

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION NO.: 951/98

30.3.2000
Date of Decision :

A.S.Joshi **Applicant.**

Shri S.P.Saxena **Advocate for the
Applicant.**

VERSUS

Union of India & Others, **Respondents.**

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

CORAM :

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal?
- (iii) Library

D.S.Baweja
(D.S.Baweja)
Member (A)

mrj*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.951/98

Dated this the 30th day of March 2000.

CORAM : Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (J)

Anad Shankar Joshi,
Stores Keeper,
C.A.F.V.D., Kirkee,
Pune.

...Applicant

By Advocate Shri S.P.Saxena

V/S.

1. Union of India
through The Secretary,
Ministry of Defence,
New Delhi.
2. The Director O.S.(Personnel),
Directorate General of Ordnance Services
(OS 8/C), Master General of Ordnance
Branch, Army Headquarters,
DHQ PO, New Delhi.
3. Officer-in-charge,
A.O.C., Record Office,
P.O. : Tirimalgiri,
Secunderabad.
4. Commandant,
C.A.F.V.D.,
Kirkee, Pune.
5. The Assistant Controller of
Defence Accounts-in-Charge,
Area Accounts Office,
C.D.A. (S.C.), Dehu Road,
Pune. ... Respondents

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

ORDER

{Per: Shri D.S.Baweja, Member (A)}

The applicant is ex-serviceman who was reemployed on 8.3.1983 as a Storekeeper against the vacancy reserved for ex-serviceman in the pay scale of Rs.260-400 under Commandant C.A.F.V.D., Kirkee, Pune (Respondent No. 4). In the Army, he was recruited as Sepoy Skt on 9.7.1974 and then got promotion as Lance Naik. He was released from Army on 13.1.1982 while working as Lance Naik with over eight years of service. Since the applicant did not complete the required service for earning pension, he was paid gratuity of Rs.4123.20. As a Store Keeper, the pay of the applicant was fixed as Rs.260/- at the minimum of the pay scale. It is the case of the applicant that his initial pay should have been fixed as Rs.302/- w.e.f. 3.8.1983 granting seven increments taking into account his service in Army. The applicant has been representing for the same. The applicant has brought on the record the internal correspondents between the field unit and the Respondent No. 2, i.e. Controller of defence Accounts which indicates that demand of the applicant for fixation of pay at Rs.302 is admissible in terms of O.M. dated 12.6.1963. Respondent No. 2 as per letter dated 22.2.1993 also advised Respondent No. 4 that the option submitted by the applicant is not to be taken as belated. Respondent No. 5 fixed his pay at Rs.297.32 after deducting Rs.4.69 as pension



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equivalent of gratuity as per his letter dated 2.6.1994. However, Respondent No. 2, Director General of Ordnance Services, New Delhi finally rejected the claim of the applicant as per order 27.7.1995. This OA. has been filed as a result of the same on 6.10.1999.

2. The applicant has sought the following reliefs :-

- (a) to declare that the pay of the applicant fixed by Respondent No. 5 as his letter dated 2.6.1994 is correct.
- (b) to direct the respondents to fix his pay w.e.f. 3.8.1983 after granting seven increments in the scale of pay of Store Keeper.
- (c) to direct respondents to pay arrears arising due to difference of the pay on account of refixation of pay with interest of 12% p.a.

3. The respondents have opposed the claim of the applicant in the two written statements. One written statement has been filed by Senior Accounts Officer, Dehu Road and the other by Shri I.D. Singh, Administrative Officer for Commandant, C.A.F.V.D., Kirkee, Pune. The respondents have stated that applicant had worked in Army from 11.11.1975 to 13.12.1982 and not 9.7.1974 to 13.11.1982 as claimed by the applicant. The respondents submit

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that the pay protection is given to re-employed ex-serviceman as a civilian employee only if the total emoluments in civilian post falls short of total emoluments of military service. Pay scale of civilian Store keeper is higher than the pay scale of Combatant Storeman and thus there is no loss of emoluments. In terms of Ministry of Finance's O.M. dated 28.6.1984, pay protection is to be given only if there is hardship. The respondents have also relied upon the O.Ms. dated 5.7.1960 and 8.8.1962. In the present case, the respondents state that the applicant has failed to furnish the details of the total emoluments received by him at the time of being relieved from military service to make out a case that with the fixation of pay as on 1.9.1983, hardship has been caused to him. Respondents have also taken a plea that since the applicant was released from the Army after 7 years, he is not to be taken as a ex-serviceman. The respondents have also opposed the OA. on the ground of being barred by limitation as the cause of action arose in 1983.

4. The applicant has filed rejoinder reply. The applicant while controveerting the submissions of the respondents has submitted that the applicant was released from the Army by way of 'Compassionate retirement' by giving due notice and such retirement is permissible as per rules. The applicant, therefore, belongs to ex-serviceman category and accordingly selected and appointed as Store keeper in C.A.F.V.D. against a reserved vacancy. For the plea of limitation raised by the respondents, the applicant contends that the same is not tenable

in view of the law laid down by the Hon'ble Supreme Court in the case of M.R.Gupta as the matter under challenge concerns pay fixation which is a continuing cause of action.

5. We have heard the arguments of Shri S.P.Saxena and Shri R.R.Shetty for Shri R.K.Shetty the learned counsel for the applicant and respondents respectively.

6. The respondents have taken a plea that the OA. is barred by limitation as the cause of action arose in 1983 and the present OA. has been filed only in 1998. The counsel for the applicant, however, has contested this stating that the issue agitated in the OA. concerns pay fixation which is a continuous cause of action as held by the Hon'ble Supreme Court in the case of M.R.Gupta vs. Union of India, 1995 (5) SCC 628. After considering the facts of the case, we find merit in the stand of the applicant. The applicant has sought fixation of his pay after being appointed at a civilian post being an ex-serviceman. As held by the Hon'ble Supreme Court in M.R.Gupta's case, pay fixation is a continuous cause of action and therefore not barred by limitation. However, payment of arrears, if any, due will be subject to the law of limitation.

7. The respondents in the written statement have taken a plea that the applicant is not an ex-serviceman as he/served Army only for a period of 7 years and this decision has been already conveyed in the letter dated 20.7.1995 through which fixation of

pay by granting increments has been rejected. The applicant has contested this and has submitted documentary evidence in support on the record. However, during the arguments, the learned counsel for the respondents stated that the respondent do not press for this point and concede that the applicant is an ex-serviceman and his appointment as Store Keeper was against reservation for the ex-serviceman. In view of this, the matter will be gone into on merits as per the extant rules treating that the applicant is an ex-serviceman and was appointed accordingly against the reservation quota.

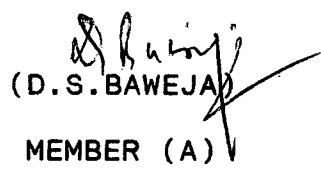
8. The applicant has claimed that his pay fixation on being appointed on the civil post of Store keeper in the scale of Rs.260-400 is required to be fixed by taking into account by granting seven increments one each for completed years of service in the Army in terms of the O.M. dated 12.6.1963. The applicant has also brought on the record the internal correspondence which has been going on between Respondents Nos. 2 to 5. The internal correspondence indicates that the case of the applicant was being considered for fixation of pay in terms of O.M. dated 12.6.1963. However, finally the Respondent No. 2, i.e. Director General of Ordnance Service, New Delhi has rejected the request for pay fixation by granting seven increments as per order dated 27.7.1995. The respondents in the written statement have taken a stand that the pay fixation by granting increments is to be allowed only when there is hardship on account of fixation of pay at the minimum of the pay scale of the civil post on which

appointed is lower than the pay drawn by the ex-serviceman at the time of being retired or released from the Army. It is their contention that since the minimum of the pay scale of Store keeper is higher than that of the Commbatant Storeman in the Army, there is no hardship and the applicant is not entitled for grant of increments based on number of years of service in Army. To support these submissions, the respondents have relied upon the O.M. brought on the record at Annexure-'R-3' with the written statement. The applicant has not brought on record the O.M. dated 12.6.1963 relied upon by him, but this has been brought on the record by the respondents. On going through this O.M., it is noted that this applies specifically to the category of ex-combatant Clerks who are retired or released from service in the Armed Forces on re-employment as LDCs/Junior Clerks in civil posts. The counsel for the applicant however during hearing brought out that the application of this Circular had been extended as per CPRO 79/75 for the category of the ex-Combatant Storeman re-employed as Storeman in the civil post. It is, therefore, the case of the applicant that he is entitled for the grant of 7 increments for 7 years of service for fixation of his pay as indicated by the Respondent No. 5 in his letter dated 2.6.1994 is correct as per the extant rules and the applicant deserves to be allowed the same. He further argued that the O.M. brought on record by the respondents at Annexure-'R-3' does not apply to the case of the applicant as this O.M. applies to ex-serviceman who are pensioners while the applicant is not a pensioner ^{as} he was released from service

on his request as a 'compassionate retirement'. We have carefully gone through the O.Ms. relied upon by the either side and other documents brought on the record and are of the view that the contention of the applicant cannot be upheld. On going through the O.M. at Annexure-'R-3', we note that this does not apply to pensioners only but also applies to those who had retired on Contributory Provident Fund and had received gratuity in lieu of pension. In para 1 (c) of this O.M., it is noted that pension equivalent of other forms of retirement benefits are to be taken into account for fixing the pay. Para 13 of this O.M. lays down the method for calculation of pension equivalent of gratuity. From the averments in the O.M. as well as internal correspondence brought out by the applicant on the record, it is noted that pension equivalent of gratuity has been worked out as Rs.19.68. Therefore, there is no doubt on going through the O.M. at Annexure-'R-3' that it does ^{not} _^ apply to pensioners but those retired otherwise. It is also noted that this O.M. is in supersession of all earlier orders on the subject and applicable in respect of re-employment prior to 1st July, 1986. Thus O.M. dated 12.6.1963 will stand superseded by this O.M. This O.M. provides that the increments corresponding to the length of service are to be allowed only when there is hardship on being appointed to the civil post and the pay fixed at the minimum of the pay scale of the post. In the present case, from the details furnished by the applicant in para 5.1 of the OA., the substantive pay drawn by him in Army was Rs.250/-. His pay as Store Keeper had been fixed at Rs.260/- and thus there was no

case of hardship. In this connection, we refer to the judgement of Hon'ble Supreme Court in the case of Director General, E.S.I. vs. M.P.Jahan & Ors., 1999 SCC (L&S) 370 relied upon by the respondents wherein similar issue has been gone into and Hon'ble Supreme Court has held that granting of the increments is permissible only if the hardship is caused due to pay being fixed at the minimum of the pay scale of the civil post. Keeping these observations in view, we are persuaded to uphold the stand of the respondents that the applicant is not entitled for grant of seven increments for fixation of pay on being appointed on civil post as Store Keeper.

9. In the result of the above, we do not find any merit in the OA. and the same is dismissed accordingly. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA) 30/3/2003
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

R.P. NO.: 34/2000 IN O.A. No.: 951/98.

Dated this Wednesday, the 12th day of June, 2002.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).
Hon'ble Shri S. L. Jain, Member (J).

A. S. Joshi ... Review Petitioner.
(By Advocate Shri S. P. Saxena)

VERSUS

Union of India & Others ... Respondents.
(By Advocate Shri R. R. Shetty
for Shri R. K. Shetty).

TRIBUNAL'S ORDER

The applicant has filed the present R.P. in respect of O.A. No. 951/98 which was decided by an order dated 30.03.2000 alongwith M.P. No. 432/02 for condonation of delay.

2. The Applicant claims that the copy of the order of the Tribunal was received by him through his counsel on 08.04.2000. After perusal of the said order he has filed the Review Petition on 01.06.2000. There was summer vacation and hardly there was delay of four days in filing the Review Petition. After hearing the parties, we allow M.P. No. 432/2002, condone the delay and proceed to hear the review petition on merits.

3. The review is sought by the Applicant on the ground that Central Civil Services (fixation of pay of re-employed pensioners) Orders 1986 were issued by the Respondents and these orders are said to be applicable in respect of re-employment prior to 1st July, 1986 as per observation of the Tribunal in

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para 8 of the judgement. The Tribunal has taken the view that the earlier O.M. dated 12.06.1983 will stand superseded by this order dated 1st July, 1986. On the above premise the Tribunal has not considered the applicant's case on the basis of the O.M. dated 12.06.1983 for granting benefit of seven increments to the applicant for fixing his initial pay on his re-employment as Store-Keeper under Respondent No. 4.

The applicant came across a copy of the O.M. No. 3/1/85-Establishment (P-11) dated 31.07.1986 which is issued by the Nodal Ministry of Personnel, P.G. and Pension (Department of Personnel & Training), New Delhi (Exhibit A-3). This O.M. has not been produced by the Respondents before Tribunal in O.A. No. 951/98 thereby they gave incomplete information. On a reading of O.M. dated 31.07.1986 it will be seen that with reference to all the appointments made on or after 1986 the pay of re-employed pensioners has to be fixed as per the Central Civil Services (fixation of pay of re-employed pensioners) Order, 1986. Thus, the applicant is seeking review of an order passed in O.A. on 30.03.2000 on the ground of discovery of new and important matter/evidence.

4. On consideration of the scope of review it is not the failure of the respondents to file documents but the discovery of new and important evidence that entails a party - the applicant, to apply for review that the said material could not be produced after due exercise of diligence. We do not find that the Applicant is able to establish the said fact. Keeping in view

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the scope of review, we are of the considered opinion that it is not a fit case for review of the order passed in the O.A.

5. In the result, the Review Petition deserves to be dismissed and is dismissed accordingly. No costs.

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

B. N. Bahadur
(B. N. BAHADUR)
MEMBER (A).

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