

(61)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH.

(Under <sup>AT HYDERABAD</sup> Rule 8(3) of CAT Procedure Rules, 1987  
MA.NO. 274 OF 1994

IN  
OA.NO. 998 OF 1993

D.P.Sankara Rao S/o Pullaiah  
aged about 50 years, Clerk, A/c No.8325285,  
O/O DCDA, PAO(ORs) EME, Secunderabad  
R/o Secunderabad.

..APPLICANT/  
APPLICANT

AND

1. The Union of India  
Min. of Defence, rep. by its Defence Secretary  
New Delhi.
2. The Controller General of Defence Accounts  
South Block.V.  
R.K.Puram, New Delhi-66.
3. The Controller of Defence Accounts(ORs)  
South, K.Kamaraj Road,  
Bangalore-1.

4. The Dy. Controller of Defence Accounts  
PAO(ORs) EME, Secunderabad.

5. The Secretary, Ministry of personnel (Dept of  
Personnel & Training)  
BRIEF FACTS LEADING TO THE APPLICATION: Govt. Offices, New Delhi etc

..RESPONDENT/  
RESPONDENT

1. It is respectfully submitted that the applicant herein has filed the above OA to declare the inaction of the Respondents in not re-fixing the pay of the applicant by allowing one increment to each completed year of Military service in the scale of pay of Rs.950-20-1150-25-1500 on his re-employment as Clerk in the Defence Accounts with effect from 30-10-1986 as arbitrary, discriminatory, illegal and violative of Articles 14 and 16 of the Constitution of India and consequently direct the Respondent to re-fix the pay of the applicant by granting him one increment to each completed year of Military service in the scale of pay of Rs.950-1500 with effect from 30-10-1986 with all consequential benefits. This Hon'ble Tribunal was pleased to admit the above OA. On behalf of the Respondents,

Regd. 5  
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a counter-affidavit has been filed contending that no protection of the scale of pay of the post held by Ex-Servicemen prior to their retirement shall be given as per the CCS orders, 1986. The applicant craves leave of this Hon'ble Tribunal to treat the averments in the main OA as part and parcel of this application to avoid duplication of statements.

2. It is respectfully submitted that this Hon'ble Tribunal at the time of hearing the main OA on 22-3-1994 was pleased to observe that unless Rule 16 of the Central Civil Services(Fixation of pay of re-employed Pensioners) orders, 1986 is declared as un-Constitutional, the relief sought for by the applicant in the main OA cannot be granted. Hence, this application is filed to amend the prayer in the main OA and to permit the applicant to raise the following additional grounds in the main OA.

G R O U N D S

(a) Rule 16 of Central Civil Services(Fixation of pay re-employed Pensioners)orders, 1986 issued by the Govt of India, Min. of Personnel PG and Pensions(Dept of Personnel and Training) in OM.No.3/1/85- Estt(P-II) dated 31-7-1986 on fixation of pay of Ex-Combatant Clerks/Storemen on their re-employment as Lower Division Clerks or Junior Clerks/Storemen in the Civil Post are entitled for fixation of their pay at a stage higher than the minimum of the scale in the Civil post taking into consideration of the total no. of years service rendered in the Military post is discriminatory and un-constitutional in as much as other Ex-Combatant members re-employed as

LDCs/Storemen in Civil Posts are discriminated in fixation of their pay in the civil posts.

(b) By confining fixation of pay of Ex-Combatant Clerks/Storemen re-employed as LDCs/Storemen and giving them advance increments corresponding to the total number of years of Military service, the rule has classified the Ex-Combatant members into two groups - the Ex-Combatant Clerks/Storemen and all other Ex-Combatant members re-employed as LDCs/Storemen in Civil posts which is impermissible under Law because the classification has no nexus for the objects sought to be achieved.

(c) The object of fixing the pay of the Ex-Combatant members re-employed as LDCs/Storemen is to provide an incentive to the Ex-Combatant members on their re-employment in Civil posts because of the peculiar circumstances to which they are exposed in their service to the Nation rescuing their lives and therefore it cannot be confined to one category of Ex-Combatant members and exclude the others. Therefore, it amounts to inequality among equals and offends Articles 14 and 16 of the Constitution of India.

(d) In all the Central Govt. undertakings, such as, LIC, GIC, Banks etc, all the Ex-Combatant members re-employed as Clerks etc are given the uniform treatment for fixation of their pay in the re-employed posts as per the notification issued by the Govt. of India in OM dated 31-7-1986 and therefore the interpretation of the very same rules in so far as the Ex-Combatant members re-employed in Civil posts in Government departments and confining the said provision only to the Ex-Combatant Clerks/Storemen is unsustainable.

(e) The rule providing for fixation of pay of re-employed Ex-Combatant Clerks/Storemen re-employed as LDCs/Storemen in Civil posts is only illustrative and not exhaustive.

(f) If the rule providing fixation of pay of re-employed Ex-Combatant Clerks/Storemen as LDCs/Storemen is read down so as to include all the Ex-Combatant members re-employed as LDCs/Storemen, it will be in conformity with the Article 14 of the Constitution of India.

3. The applicant submits that after amending the prayer in the above OA by adding certain words in the prayer, the prayer in the main OA would be as follows:

Therefore, in the interest of justice it is prayed that this Hon'ble Tribunal may be pleased to declare that the inaction of the Respondents in not refixing the pay of the applicant by allowing one increment to each completed year of Military service in the scale of pay of Rs.950-20-1150-25-1500 on his re-employment as Clerk in Dy. Controller of Defence Accounts w.e.f 30-10-1986 as arbitrary, discriminatory and illegal and also declare that <sup>n</sup>confining fixation of pay of Ex-Combatant Clerks/Storemen re-employed as Lower Division Clerks/Storemen in Civil posts taking into consideration of the total number of years of service rendered in the Military post as Unconstitutional and consequently direct the Respondents to refix the pay of the applicant by granting him one increment to each completed year of Military service in the scale of pay of Rs.950-1500 w.e.f the date the applicant was re-employed in the Dy. Controller of Defence Accounts as Clerk i.e 30-10-1986 with all consequential benefits and pass such other order or orders as this

Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

RELIEF SOUGHT:

In view of the above mentioned facts, this Hon'ble Tribunal may be pleased to permit the applicant to amend the prayer in the main application by adding the following words" and also declare that confining fixation of pay of Ex-Combatant Clerks/ Storemen Re-employed as LDCs/Storemen in Civil posts taking into consideration of the total no. of years of service rendered in the Military post as unconstitutional" after the words in the prayer" discriminatory and illegal" and also to permit the applicant to raise additional grounds of this application and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

VERIFICATION

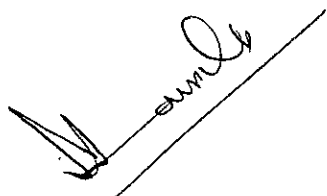
I, D.P. Sankara Rao S/o Pullaiah, do hereby verify and declare that the contents of paras 1 to 3 are true to my personal knowledge, belief and legal advice and that I have not suppressed any material facts.


HYDERABAD

Dated: 8-4-1994

To

The Registrar  
Central Administrative Tribunal  
Hyderabad Bench, Hyderabad

  
Signature of the Applicant

  
Counsel for the Applicant

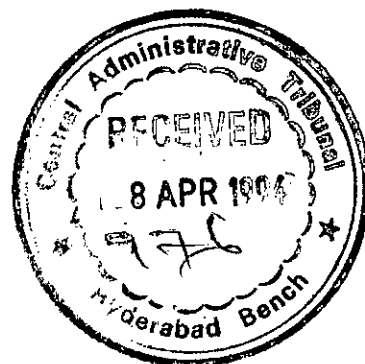
Reg: Petition for Amendment of  
the prayer

HYDERABAD DISTRICT  
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

MA.NO. OF 1994

IN

OA.NO. 998 OF 1993



APPLICATION FOR AMENDMENT OF THE  
PRAYER IN OA AND TO RAISE ADDITIONAL  
GROUND

Filed on: 8-4-1994

Rev  
N. V. Jagapathi  
8/4/94

mayur kcp

Filed by:

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13/4/94

8/4/94