

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.410/96

Date of order: 15/12/2000

Vishav Bhushan Sharma, S/o Aydhya Prasad, R/o E-56,
Shastri Nagar, Ajmer, working as Cashier, O/o Telecom
Distt.Manager, Ajmer.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt. of India,
Deptt. of Telecom, Mini. of Communications, New Delhi.
2. Chief General Manager Telecom Rajasthan Circle, Jaipur.
3. Telecom District Manager, Ajmer.
4. Telecom District Engineer, Ajmer.

...Respondents.

Mr.K.L.Thawani - Counsel for the applicant.

Mr.V.S.Gurjar - Counsel for respondents.

CORAM:

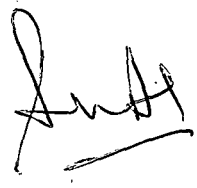
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original Application filed under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the impugned order at Annx.A1, being violative of Articles 14 & 16 of the Constitution and to direct the respondents to count the military service of the applicant and to refix the pay of the applicant from the date of reemployment i.e. 28.4.82 in accordance with the Exservicemen (Reemployment in Central Civil Services & Posts) Rules, 1979 and to pay arrears with interest

2. In brief facts of the case as stated by the applicant are that the applicant was appointed as Telephone Operator w.e.f. 28.4.82 and before joining the department, the applicant was in Military service. It is stated that the applicant was initially recruited as Draftsman (Mechanical) in



Army on 19.3.75 and he worked till 3.6.80 thereafter he was retrenched. It is stated that on reemployment as Telephone Operator, the pay of the applicant was fixed at Rs.260 in the grade Rs.260-480 and the military service of 5 years two months was not taken into account and if the same would have been taken into account the applicant pay might have been fixed at Rs.300/- instead of Rs260/- under Rule 16 of the Ex-servicemen (Reemployment in Central Civil Services & Posts) 1979. It is also stated that under Rule 16, the appointing authority should have asked the reemployed pensioner to exercise his option for fixation within the period of 3 months from the date of his reemployment and after obtaining option, the appointing authority should have fixed the pay accordingly. But on application dated 16.10.90, for counting the military service, the Telecom District Engineer, Ajmer asked the applicant vide letter dated 19.6.92 to submit detailed information in the proforma alongwith option which was furnished by the applicant on 2.7.92. Vide letters dated 29.11.95 and 26.6.96 the Telecom Distt.Manager, Ajmer informed that the Chief General Manager, Telecom, Rajasthan Circle, has rejected the case of the applicant. Thereafter, vide order dated 6.5.96, the Chief General Manager, Telecom, Rajasthan Circle, has also decided and rejected the case of the applicant without any application of mind. It is further stated that the applicant is entitled to counting of Military Service and fixation of pay accordingly, as per the aforesaid rules. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply, a preliminary objection was also raised that this O.A is hopelessly barred by limitation. In the reply it is admitted that the applicant was reemployed as Telephone Operated w.e.f. 29.4.82 and as per

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rule 16 of the Exservicemen (Reemployment in Central Civil Services) the applicant ought to have been given his option for counting military service for fixation of pay within 3 months of reemployment as Telephone Operator but the applicant failed to exercise his option. It is also stated in the reply that the applicant did not render his services as Combatant Clerk/Storeman during his army service which is clear from Appendix-B received from the Record Office, Ministry of Defence, Pune (Annx.R1). Therefore, the applicant is not entitled for fixation of his pay by counting his military service. Therefore, the claim of the applicant for fixation of his pay and other benefits is without any substance and this O.A devoid of any merit is liable to be dismissed.

4. Rejoinder and additional reply to the rejoinder has also been filed, which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. Admittedly, the applicant, after serving as Draftsman in the Army from 19.3.75 to 3.6.80, was reemployed on the post of Telephone Operator w.e.f. 28.4.82. It is also an undisputed fact that the services of the applicant rendered in Military w.e.f. 19.3.75 to 3.6.80 was not counted for fixation of his pay on the ground that the applicant did not render the Military service as Combatant Clerk/Storeman.

7. Now the main question for determination by this Tribunal is that whether the services rendered by the applicant in the Military w.e.f. 19.3.75 to 3.6.80 was a Combatant Clerk/Storeman.

8. The learned counsel for the applicant vehemently argued that the service rendered by the applicant in the Military during the period as referred above was Storeman. On the other hand, the learned counsel for the respondents while opposing

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the arguments submitted that the applicant did not render his services as Combatant Clerk/Storeman in the Military and this fact has been certified by the Record Officer, Defence Service Pune.

9. Annexure-R1, annexed by the respondents alongwith the reply is indicative to the fact that the applicant did not render his service in the Military w.e.f. 19.3.75 to 3.6.80 as Combatant Clerk/Storeman because in Annx.R1, the answer to column 9, the word "NA" is written and the same is certified by the Record Officer. In the averments made by the applicant himself in the O.A, it has stated that he was initially recruited as Draftsman Mechanical in Military on 19.3.75 where he worked till 3.6.80. He did not mention the fact in the O.A categorically that he was served in the Military as Combatant Clerk/Storeman. The Oxford Dictionary meaning of combatant is -"a person engaged in fighting". The learned counsel for the applicant also produced before us a certificate defining the word 'Sapper' : "A combatant in Engineer Units is charged with the responsibility of construction of roads and bridges for the advancement of troops in the operational area." But as per this definition also we do not find any substance in the contention of the applicant that he served in the Military as Combatant Clerk/Storeman. The learned counsel for the applicant admitted the fact that the applicant did not serve in the Military as Combatant Clerk but he led stress that the applicant served as Combatant Storeman. But we are unable to accept this contention, in view of the documentary evidence (Annx.R1) made available with the reply. The learned counsel for the applicant failed to produce any such interpretation/ evidence so as to convince us that the applicant worked during the period 19.3.75 to 3.6.80 as Combatant Storeman.

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10. We, therefore, find no merits in the claim of the

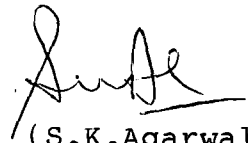
applicant and this O.A devoid of any merit is liable to be dismissed.

11. We, therefore, dismiss the O.A having no merit with no order as to costs.



(A.P.Nagrath)

Member (A).



(S.K.Agarwal)

Member (J).