

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No. 1281/94

Date of Order: 28.6.96

BETWEEN:

K.Nageswara Rao

.. Applicant.

A N D

1. The Sr. Supdt. of Post Offices,
HPO Bldg, Vijayawada - 520 001.

2. The Post Master General,
Vijayawada - 520 002.

3. The Chief Post Master General,
AP, Hyderabad - 500 001.

4. The Director-General, Posts,
(representing Union of India),
Dak Bhavan, New Delhi - 110 001.

.. Respondents.

Counsel for the Applicant

.. Mr.C.Suryanarayana

Counsel for the Respondents

.. Mr.N.V.Raghava Reddy

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

J U D G E M E N T

[Oral order as per Hon'ble Shri R.Rangarajan, Member (Admn.)]

Heard Sri C.Suryanarayana, learned counsel for the applicant and Sri N.V.Raghava Reddy, learned standing counsel for the respondents.

2. The applicant served in the Army during the period 5.10.65 to 29.7.78. He requested for his release from army and on his release from army he joined as Postal Assistant under R1 on 23.8.80. He submitted a representation for fixation of his pay granting him increment in the postal assistant cadre for the number of years of service rendered by him in army. But that representation was rejected by the impugned letter No. B1-3/KNR/94 dated 22.9.94 (A-9) by R2 on the ground that his

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it has to be held that such notification is only prospective and those who had retired earlier to the date of notification namely 27.3.87 should be governed by the various notifications/instructions issued from time to time earlier to 27.3.87. The applicant had retired from army on 29.7.78 and he joined as Postal Assistant in 1980. Instructions prevalent during that period only will apply in this case. It is evident even from the reply of the respondents that the government of India circular No. G.I., M.F., O.M.No.4 (1)-EIII(A)/74 dated 2.3.74 was in force when the applicant retired from army service and as per that above letter even the ex-serviceman released from armed forces on their own request on compassionate or medical grounds are entitled for the benefit envisaged in order (4) of Swamy's compilation (A-7). As per this order (4) the released army combatant clerks when posted to civil services as LDC/Junior Clerks are entitled to fix their pay at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerks. In view of the above there is no doubt that the applicant is entitled for fixation of pay as indicated above when he joined as Postal Assistant in the Postal Department. In view of what is stated above, the contention of the respondents that he is not an ex-serviceman in view of the notification dated 27.3.87 and hence he is not entitled for higher fixation fails.

10. Learned counsel for the applicants contend that he is not getting pension and hence he is not entitled for the higher fixation. This contention does not appear to be in order. When a combatant clerk was released from army whether he gets pension or not he is an ex-serviceman. He cannot be called in any other term other than ex-serviceman. This is evident in view of the circular quoted above. In order (4) of Swamy's compilation it has been stated that the pension or pension equivalent of gratuity if any which does not exceed Rs.15/- will be

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The applicant states that his case is similar to that of Sri Gopichand and hence he is entitled to get the same relief as granted to Sri Gopichand by the High Court of A.P.

6. The respondents filed a reply statement and also an additional affidavit. The main contention of the respondents in resisting the prayer are two fold.

7. The applicant had severed his service from army on request. As per Rule 2(C)(III) of ex-serviceman (re-employment in Central Civil Services and Posts) Rule 1979, the term ex-serviceman is defined as a person who has been released otherwise than on his own request from such service as a result of rejection in establishment. As the applicant was released from army in 1978 on his own request he cannot be termed as an ex-serviceman in view of the above rule. Further in terms of the Government of India, Department of Personnel and Training notification No. 36034/5/85-Estt. (SCT) dated 27th March, 1987 and published as (GSR 333(E) in the gazette of India, dated the 27th March, 1987), he cannot be called as an ex-serviceman as he has not completed 5 years of army service on the date of publication of the Government of India notification dated 27.3.87

8. The second contention of the respondent is that one can come under ex-serviceman category and request for higher fixation in the civil service provided he earns pension from the army as of ex-serviceman per Rule 2(C)(III) (re-employment and Central Civil Services and Posts) Rules 1979. The applicant did not receive any pension and hence he cannot be called as an ex-serviceman.

9. The notification dated 2.3.87 stipulates that an army released person will be considered as an ex-serviceman only if he had put in 5 years of service on the date of issue of notification dated 27.3.87. But this notification does not state that this rule is applicable retrospectively. If such a stipulation with retrospective effect is not indicated in the notification

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The department should also permit him to refund the pension and pension equivalent amount received by him from army.

13. The OA is ordered accordingly. No costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

Dushyant
कानूनी लिपिका
COURT OFFICER
केंद्रीय न्यायिक अधिकारी
Central Administrative Tribunal
केन्द्रीय न्यायिक
HYDERABAD BENCH

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ignored while fixing the pay of the ex-serviceman in the civil department. This would mean that while fixing the emoluments in the civil department the pension or pension equivalents exceeding Rs.15/- is to be deducted. If no pension is paid it would mean that he got zero pension and hence his pay in the civil department cannot be reduced.

11. The case of Sri Gopichand also appear to be similar. But a copy of the judgement is not enclosed to the OA. In view of the above I do not wish to comment in regard to the case of Sri N.Gopichand.

12. As can be seen from the above discussion the applicant has made out a case for fixing his pay in the cadre of Postal Assistant at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerk in army. Hence the prayer of the applicant has to be allowed, and a direction to that effect has to be given. As can be seen from A-4 letter dated 22.9.94 the President had permitted the applicant to give option for refund of the pension and pensionary benefits for counting his past services rendered in military service from 5.10.65 to 29.7.78. But it is stated that the department is not permitting him to pay the pension and pensionary benefits received by him from the defence. Hence the concerned authority should now permit the applicant to refund the pension and pensionary benefits received by him for the service rendered by him in army to enable for fixation of his pay at a higher stage in the Postal Assistant scale.

13. In the result, this OA is allowed and it is directed to fix his pay, when he joined as a Postal Assistant, at a higher stage granting him the number of increments equal to the number of completed years of service in the armed forces and to pay him the consequential arrears within a period of 4 months from the date of receipt of a copy of this order.