

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 13.12.2004

OA No.552/2002

Anand Prakash Rawat s/o Shri Ladu Singh, aged about 56 years r/o Village and Post Ladpura, Ajmer and presently working as Fitter Grade-II, Loco Mill Wright-10, North Western Railway, Ajmer Division, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, North Western Zone, North-Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer Division, Ajmer.
3. Senior Divisional Personnel officer, North-Western Railway, Ajmer Division, Ajmer.
4. Chief Works Manager, Diesel and Wagon Shop, North Western Railway, Ajmer division, Ajmer.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant

Mr.V.S.Gurjar, counsel for the respondent Nos. 1 & 4

Mr. R.G.Gupta, counsel for respondent Nos. 2 & 3

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

O R D E R

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA on account of inaction on the part of the respondents in not disposing of his representation dated 10.12.2001 (Ann.A1) whereby he wants counting of service rendered by him in defence from 8.1.65 to

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19.8.1973 after his re-employment on the post of Khallasi on 12.8.78 in the railways. In relief, he has prayed for the following reliefs:-

- "i) That respondents may be directed to allow the applicant proper pay fixation taking into consideration of last pay drawn of Rs. 210/- in the year 1973 on re-employment in the year 1978 with all consequential benefits.
- ii) That the respondents be further directed to count service for the period 8.1.1965 to 19.8.1973 rendered in defence services towards retiral benefits from railways.
- iii) Any other order/directions of relief may be granted in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case.
- iv) That the costs of this application may be awarded."

2. When the matter was listed before this Tribunal on 18.12.2002 for admission, the learned counsel for the applicant stated that he does not want to press relief of para 8(i) and wants to confine the case for para 8(ii) and (8(iii)). As such, the OA was confined on these two reliefs and the case was adjourned to 23.1.2003 on the prayer of the learned counsel for the applicant that he wants to show the original documents and the relevant rules. It was only on 23.1.2003 that notices were issued to the respondents. Thereafter, the respondents filed reply opposing the maintainability of this OA on the ground that the grievance relates back to a period beyond 3 years immediately preceding conferment of jurisdiction on this Tribunal. As such, in view of the provisions contained in Section 21(2) and (3) of the Administrative Tribunals Act, 1985 and in view of the law laid down by the Tribunal in OA No. 67/91, Mahmood, Ansari vs. Union of India and ors., the OA cannot be entertained, as no grievance related prior to 1982 is entertainable. When the applicant was confronted with the statutory provisions contained in Section 21(2)(a) of the Administrative Tribunals Act, 1985 and also law laid down in the case of Mahmood Ansari (supra), the learned counsel for the applicant has now moved a

separate application which was registered as MA No.249/2004 thereby praying that the applicant is now only pressing relief in para 8(1) relating to pay fixation from the date respondent railways issued order vide Ann.A4 in the year 1988 filed with the OA and he is not insisting on counting of service because he is in receipt of disability pension. This part of averment find mention in para 2 of the MA, which is reproduced hereinunder:-

2. That when the fact regarding not pressing relief 8(i) relating to pay fixation came to knowledge of the applicant, he appraised his counsel that he is interested in pay fixation atleast from the date respondent railway issued orders vide Annexure A/4 in the year 1988 filed with the Original Application and he is not interested for counting his services because he is in receipt of disability pension. In view of position applicant wants to adjudicate the matter for pay fixation only from the date Railway Board orders became effective i.e. 1.6.1988 and prayed for recalling order dated 18.12.2002."

3. We have considered the submissions made by the learned counsel for the applicant in para 2 of MA No.249/2004, relevant portion of which has been reproduced hereinabove, and the present OA now confines only to relief 8(i) and the order dated 18.12.2002 whereby the OA was confined only to relief as contained in para 8(ii) and 8(iii) instead of para 8(i) is recalled. Now the present application shall be confined only to pay fixation of the applicant from the date respondent railway issued order Ann.A4 in the year 1988.

4. We have heard the learned counsel for the parties and gone through the material placed on record.

4.1 Since the learned counsel for the applicant has confined this OA only to the extent that his pay on re-employment in civil post has not been correctly fixed in the light of Railway Board letter dated 21.7/1.8.88 effected from 1.6.88 and his pay has been fixed at the minimum of the pay

scale of the civil post which has caused hardship to him. As such, his pay was required to be fixed at the higher stage in the pay scale allowing one increment for each year of service which the applicant had rendered before retirement in a post not lower than that in which he was re-employed. In order to buttress this argument, the learned counsel for the applicant has stated that he was discharged from military service on 19/20.8.73 on account of sustaining injury in the year 1971 during the Indo-Pak War on the ground of disability and at the time of discharge of the applicant he was drawing a pay of Rs. 205/- and he was holding a Group 'C' post. On re-employment in the year 1978, he was offered the post of Khallasi by the railway department on 12.8.78 and thereafter further promoted as Skilled Artisan on 23.3.91 in the scale of Rs. 950-1500 and thereafter in the scale of Rs. 1200-1800 w.e.f. 24.11.1992. It is pleaded in the OA that at the time of discharge, the applicant was extended disability pension of Rs. 45/- p.m. only besides other retirement benefits. Thus, according to the learned counsel for the applicant by fixing initial pay of the applicant at the minimum of the scale of pay of the post of Khallasi (Group 'D') had caused hardship on account of re-employment as the total amount received by the applicant namely the minimum pay scale plus pension and pension equivalent of gratuity (Rs. 45/-) whether ignorable or not, is less than the last pay drawn at the time of retirement i.e. Rs. 205/-.

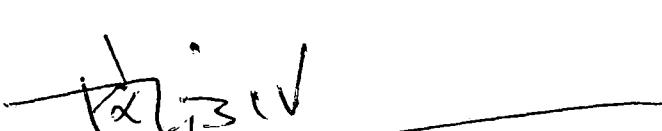
4.2 We have considered the submissions made by the learned counsel for the applicant. As can be seen from the submissions made by the learned counsel for the applicant, now the applicant wants refixation of his pay as re-employed pensioner in civil post and he does not want to count his past services rendered by him in the army. The precise grievance of

the applicant is that the pay as fixed by the respondents at the minimum of scale of the pay of the post of Khallasi in Group 'D' category has caused hardship to him as the total amount received by him namely the minimum of pay scale plus pension and pension equivalent to gratuity is less than the last pay drawn at the time of retirement. As such, his pay was required to be fixed at a higher stage in the scale by allowing one increment for each year of service which the applicant had rendered before retirement in a post which was not lower than the post in which he was re-employed. Rather, he had rendered service in the army on Group 'C' post whereas he was re-employed in the civil post on Group 'D' post. For that purpose, there is no material placed before us whether it is a case of hardship as contended by the applicant and at what stage the initial pay of the applicant on re-employment on the post of Khallasi was fixed? Further, the applicant has not placed any material before us as on what stage his pay would be fixed in the initial pay on re-employment after ignoring amount equivalent of gratuity from the pay fixed in terms of Para 4(b)(ii) of CCS (Fixation of Pay of Re-employed Pensioners) Order, 1986 which stipulates that for the purpose of fixation of pay on re-employment of railway employee/retired Central Govt. employee/retired Defence Personnel etc. the entire pension and pensionary benefits are not ignored for pay fixation, the non-ignorable part of pension and pension equivalent of retirement benefits shall be reduced from the pay so fixed. Thus, for want of necessary material, it is not possible for us to decide the matter and grant relief to the applicant. However, at this stage, it will be in the interest of justice, if the applicant makes detailed representation to the authorities as to how his pay should be fixed on account of re-employment in the railway department

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after discharge from army service and how the fixation of his initial pay at the minimum of the prescribed scale of pay of Khallasi has caused hardship to him on his re-employment on civil post and also whether the minimum of the pay scale or pension and pension equivalent to gratuity whether ignorable or not, is less than the last pay drawn at the time of retirement. In case the applicant makes such representation, the respondents will decide the same with reasoned and speaking order. Accordingly, the applicant is directed to make representation in that behalf to the railway authorities within a period of four weeks from the date of passing of this order thereby stating how fixation of his initial pay on re-employment has caused hardship to him and the minimum pay scale plus pension and pension equivalent to gratuity whether ignorable or not, is less than the last pay drawn at the time of retirement. It will also be permissible for the applicant to rely on other instructions/orders of the Government/Railway authorities regarding his refixation of pay on account of re-employment in railway service. In that eventuality, the respondent No.2/any other appropriate authority shall dispose of the representation of the applicant within a period of 2 months from the date of receipt of such representation by passing speaking and reasoned order.

5. With these observations, the OA is disposed of with no order as to costs.


(A.K. BHANDARI)

Member (A)


(M.L. CHAUHAN)

Member (J)