

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 21-12-04

OA No.50/2003

with

MA No.171/2003

Phool Shankar Mishra s/o Shri Shankar Lal Mishra, aged 49 years, Helper Khallasi, Signal Workshop, North West Railway, Ajmer and r/o 459/27, Indrapuri Colony, Jhonsganj, Ajmer.

.. Applicant

Versus

1. Union of India through the General Manager, North West Railway, Jaipur.
2. Divisional Railway Manager, North West Railway, Ajmer.
3. Chief Works Manager, Loco Workshop, North West Railway, Ajmer.
4. Assistant Construction Manager (Signal Workshop), North West Railway, Ajmer.

..Respondents

Mr. N.K.Gautam, counsel for the applicant

Mr.V.S.Gurjar, counsel for the respondents

CORAM:

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

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

ORDER

Per Hon'ble Mr. M.L.Chauhan

The applicant has filed this OA thereby praying for the following reliefs:-

- "(1) The respondent may be directed to fix his pay Rs. 940/- p.m. w.e.f. June, 1989.
- (2) Stagnation pay may also be granted to the applicant

- as and when due to him.
- (3) Benefit of pay fixation under 5th Pay Commission may be granted accordingly.
  - (4) Arrear difference may be arranged to him.
  - (5) The cost of application may be awarded to the applicant.
  - (6) Any other relief, the Hon'ble Tribunal consider just and reasonable in the facts and circumstances of the case."

2. Briefly stated, the applicant who is ex-service man, retired from army service on 1.8.88 while serving as Sepoy and his pension was fixed at Rs. 375/- p.m. For that purpose, the applicant has placed on record PPO issued by the Office of CDA (Pensions) Allahabad (Ann.A2). It is stated that the last pay of the applicant at the time of retirement was Rs. 1040/-. The applicant was re-employed as Group 'D' employee vide order dated 15/16.6.1989 in the pay scale of Rs. 750-840 in Signal and Telecommunication Department of Ajmer Division and his pay was fixed at Rs. 750/-. The grievance of the applicant in this OA is that his pay should have been fixed at Rs. 940/- p.m. at the time of re-employment in railways in the pay scale of Rs. 750-940 in terms of para 4(b)(ii) of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. It is on this basis, the applicant has filed this OA praying for the reliefs as aforesaid.

3. The respondents have filed detailed reply. By way of preliminary submissions, the respondents have stated that this application is hopelessly time barred as the applicant was initially re-employed in the year 1989 whereas the OA has been filed in the year 2003. It is further stated that the applicant was posted under respondent No.2 as Senior Watchman in the pay scale of Rs. 850-1150 and after his demotion from Senior Watchman to the post of Khallasi in the scale of Rs. 750-940, he joined duty on 3.7.1993 at Signal and Telecommunication Department of Ajmer Division. According to

respondents, it is the provisions of the Railway Board circular read with para 4(b)(i) of the CCS (Fixation of Pay of Re-employed Pensioners) Order, 1986 which are applicable in the matter of re-employed pensioners.

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

4.1 The facts, as stated above, are not disputed. The applicant, who is re-employed pensioner wants fixation of his pay as per CCS (Fixation of Pay of re-employed Pensioners) Order, 1986. The question which requires our consideration is whether it is Para 4(b)(i) which is attracted in the instant case or it is Para 4(b)(ii) which governs the case of the applicant, as pleaded by him. At this stage, it will be useful to quote relevant part of 1986 orders, which is in the following terms:-

"4. Fixation of pay of re-employed pensioners.

(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b)(i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

(ii) In case where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage next above that pay. If the maximum of the pay scale in which the pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement, his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all these cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

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(c) The re-employed pension will, in addition to pay as fixed under Para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation to the following extent:-

(i) In the case of Ex-servicemen who held posts below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs. 500/- of the pension and pension equivalent of retirement benefits shall be ignored.

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4.2 From the portion as quoted above, it is clear that the case of the applicant is covered under para 4(b)(i) as in the case of the applicant pension is fully ignored and the applicant in addition to pay as fixed under sub para (b)(i) of para 4 is also permitted to draw separately any pension sanctioned to him and to retain any other form of retiral benefits. Further, in terms of rule 4(a) no protection of the scale of the post held by the re-employed pensioner prior to retirement shall be given. Thus, according to us, the pay of the applicant has been correctly fixed in terms of para 4(b)(i) and para 4(b)(ii) is not attracted in the instant case as the said para is applicable where the entire pension and pensionary benefits are not ignored in pay fixation, which is not the case here. Further, as per para 4(d)(i) the ex-servicemen who are retired before attaining the age of 55 years and are subsequently re-employed and such ex-servicemen held posts below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group

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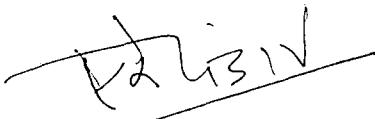
'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored. Admittedly, the case of the applicant falls under para 4(d)(i) and on his re-employment on civil post, entire pension and pension equivalent of retirement benefits has to be ignored. Thus, in the light of the provisions contained in para 4 above, it is para 4(b)(i) which is attracted in the instant case and the pay of the applicant is correctly refixed at the minimum of the scale of pay of re-employed post. Further, it is not a case where hardship has been caused to the applicant on his re-employment as the total amount received by the applicant namely minimum of the pay scale i.e. Rs. 750 plus pension and pension equivalent to gratuity i.e. Rs. 375, whether ignorable or not, is less than the last pay drawn by the applicant at the time of retirement, which according to the applicant, was Rs. 1040/-. The applicant has not made out a case under what provision of law he is entitled to receive pension and also refixation of his pay at a stage which he was drawing at the time of retirement? Rather, the provisions of the rule, as quoted above, stipulate that the pay of the re-employed pensioner has to be fixed at the minimum of the scale of pay of the re-employed post. It also prescribes that in addition, the re-employed pensioner will get pension which has to be ignored in pay fixation. This is also the view which has been taken in Director General, ESI Corporation vs. M.P. John 1999 SCC (L&S) 372. The Apex Court has further held that departure from this norm of granting minimum in the pay scale is permissible only in case of hardship and that too to the extent permitted. What is hardship has been defined in OM dated 25.11.58 which stipulated that there would be a case of hardship if on re-employment the total amount received by the ex-serviceman namely the minimum of pay scale and pension and pension

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equivalent to gratuity, whether ignorable or not, is less than the last pay drawn at the time of retirement. There is no hardship as contemplated under OM of 25.11.58 in the case of the applicant, hence his pay fixation has been rightly done by the respondents.

5. For the reasons stated above, the applicant has not made out a case for our interference. Accordingly, the OA is dismissed with no order as to costs.

6. In view of the order passed in this OA, no order is required to be passed in MA No.171/03 for condonation of delay which shall also stand disposed of accordingly.

  
(A.K. BHANDARI)

Member (A)

  
(M.L. CHAUHAN)

Member (J)