

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(12)

O.A. No. 85/1996 199
T.A. No.

DATE OF DECISION 10-12-99

Ummed Singh Petitioner

Mr. K.L.Thawani Advocate for the Petitioner (s)

Versus

Union of India and Ors. Respondent

Mr. M.Rafiq Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

(13)

Date of Order: 10.12.1997

OA No.85/1996

Ummed Singh S/o Shri Magandan working as Sub Postmaster Tamkore, Distt. Jhunjhunu.

.. Applicant

Versus

1. Union of India through the Secretary to the Government of India, Department of Posts, Ministry of Communications, Dak Bhawan, New Delhi.
2. Director General, Department of Posts, Dak Bhawan, New Delhi.
3. Postmaster General, Rajasthan Western Region, Jodhpur.
4. Superintendent of Post Offices, Jhunjhunu Division, Jhunjhunu.

.. Respondents

Mr. K.L.Thawani, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays for quashing of the impugned order dated 1.1.1996 (Ann.A1) fixing his pay on joining the Department of Posts on his re-employment and directing the respondents to refix his pay in accordance with the rules for re-employment of the Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 (for short, Rules of 1979) along with payment of arrears with an interest @ 18 per cent.

2. The facts, as briefly stated by the applicant, are that the applicant was recruited as a Sepoy in the Indian Army on 13.12.1971 and

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promoted to the post of Combatant Clerk on 20.5.1975 where he worked till 13.3.1980 when he was retrenched on medical grounds. A disability pension was sanctioned to him @ Rs. 136/- p.m. from 14.3.1980 to 7.2.1981, @ 91 p.m. from 8.2.1981 for life, Rs. 109 p.m. from 14.11.1982 to 5.11.1984 and presently drawing Rs. 91 p.m. w.e.f. 6.11.1984. His pay was fixed incorrectly in the grade Rs.260-8-300-EB-8-340-10-360-12-420-EB-480 at Rs. 216 p.m.

3. The case of the applicant is that he is entitled to counting of military service and fixation of pay under the Rules of 1979. The respondents, relied on Rule 7 of the CCS(R.P.) Rules, 1986 (for short, Rules of 1986) but have not taken into account the orders and instructions issued subsequently to clarify the position regarding ignoring pension/P.E.G. upto Rs. 125/- p.m.. It has been contended that the applicant being an Ex-Combatant Clerk re-employed as Time Scale Clerk in P&T Department is entitled to the Government of India's (for short, GOI) decision No.3 published in Swamy's Compilation on Re-employment of Pensioners (Civilian and Ex-Servicement) page 32 (Ann.A13). Further the pay is to be refixed under GOI's decision 1, 2 and 3 under Chapter 3 titled Regulation of Pay during Re-employment in the said Swamy's Compilation (Ann.A11). The disability pension is not to be taken into account while fixing the pay during re-employment in view of Article 510-B of the Civil Service Regulation (Ann.A12). It has also been contended that Rule 16 of the Rules of 1986 requires the appointing authority to obtain an option but it was not done in the case of the applicant, who, however, submitted an application dated 4.12.1991 for fixation of his pay whereupon he was asked to submit his option. He was, however, informed vide letter dated 22.9.1989 (Ann.A2) that the Postmaster General, Rajasthan Circle had rejected his representation on the ground that it was submitted on 2.7.1982 and not within 3 months. The applicant informed the correct position through Ann.A4 which evoked no response. An appeal and another representation were made but no reply was received. Thereafter the applicant made a representation to the Director General, Department of Posts on 1.11.1991 on which a query has been made by the Director General's letter



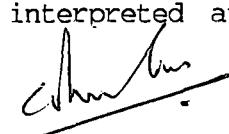
of 30.9.1994. Meanwhile the Record of the Grenediers, Jabalpur had supplied the detailed statement of pay drawn by the applicant (Ann.A9) on a request made by the Superintendent of Post Offices, Jhunjhunu. It is presumed that his representation has been decided by the Director General and as a result the impugned order dated 11 December, 1996 fixing his pay wrongly has been issued. In between, the applicant had filed OA No.344/94 in this Bench of the Tribunal but since his request was being processed in the office of Director General (Posts), he had withdrawn the same. However, unfortunately the representation of the applicant was not decided favourably, and the Postmaster General, Rajasthan Circle fixed his pay at Rs. 208/- on 24.10.1981 which is even below the minimum of the scale of Rs. 260-480, such fixation is by no means applicable to the clerical grade whose pay scale starts at Rs. 260/- p.m. onwards and thus the respondents have committed an error.

4. The respondents have contested the case by stating in their reply that the applicant had after having appointed as T.S.Clerk on 24.10.1981 applied for refixation of his pay on 4.12.1981 on his own motion but no option was attached. He was, therefore, asked to submit the option on 5.6.1982, which was received on 2.7.1982. The case was submitted by DPS, Jodhpur to the Circle Office, Jaipur and was rejected vide letter dated 12.9.1989. On further representations by the applicant, his case was decided by the Postmaster General, Jodhpur vide order dated 1.1.1996 (Ann.A1) and based on that, pay of the applicant was fixed by the Postmaster, Jhunjhunu HQ on 16.2.1996. It has further been stated by the respondents that as per certificate issued by the Manager, Bank of Baroda on 5.9.1994, the applicant was drawing pension Rs. 429/- since 1.1.1986, which included Rs. 180/- as disability pension and Rs. 249/- as service elements. It has further been stated that at the time of appointment of the applicant on 24.10.1981, the Rules of 1979 referred to by him were not applicable and his pay was fixed in terms of Ministry of Finance, Department of Expenditure OM No. 8(34)E-III/57 dated 25.11.1958 whereunder the advantage of previous service is admissible only when the minimum pay of re-employed post plus pension and other

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retirement benefits are less than the previous pay drawn on the post of Ex-Combatant Clerk and according to the Record Office, the applicant was paid Rs. 1698.60 as gratuity, Rs. 91 as disability pension and Rs. 249 (revised) service element. The applicant had opted for pay fixation under order No.16 (Swamy's Compilation and re-employment of Pensioners), copy at Ann.R1 and his pay was fixed accordingly, and by taking only the service element into account. Fixation chart has already been supplied to the applicant vide office Memo No.B-310/86-87 dated 9.1.1996 a copy of which is at Ann.R2. Further, while the applicant was appointed as Postal Assistant from 24.10.1981, the practice of inserting the clause regarding option in the appointment order was started only after issuance of order No.F.2(1) Estt.PI/83 dated 25.6.1984 by the DP&AR. It has been contended that fixation has been done as per existing rules. The PEG was taken into account upto 1.6.1968 and thereafter it was ignored in terms of DOPT OM No.3/3/87-Estt./Pay III dated 3.6.1988. The fixation was done as per Order No.16 (fixation of pay of Ex-Combatant Clerks) as the applicant had given option under this clause. The pay was fixed at Rs. 292/- by awarding benefit of four increments and after adjustment of his pension and PEG, the pay was fixed at Rs. 208/- on 24.10.1981. The applicant is also eligible to draw DA/HRA/CCA and CTC on adjusted portion of pension and as such no loss has been caused to the applicant. However, he wants to get both the benefits i.e. 4 increments in basic pay and military pension which are not admissible together as per rules. Fixation of pay was done as per rule 7 and GOI's decision No.(I) i.e. DOPT OM No.3/7/86-Estt. (Pay II) dated 9.12.1986 and (3) of DOPT No.3/9/87 Estt.(Pay II) dated 11.9.1987 (copies at Annexures R3 and R4). It has been submitted on behalf of respondents that the applicant was given option under Order No.16(2) i.e. fixation of pay for Ex-Combatant Clerks but wants the benefit under Order No. 4 and 5 of the same rule where it is clearly stated that the applicant shall have the option to get his pay fixed under order 4&5 above or in accordance with procedure indicated in sub-para (2) of Order No.16. The respondents deny that rules were not properly interpreted and the stage at which his pay was fixed initially and on



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revision of pay since 1.1.1986 were clearly mentioned in the order.

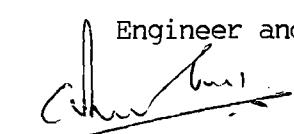
5. The applicant also filed a rejoinder to reply of the respondents. The delay in sending the option has been explained and attention has been drawn to the excessive delay in processing his case. The details of pension obtained by the respondents from Bank of Baroda (para 4.3 of reply) were denied being without any authority of the Bank attached with the reply and it has been said that Ann.A2 and A3 were self-explanatory. The reply given against para 4.4 has also been denied. Order cited at Ann.R1 was not applicable, whereas GOI's instruction No.3 dated 10.9.1965 was applicable as will be clear from Ann.A11 and accordingly pay should have been fixed at Rs. 292/- and not Rs. 260/-. It has been stated that as against the stand taken in para 4.5 of the reply, there was no rule for counting service elements for pay fixation and entire military pension was to be ignored as per Ann.A13. That the insertion of the clause relating to option in the appointment letter was started only after issuance of DOPT OM No.F.2(1) Estt.P I/83 of 25.6.1984 has also been denied and attention has been drawn to GOI instruction No.3 (Ann.A11) dated 10.9.1965. It has also been denied that pay fixation has been done as per Order No.16 (para 4.15 of reply referred). Since the applicant had given option that clause and further instructions from time to time (Ann.A11, A12 and A13) were not taken into consideration. Para 4.16 of the reply has also been controverted since pay fixation could not have been below the minimum of the grade Rs. 260-480 under any circumstances and in view of Ann.A13, the entire pension should have been ignored. Further, the pay fixation has to be done on the date of appointment viz. 24.10.1981 and not revised every time as has been done by the respondents according to Rule of 1986. The fixation was to be done in 1981-82 when the Rule of 1986 was not born and there was no question of application of the said Rule. Finally, it has been prayed that the respondents be stopped from recovery of Rs. 34,652/- @ Rs. 500/- p.m. from the pay of the applicant w.e.f. January, 1996 and in this connection Annexures AR/1 and AR/2 may be perused.

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6. We have heard the learned counsel for the parties and have carefully gone through the case file. The learned counsel for the respondents has personally handed over his written submissions on 3.12.1997 which we have perused. A photocopy of these submissions was supplied to the learned counsel for the applicant. This was discussed with both the counsel on 6.12.1999.

7. It is now an admitted position that the applicant had exercised the option for fixation of his pay in terms of Government of India, Ministry of Finance OM No.F-6(8) E-III/63 dated 11.4.1963, which has since been incorporated as order No.16 under orders of 1986 as DG, P&T decision No. (5) vide letter No.2-68/61 P&A (P) dated 10.9.1965.

8. It is also an admitted position that in the fixation of pay of the applicant, the provisions contained in (2) of order 16 with the initial pay in case of Combatant Clerks, shall be fixed in the time scale of the re-employed post at a stage equivalent to the stage that would have reached by putting in the civil post, the number of completed years of service rendered in the post in the Armed Forces. Thus the respondents themselves have in Ann.A2 under item (ii) arrived at a stage of Rs. 292 after adding four increments on account of service rendered in the Army. They have, however, taken the amount of pension as Rs. 91 and amount of pension to be ignored as Rs. 15. Thus Rs. 76 (Rs. 91-15) has been taken into account in pay fixation and arrived at the disputed pay of Rs. 216 per month (Rs. 292-76). However, the amount of pension to be ignored has been progressively increased as a measure of concession to ex-servicemen. Initially it was Rs. 15, then raised to Rs. 50 in 1964, to Rs. 125 in 1978 and subsequently vide Ministry of Defence OM No. 2(1)83/D/(Civ.I) dated 8.2.1983 it has been decided that in the case of pensioners below commissioned rank, the entire pension should be ignored in fixing their pay on re-employment. We, therefore, feel that after having arrived at a figure of Rs. 292, the entire amount of pension i.e. Rs. 91 should have been ignored. We get support for arriving at this view from the order dated 6.12.1994 in the case of P.Sanker Reddy Vs. Telecom District Engineer and Ors. passed by the Hyderabad Bench of this Tribunal and reported



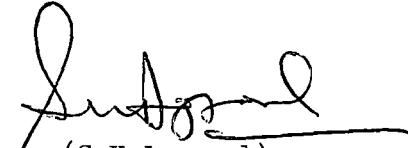
in (1995) 30 ATC 640. In that case it was held that the initial pay of the applicant shall be fixed at a stage equivalent to the stage that would have been reached on the basis of number of completed years of service in the post of Combatant Clerk and that entire pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored.

9. In the light of above discussions, we hold that the entire pension of the applicant should be ignored while fixing his initial pay on his appointment as postal clerk in the pay scale of Rs. 260-480. The financial benefits shall be calculated and adjusted accordingly but the applicant will be entitled to the actual resultant financial benefits w.e.f. 6.2.1995 i.e. one year prior to the date of filing of this Original Application.

10. No order as to costs.


(N.P. Nawani)

Adm. Member


(S.K. Agarwal)

Judl. Member