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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 909/92

Date of Order: 13-11-95

Between:

Galam Surya Rao.

.. Applicant

and

1. The Sub Divisional Officer,
Telecom, Vizianagaram-202.
2. The Telecom District Engineer,
Vizianagaram-250.
3. The Chief General Manager, Telecommunications,
A.P.Hyderabad-1.
4. The Chairman, Telecom Commission,
(rep. Union of India)
New Delhi-1.

Respondents.

For the Applicant :- Mr. C.Suryanarayana, Advocate.

For the Respondents: Mr. N.R.Devraj,
Sr./Asst. CGSC

CORAM:

THE HON'BLE MR.JUSTICE V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE MR.RANGARAJAN : MEMBER(ADMIN)

O.A.No.909/92.

JUDGMENT

Dt: 13.11.95

(AS PER HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN)

Heard Shri C.Suryanarayana, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for the respondents.

2. This OA was filed praying for declaration that, "the applicant is entitled to fixation of his pay by granting one notional increment for every year of Army service on his re-employment as Technician and that he cannot be discriminated on the ground that he was not employed as Combatant Clerk or a Storesman in the Army." The applicant further prays that the appropriate consequential direction may be given to the respondents to revise the earlier orders and fix the pay of the applicant by giving one increment in the pay scale of the Technicians for each year of his service in the Army at the time of fixation of his initial pay as Technician.

3. The facts which give rise to this OA are as under:-

The applicant joined Army as Line Mechanic Class-II on 10.7.70 and he was discharged from Army on 26.4.79. By then his basic pay was Rs.240/- plus classification pay of Rs.25/- which according to the applicant was counted as pay for all purposes including grant of DA and ADA and pay fixation on promotion etc. He was also drawing DA of Rs.141.80 paise and clothing allowance of Rs.9/- per month. Thus total had come to Rs.265/- per month.

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4. The applicant was selected as Technician and he was sent for training on 9.7.79 and after completion of one year training he was appointed as Technician with effect from 9.7.80. Then his pay was fixed at ^{Rs. 260/-} ~~Rs. 264-80~~ and thus in the minimum of the pay scale.

5. Before adverting to the respective contentions for the parties in this OA, it is convenient to read ^{relevant} portion of O.M.No.F.6(8)-E.III/63, dated the 11th April, 1963 and O.M.No.6(8)-E.III/63, dated the 19th January, 1965 which is as under:-

"(4) Fixation of pay of ex-combatant clerks:

It has been decided as a special case, that service rendered as a combatant clerk (sepoy and above and equivalent ranks in Navy and Air Force) may be treated as equivalent to service as LDCs/Junior Clerks in Civil Departments irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in the posts of LDCs/Junior Clerks in Civil Departments after their release/retirement from the Armed Forces, their initial pay in the posts of LDCs/Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerk.

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The pension and pension equivalent of gratuity, if any, which does not exceed Rs.15* per mensem will be ignored. In respect of pensionary benefits exceeding Rs. 15* per mensem the authority competent to determine the pay will have discretion to ignore Rs.15* or any smaller amount that it may consider justified depending upon the circumstances of the case.

The power to fix pay as above is hereby delegated to the Ministries of the Government of India. For the purpose of this order, the C. & A.G. will have the same powers as Ministries of the Government of India. Orders fixing the pay in such cases should be issued by invoking the provisions of F.R. 27.

The above decision will have effect from the 30th May, 1960. Ex-combatant clerks re-employed at L.D.Cs/Junior Clerks in Civil Departments before the 30th May, 1960, may be given an option to get their pay refixed with effect from the 30th May, 1960 under these orders as if they were re-employed from that date. Those who so opt will not be eligible for the benefit of the civil service rendered prior to that date but they may be allowed to retain the benefit of ad hoc increments, if any, already earned by them under the Ministry of Home Affairs O.M. No.30/53-G.S. (D), dated the 9th October, 1954. The option should be exercised within six months from the date of issue of this Memo. The option once exercised shall be final."

6. It is manifest from the above that the benefit of the earlier service in the Army to the extent referred to therein has to be given on re-employment in the posts referred to i.e. LDC/Junior Clerks for fixation of initial pay on ~~wa~~ such re-employment. The same benefit was extended to those who were appointed as Telephone Operator and Storesman as per the letter No.2105/ dated 4.4.72.

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7. The request of the applicant for fixation of his pay on his re-employment as Technician, in accordance with the letters dated 11.4.63, 19.1.65 and 4.4.72 was negatived by observing that as he was not a Clerk/Telephone Operator/Storesman in the Army and as his re-employment was not to any of ~~any~~ such posts, ~~and~~

8. The learned counsel for the applicant relied upon the ~~xxxxxx~~ judgment of the Karnataka High Court reported in 1978(I) LLJ 191 (T.P.Thomas & Vs. Union of India and others) and ~~xxxxxx~~ an unreported judgement of A.P. High Court in W.P.No.3104/80 (copy of the judgment was produced for perusal). The Karnataka High Court had considered the scope of Ministry of Defence letter No. 13034/D(Appts), dated 4.12.59 and No.10(1)63/6039/D(Appts) dated 1.6.63. The above letters ~~xxxxxx~~ refer to the weightage ~~was~~ to be given for fixation of seniority on re-employment of the Discharged Army people, and the scope of the letter dated 11.4.63, 19.1.65 and 4.4.72 which are in regard to fixation of pay & have not ^{been} considered as it was not necessary to consider by the Karnataka High Court in Thomas case.

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9. The only question which had arisen for consideration in WP 3104/80 is as to whether the post of Key Board and Line Signaller in the Army was of the rank of Sepoy. It has no bearing for consideration for the relief claimed in this OA.

10. It was contended for the applicant that it will be discriminatory if the weightage is given for fixation of pay on re-employment of discharged army personnel only in the categories of LDC, Clerks, Telephone Operators and Storesmen, ~~which~~ while such benefit is not extended for those who are re-employed as Technicians or in various other categories of posts, especially, when the pay scale of Assistants (Clerks), Telephone Operators and Technicians in a Telecom Deptt. are same.

11. It is obvious that in case of non-technical posts, one who renders service in that post, may have the opportunity to utilise that experience in the re-employed non-technical post and hence, the weightage in fixation of pay in re-employment of non-technical posts is given. But the same thing cannot be stated in regard to the Technical Posts. The experience one gained in one type of Technical posts may not be of much use in discharging the duties in another category of ~~non~~ technical post. It is not even pleaded that the ~~nature~~ of duties of Signaller in the Army are similar to the duties of the Technicians in the Telecom Deptt.

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12. There can be reasonable ~~xxxxxx~~ ^{classification} classification if there is nexus between the objective to be achieved. Thus, every classification cannot be held as discriminatory. The Tribunal can take cognisance of the fact that the experience in one non-technical job may be of use in discharging the services in another non-technical post while the same cannot be stated in regard ^{to} the experience in one type of a technical job for discharging the duties in another type of technical job.

13. The next contention that was raised for the applicant is that when weightage in regard to the service in the Army was given for fixation of seniority in the re-employed post of a discharged army personnel, it follows that due weightage ^{has to} ~~can~~ be given even in regard to the fixation of pay. We cannot accede to this contention. Probably in view of the age factor the weightage in regard to the seniority ~~it~~ was given. But, it is evident that separate circulars are being issued for weightage in regard to the seniority and weightage in regard to the fixation of pay. If on the basis of weightage in service for fixation of seniority one can claim weightage for fixation of pay also, ~~Then~~ there is no need to issue separate circulars for providing weightage for fixation of pay. It can be seen from the separate circulars issued in regard to the weightage for seniority and weightage for fixation of pay, that age ~~cannot be~~ ^{was} taken as one of ~~xx~~ the factors for allowing weightage for fixation of seniority, ^{while} ~~but~~ the experience in the work ~~has to be~~ ^{was} taken as a criterion for providing weightage for fixation of seniority.

14. As it is a case where 1987 rules were formulated in regard to the provision of weightage for fixation of initial pay of discharged army personnel on their re-employment, we feel

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To

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3. The Chief General Manager, Telecommunications,
A.P.Hyderabad-1.
4. The Chairman, Telecom Commission,
Union of India, New Delhi-1.
5. One copy to Mr.C.Suryanarayana, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

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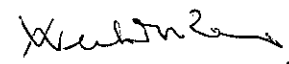
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it is not a case where again opportunity has to be given to the applicant to make a representation to the Deptt. about the plea of discrimination.

15. But, the learned counsel for the applicant produced a letter No.TA/ACA/16/Rlgs/V/49 dated 14.9.89 of Deptt. of Telecommunications where by a direction of the CAT, Bangalore Bench. It is to the effect that an ex-combatant clerk, on re-employment as Telegraphist even prior to 22.1.1987 had to be given dated 22.1.1987. As such a plea was not taken in this OA, we feel it just and proper to leave ^{it} open for consideration and the applicant if so advised, can make a representation to the respondents praying for extension of DoB&T OM dated 22.1.1987 ~~XXXXX XXXXX~~ referred to herein before.

16. Subject to the above, the OA is dismissed.
No costs. //

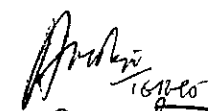

(R. RANGARAJAN)
Member (Admn)


(V. NEELADRI RAO)
Vice Chairman

Dtd. The 13th November, 1995

Dictated in the Open Court

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Deputy Registrar (5) cc