

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-560038.

Date: 1 SEP 1993

APPLICATION NO(S) 523 and 524 of 1990.

APPLICANTS: B.A. Sunagar and B.K. Satabhavi v/s. RESPONDENTS: Chief Post Master, P&T Deptt. Bangalore and Others.
TO.


1. Sri.R.U.Goulay,
Advocate, No.90/1,
Second Block,
Near Ganesh Mandir,
Post Office Road,
Thyagarajanagar,
Bangalore-560028.
2. Sri.M.S.Padmarajaiah,
Central Govt. Stng. Counsel,
High Court Building,
Bangalore-560001.

Subject:- Forwarding of copies of the Order passed by the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the ORDER/STAY/INTERIM ORDER, passed by this Tribunal in the above said application(s) on 09th September, 1993.

Issued

gm*


DEPUTY REGISTRAR
JUDICIAL BRANCHES.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH : BANGALORE

DATED THIS THE 9TH DAY OF SEPTEMBER, 1993.

P R E S E N T

HON'BLE SHRI S. GURUSANKARAN ... MEMBER (A)

HON'BLE SHRI A.N. VUJJANA RAO ... MEMBER (J)

APPLICATION No.523 & 524/90

1. Shri B.A. Sunagar,
S/o. Adivappa,
Working as Postal Assistant
at Ranebennur,
District: Dharwad.

(Applicant in O.A.No.523/90)

2. Shri B.K. Satabhavi,
Working as Postal Assistant,
Ranebennur Head Office,
Ranebennur,
District: Dharwad.

(Applicant in O.A.524/90)

... Applicants

(Shri R.U. Goulay ... Advocate)

Vs.

1. The Chief Post Master,
Post and Telegraph Department,
Karnataka Circle,
Bangalore-1.
2. The Director General of
Post and Telegraphs,
New Delhi.
3. The Union of India by
its Secretary, Ministry of
Defence, Department of Personnel
and Training, Raksha Bhavan,
New Delhi.
4. The Union of India by its
Secretary, Ministry of Communications,
Sanchar Bhavan, New Delhi.
5. The Director General of
Telecommunications,
Sanchar Bhavan, New Delhi.
6. Union of India, by its Secretary,
Dept. of Personnel And Administrative
Reforms, Ministry of Home Affairs,
North Block, New Delhi.

... Respondents

(Shri M.S. Padmarajaiah .. Advocate)

This application, having come up before this Tribunal



today for orders, Hon'ble Shri S. Gurusankaran, Member (A),
made the followings:

ORDER

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants are aggrieved by the order dated 28.2.1990, issued by Respondent No.1 intimating them that their pay could not be fixed above the minimum as there is no hardship in their cases. They have, therefore, prayed for the following reliefs:

- a) Direction to the Respondents 1 and 2 to re-fix the pay of the applicants 1 and 2 as Clerk on their re-employment in the Department of Respondents 1 and 2 counting their military service.
- b) issue an order declaring the order No.DDP and TOM:16-3/85/Estt(Pay) I dated 22.1.87 extending the benefit of fixation of pay under MDF OM No.6 (8) B-III/63 dated 11.4.1963 to the Telephone Operators/Telegraphists with effect from 1.1.1987 onwards in so far as it relates to grant of monetary benefits only from 1.1.1987 as discriminatory and ultra vires under Articles 14 and 16 of the Constitution of India.
- c) issue any other direction or order as deemed fit under the circumstances of the case, including incidental and consequential to the main relief sought for.

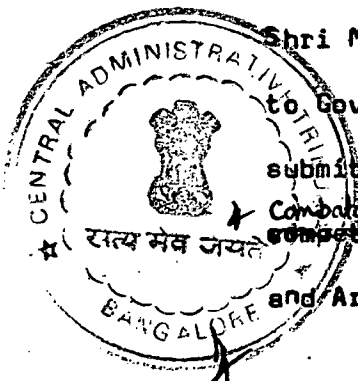
2. The facts of the case are not in dispute. The applicant in O.A.523/90, an Ex-serviceman, was appointed as Postal Assistant with effect from 22.4.1980 in the Scale of Rs.260-480/- fixing his pay at Rs.260/-, i.e., the minimum of the scale. The applicant had opted for counting his Military service for civil pension and for fixation of his pay accordingly. The last pay drawn by him in the Military service was Rs.257/-. With reference to his letter dated 17.2.1989, he was advised by R-1 vide letter dated 28.2.1989 (Annexure-A2) that his pay on his reemployment as T/S Clerk cannot be fixed at a higher stage than the minimum of the

scale. He made further representation dated 23.2.1990 quoting the decision of C.A.T., Bangalore, dated 28.9.1989 in O.A. No. 239 and 240/89 filed by two other persons and the same was also turned down by R-1 vide letter dated 28.2.1990 (Annexure-A4). Aggrieved by the refusal of the respondents to refix his pay, the applicant has filed this application on 2.7.1990.

3. The applicant in O.A. 524/90, who is also an Ex-serviceman, was appointed as Postal Assistant with effect from 18.4.1980 in the scale Rs.260-480/- fixing his pay at Rs.260/-, i.e., the minimum of the scale. The applicant was asked to opt for counting of his Military service for civil service under the Pension Rules. Even though he has opted he has not sent the required documents along with the option. Hence, no further action was taken in his case. However, the applicant in O.A.524/90 represented for fixation of pay counting his Military service on 19.6.1990 and he was asked to furnish full particulars regarding his Military service for considering his case vide letter dated 6.12.1990. However, the applicant without responding to this letter has filed this application on 2.7.1990.

4. The respondents have filed their reply contesting this application. Since, both the applications deal with the same question of law, they have been heard together and are being disposed off by this common order.

5. We have heard Shri R.U. Goulay for the applicants and Shri M.S. Padmarajaiah for the respondents. Shri Goulay referred to Government of India letter dated 11.4.1963 (Annexure-I) and submitted that as per that circular, the service rendered as ~~competent~~ ^{Combatant} clerk (Sepoy and above and equivalent ranks in Navy and Armed Forces) may be treated as equivalent to service as

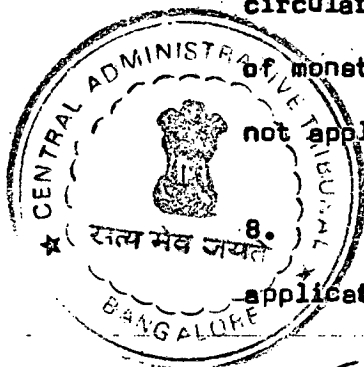


L.D.C./Junior Clerks in Civil Department irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in the posts of L.D.Cs/Junior Clerks in Civil Departments after their release/retirement from the Armed Forces, their initial pay in the posts of LDCs/Junior Clerk may be fixed at a higher stage in the said scale above the minimum equal to the number of completed years of service as ~~competent~~ ^{Combatant} clerks. The applicant in O.A.523/90 was working as Naik, which is above the post of Sepoy and he has been appointed as Postal Assistant, which is as same as LDC/Junior Clerk. The applicant in O.A.524/90 was also appointed as a Postal Assistant and he was serving as a Sepoy. He vehemently argued that since the order dated 22.1.1987 extends the benefit of fixation of pay given under order dated 11.4.1963 to the Telephone Operators/Telegraphists with effect from 1.1.1987, the applicants should also be given the ~~same~~ benefit. He, further argued that the order dated 22.1.1987 should be struck down as discriminatory and ultra vires under Articles 14 and 16 of the Constitution of India to the extent they restrict the monetary benefit from 1.1.1987 only.

6. Shri M.S. Padmarajiah pointed out that there is no merit in the case of the applicants. He produced the necessary record to show that the applicant in O.A.523/90 was working as a Linesman in the Signals Company and the applicant in O.A.524/90 was working as a Turner in the EME Company. He ~~therefore submitted both were not working as competent clerks~~ ^{& combatant clerks &} in the Army before their discharge and hence circular dated 11.4.1963 and 22.1.1987 do not apply to the cases of these two applicants. In spite of adjournments given as desired by the learned counsel for the applicants to produce any other

proof to show that the applicants were working as ^{Combatant &} ~~competent~~ Clerks in the Armed Forces before their discharge, the applicants could not produce any such proof before us.

7. Having heard the submission of both the parties, we find that there is no merit in these applications. As pointed out by the Respondents, the concession given in the letters dated 11.4.1963 and 22.1.1987 apply only to those Ex-service-men who worked as ^{Combatant clerks &} ~~competent clerks~~ in the Armed Forces before their discharge and are re-employed as LDCs/Junior Clerks/Telephone Operators/Telegraphists. The 1987 letter only extended the benefit to those ^{Combatant} ~~competent~~ Clerks, who were appointed as Telephone Operators/Telegraphists instead of restricting it to only those who were employed as LDCs/Junior Clerks as in the 1963 letter. In fact, the letter dated 22.1.1987 has no application to the present cases, since the applicants were appointed as Postal Assistants which is equivalent to LDC/Junior Clerk and hence 11.4.1963 letter is applicable to them. However, since they were not working as ^{Combatant clerks &} ~~competent clerks~~ in the Armed Forces before their discharge and were working in other technical capacities, the benefits given under the letter dated 11.4.1963 cannot be extended to them. In view of this, we do not think that it is necessary to consider the vires of the circular dated 22.1.1987 in so far as it restricts the payment of monetary benefits only from 1.1.1987, since the circular is not applicable to the present applicants.



8. In the light of the above, we find no merit in these applications and accordingly these applications are dismissed.

Sd-

9/9/93
MEMBER (J)

TRUE COPY

SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

Sd-

9/9/93
MEMBER (A)

psp.

21/9/93