (Exhibit-'R-2'). The applicant preferred another appeal on 8.12.1977 addressed to Hon'ble President of India, Army Headquarters decided to re-examine the matter in the light of Ministry of Defence O.M.No. 2(S)/63/5406/D(Civ-I) dated 12.6.1963 and called for audit report. The audit authority as a result of review have agreed to examine his request in the light of Ministry of Defence letter No.2(54)/5801/D(Civ-17) dated 15.7.1966. On re-examination, it was concluded that the case is out of the scope of the said letter. However, the case was again subjected to repeated requests from the applicant. In the light of expert audit opinion, it was ruled that the case is not acceptable in terms of Ministry of Defence O.M. No.2(54)/5801/D(Civ-17) dated 15.7.1960 as informed vide letter No.B/1102/425/OS-8C(ii) dated 27.4.1988 (Exhibit-'R-4'). The applicant went on submitting appeal after appeal and finally Army Headquarters informed that the case has been turned down by Controller General Defence Accounts and therefore it has been finally closed. The applicant's appeal dated 6.12.1992, said to have been submitted, has not been received. At the time of alternative appointment, he was informed that he will be treated as fresh entrant in the post of Store Keeper which obviously means that the pay and allowances applicable to the post only payable to him. Hence, prayed for dismissal of the OA. along with cost:

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6. The applicant filed the rejoinder stating that he had requested for pay fixation on his re-employment against Ex-servicemen vacancies and not pay protection. As the OA. has been admitted, the pleas raised by the respondents do not stand. He was on strength of Headquarters, Recruiting Zone, Pune from 11.2.1974 to 5.3.1974 without pay and allowances for seeking the alternative appointment on declaration surplus to the establishment of Headquarters, Recruiting Zone, Pune. He received the Movement Order from Headquarters and accordingly reported to the Commandant, Ordnance Depot, Talegaon Dabhade on 6.3.1974 as Store Keeper. CPRO 107/60 has been ignored by the Respondent No. 4 in his written statement. As he was on strength of Headquarters, Recruiting Zone, Pune without pay and allowances, there was no break in service. The respondents have mixed up the issue of counting of Military service towards civil pension under CCS (Pension) Rules, 1972 and issue regarding fixation of pay. The cases referred by the applicant are similar one having no distinct features. All the Ex-servicemen on their re-employment are treated as fresh entrants but their pay are refixed to higher scales as they are appointed to various trades against Ex-servicemen vacancies.

7. Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 which came into force w.e.f. 1.7.1979, 'Ex-Serviceman' has been defined in Section 2 (c) which is as under :-

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"2.(c) "Ex-Serviceman" means a person who has served in any rank (whether as combatant or as a non-combatant) in the Regular Army, Navy and Air Force of the Indian Union but does not include a person who has served in the Defence Security Corps, the General Research Engineering Force, the Lok Sahayak Sena and the paramilitary forces; and

- (i)
- (ii)
- (iii) who has been released, otherwise than on his own request, from such service as a result of reduction in establishment."

Perusal of the said provision particularly Section 2 (c) (iii), it is clear that a person who has been released, otherwise than on his own request, from such service as a result of reduction in establishment is covered by the definition of Ex-serviceman. Thus, a person who has been released on his own request is not covered by the said definition. The applicant took discharge from the Army service on compassionate ground and was released from Military service w.e.f. 31.10.1973 without any pensionary benefits after serving more than 10 years but was paid the gratuity amounting to Rs.4062.70. Thereafter, the applicant joined the Territorial Army Group Headquarters, Pune on IAFA-497 as a Lower Division Clerk on 1.11.1973. After getting a call letter from the Employment Exchange, Pune while in service joined Headquarters, Recruiting Zone, Pune as a Lower Division Clerk w.e.f. 12.12.1973. He was declared surplus and was provided with an alternative appointment at Ordnance Depot, Talegaon, Dabhade, Dist. Pune as a Store Keeper. The applicant joined the Ordnance Depot, Talegaon Dabhade w.e.f. 6.3.1974 and since then the applicant is serving there.

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8. As stated above, the applicant was released on his own request on compassionate ground and thereafter he was declared surplus. As such, he is not covered by the definition of the word 'Ex-Serviceman'. Therefore, he is not entitled to be governed by Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979.

9. Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 which came into force w.e.f. 1.7.1986 deals with cases of re-employed pensioners. While the applicant cannot be treated as pensioner for the reason that he was released from Military service w.e.f. 31.10.1973 without any pensionary benefits. Hence, the applicant is not governed by the said orders.

10. The applicant's service is not a continuous service as there has been a break w.e.f. 11.2.1974 till 6.3.1974 after his working as Lower Division Clerk at Pune.

11. Pay fixation being a recurring cause of action in view of M.R.Gupta's case, though the grievance of the applicant relates back to the year 1974 but it being a recurring cause of action, the claim of the applicant cannot be said to be barred by time.

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12. The basic pay of the applicant at the time of release from Army service was Rs.328.50 p.m. while he was fixed at Rs.260/- p.m. w.e.f. 6.3.1974. The applicant is not entitled to pay protection as he is not covered by the definition of the word 'Ex-serviceman', hence, he was not entitled to pay protection.

13. In the result, we do not find any merit in the OA. It is liable to be dismissed and is dismissed as such with no order as to costs.

(GOVINDAN S. TAMPI)

MEMBER (A)

mrj.

(S.L.JAIN)

MEMBER (J)

Order/200/12/22141/2
to Applicant dependent (s)

22/4/12

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

REVIEW PETITION NO.31/2002
IN
ORIGINAL APPLICATION 1137/1996

Shri Nriteshwar Nath Sinha
Senior Storekeeper
Ordnance Depot,
Telegaon Dabhade
Pin Code - 410 506.

...Applicant

(By Advocate Shri J.M. Tanpure)

V/s

Union of India and ors.

...Respondents

TRIBUNAL'S ORDER :

DATE : 30.12.2002

The applicant in O.A.1137/96 has filed this review petition in respect of an order passed by this Tribunal dated 8th April, 2001 by which the O.A. has been dismissed.

On perusal of the grounds raised in the review petition we find that the applicant intends to place Ex.A-2 "Form of confidential in respect of Lower Division Clerks/Upper Division Clerks/Store Keepers/Sr. Store Keepers and equivalent category in AOC" for the year 2000 period from 31st April, 99 to 31st March, 2000. Other grounds which are raised relates to appreciation and applicability of the documents placed on record.

Ex.A-2 which is sought to be placed on record is not a complete document, only one page of the document is sought to be placed on record, while the document is of more than one page which is apparent on the page by an endorsement "continued".

P.911-2

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Further no reason is put forth for not placing the document on record earlier when the O.A. was decided. Order 47 rule 1 applies when "discovery of new and important matter or evidence" is there which after exercise of due diligence was not within his knowledge or could not be produced earlier. Such allegations and facts are not available in the present case. As such we are of the considered view that on this ground the review petition does not lie.

A review can not be claimed or asked merely for a fresh hearing of arguments or correction of an erroneous view taken earlier that is to say, the power of review can be exercised only for correction of a patent error of law or fact which shows in the face without any elaborate argument being needed for establishing it. Any attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment (2000(2)A 1 SLJ 108 Ajit Kumar Rath Vs. State of Orisa & others).

In the result, we do not find any ground to review the order passed by this Tribunal on 8.4.2001. As such review petition is liable to be dismissed and is dismissed accordingly.

(GOVINDAN S. TAMPTI)
MEMBER (A)

(S.L. JAIN)
MEMBER (J)