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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD.

O.A.No.1447/93.

Date of Judgement : 6-12-94

F. BURKET Deoay

.. Applicant

Vs.

1. The Telecom. District Engineer, Nalgonda.
2. The Chief General Manager, Telecom., A.P.Circle, Hyderabad.
3. The Director-General, Telecom., Sanchar Bhavan, New Delhi
4. U.O.I. Rep. by its Secretary, Min. of Telecom., Sanchar Bhavan, New Delhi.

.. Respondents

--- (This uploaded with order of the Hon'ble Tribunal  
on 9.8.94 and made by M.A. 61 P(94)

Counsel for the Applicant :: Shri K.Venkateswara Rao

Counsel for the Respondents:: Shri N.V.Ramana, Addl. CGSC

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C O R A M

Hon'ble Shri A.V.Haridasan : Member(J)

Hon'ble Shri A.B.Gorthi : Member(A)



J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

The Applicant served as a Combatant Clerk in the Indian Air Force from 20.2.1969 to 31.5.1983, after having completed his basic training from 11.5.1968 to 19.2.1969. On his retirement from the I.A.F. he joined the Dept. of Telecommunications as a Telephone Operator on 24.3.1986. The last pay (basic pay) drawn by him in the I.A.F. was Rs.339/- but his pay on re-employment was fixed at Rs.260/- in the scale of pay of Rs.260-480. His claim is

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that he is entitled to the benefit of annual increments for the 14 years of service rendered by him in the I.A.F.

2. The Respondents refuted the claim of the Applicant by stating that he is not entitled to higher fixation as the minimum pay of his present post plus non-ignorable part of pension would be more than his pre-retirement pay of Rs.339/- No rule or regulation has been referred to in support of the said view of the Respondents.

3. The Applicant's pension from the I.A.F. was Rs.188/- p.m. Admittedly, w.e.f. 1.4.1986, the entire pension had to be ignored in respect of members of the Armed Forces below commissioned rank in fixing their pay on re-employment. Those who were already re-employed as on 1.4.1986, could opt for this benefit w.e.f. 1.4.1986.

4. As regards annual increments, in terms of Order 16, of Fixation of Pay of Re-employed Pensioners Orders, Combatant Clerks are given the additional advantage of claiming initial pay fixation in the time scale of the re-employed post at a stage equivalent to the stage that would have been reached by putting in the civil post the number of completed years of service rendered in the post in the Armed Forces. This benefit which was initially restricted to Combatant Clerks re-employed in the civil post of Lower Division Clerks, Junior Clerks or Storemen, was later extended to Combatant Clerks re-employed as Telegraphists/Telephone Operators, vide Govt. of India, Min. of Personnel, O.M.No.16/3/85-Est(Pay-I) dt. 22.1.1987, which came into effect from 1.1.1987.

5. It is seen from the Dept. of Telecommunications letter No.45-65/88-PAT dt. 4.9.1989 that Bangalore Bench of the Tribunal decided in the O.A. filed by Shri B.N.Mai-sale that the Telegraphists/Telephone Operators employed even prior to 1.1.1987 would also be entitled to the benefit of the O.M. dt. 22.1.1987, but the financial benefits of refixation of pay would accrue to them only from 1.1.1987. The Department's stand is that the question of extending the benefit of the judgement of the Bangalore Bench to similarly situated other employees is under consideration.

6. In view of Govt. of India, Min. of Personnel, O.M. dt. 22.1.1987 and the judgement of the Bangalore Bench of the Tribunal, it would be evident that the Applicant would be entitled to claim that he should be given the benefit of increments for past service while fixing his initial pay as a Telephone Operator.

7. The Respondents came to a different conclusion, mainly on the premise that if such a benefit were to be given to the Applicant, his initial pay thus fixed and reckonable portion of his pension would exceed his last drawn pay in the I.A.F. This seems to be due to a misconception of the relevant rules which underwent a gradual, progressive change.

8. Civil Service Regulations Articles 521 and 526 provide for civil and military pensioners retiring before attaining the age of 55 years would be entitled to have Rs.15/- of the pension ignored for fixing their pay on re-employment. The limit of Rs.15/- was raised to Rs.50/- in 1964 and Rs.125/- in 1978. Subsequently, vide Min. of Defence O.M.No.2(1)83/D(Civ-I) dt. 8.2.1983, it was decided that, in the case of pensioners below ~~a~~ commissioned rank, the entire pension would be ignored in fixing their pay on re-employment.

9. In view of the aforesaid O.M. dt. 8.2.1983, it would be incongruous if it is still to be considered that the initial pay in the re-employed post and the non-ignorable portion of the pension should not exceed the last drawn pay. It would be so, because with the issuance of O.M. dt. 8.2.1983, there can no longer be the concept of "ignorable and non-ignorable portion of pension" for pay fixation on re-employment. The entire pension, in case of military pensioners below non-commissioned rank, will have to be ignored for pay fixation on re-employment in civil posts. There does not seem to be any authority, nor one is shown to us, to support the Respondents' case that even after 1983, a portion of the pension will have a part to play in pay fixation on re-employment. In fact, there can be no such postulation, for that would amount to taking away with one hand what is given ~~with~~ the other.

10. It is not the case of the Respondents that the Applicant did not exercise his option at the relevant time. Even if the Applicant was ignorant of the rule position regarding claiming the benefit of additional increments of pay, it should have been brought to the notice of the Applicant at the time of his re-employment, as stipulated in the Dept. of Personnel & Administrative Reforms O.M.F.2(1)-Estt.P.1/83 dt. 25.6.1984. Relevant portion of the O.M. is as follows:-

"It has been found in some cases that the provisions of Order No.16 of Fixation of Pay of Re-employed Pensioners Orders were not specifically brought to the notice of the individual concerned, which has resulted in their not opting for either set of orders (Orders 4, 5 & 16) for their pay fixation within the prescribed time-limit. To obviate the difficulties in this regard, it has been decided that in future at the time of re-employment of an ex-combatant clerk/ storeman on civil posts, a reference to the different orders concerning pay fixation might be made and it might be mentioned that he has to exercise the said option within three months of his re-employment and such an option will be treated as final."

Copy to:

1. The Telecom District Engineer, Nalgonda.
2. The Chief General Manager, Telecom, A.P.Circle, Hyderabad.
3. The Director - General, Telecom, Sanchar Bhavan, New Delhi.
4. The Secretary, Ministry of Telecom, Sanchar Bhavan, New Delhi.
5. One copy to Mr.K.Venkateswar Rao, Advocate, CAT, Hyderabad.
6. One copy to Mr.N.V.Ramana, Addl.CGSC,CAT, Hyderabad.
7. One copy to Library,CAT, Hyderabad.
8. Copy to All the Reporters as per the list of CAT, Hyderabad.
9. One spare copy.

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11. There is nothing on record to suggest even remotely, that the Respondents did instruct the Applicant on the benefits of opting for pay fixation under Order No.16, of Fixation of Pay of Re-employed Pensioners Orders. The Applicant should not therefore be made to suffer on account of the lapse of the administration on an important issue of this nature.

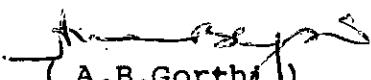
12. In the light of the above, it seems just and proper to hold that the Applicant would be entitled to have his initial pay as Telephone Operator fixed by taking into consideration the annual increments for the service rendered in the I.A.F. Consequently we allow the O.A. with the following directions to the Respondents:-

(a) The initial pay of the Applicant shall be fixed at a stage equivalent to the stage that would have been reached by putting in the post of Telephone Operator, the number of completed years of service rendered in the post of Combatant Clerk (excluding his period of basic training) in the I.A.F.

(b) For the above purpose, the Applicant's entire pension (including pension equivalent of gratuity and other forms of ~~retirement~~ benefits) shall be ignored.

(c) Financial benefits shall be calculated and adjusted accordingly, but the Applicant will be entitled to the actual resultant financial benefits w.e.f. 1.11.1992, that is, one year prior to the date of filing of this application.

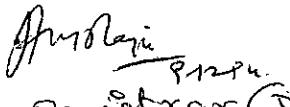
12. No order as to costs.

  
( A.B.Gorthi )  
Member(A).

  
( A.V.Haridasan )  
Member(J).

Dated: 6 Dec., 1994.

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Deputy Registrar (S)

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