

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No. 56

of 1997

DATE OF DECISION.....8.6.1999

Shri S. Bora

(PETITIONER(S))

Mr B.K. Sharma, Mr M.Goswami and

Mr S. Sarma

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.

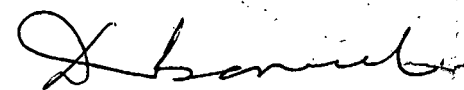
ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN

THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.56 of 1997

Date of decision: This the 8th day of June 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

Shri Sadananda Bora,
Telegraphist (TM),
Telegraph Office,
Nagaon, Assam.

.....Applicant

By Advocates Mr B.K. Sharma, Mr M. Goswami
and Mr S. Sarma.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Telecom Department,
New Delhi.

2. The Chief General Manager, Telecom,
Assam Telecom Circle,
Guwahati.

.....Respondents

By Advocate Mr A. Deb Roy, Sr. C.G.S.C.

.....

O R D E R

BARUAH.J. (V.C.)

This application has been filed by the applicant seeking certain directions to the respondents.

2. Facts for the purpose of disposal of this application are:

The applicant was appointed Sepoy Clerk in the Electrical and Mechanical Engineering Corps. On his request he was released from his service on 10.9.1969. His pay on the date of his release from the army was Rs.99/-. After his release from the army he was appointed Circle Service Telegraphist on or about 17.1.1973 at a scale of pay of Rs.122/- in the scale of Rs.110-240. Later on the pay scale was revised by the Third Pay Commission. The applicant was a Combatant Clerk in the army and therefore, according to

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him the authority, while fixing his pay, ought to have taken into consideration the number of years of service he had rendered in the army. However, the authority did not do so. The applicant has made this claim on the basis of the Office Memorandum dated 11.4.1963 issued by the Ministry of Finance. He submitted a representation, and his representation was disposed of rejecting his claim, totally ignoring the office memorandum dated 11.4.1963. Thereafter also, the applicant submitted several representations, but his claim was rejected by the authority. The applicant submitted yet another representation on 10.4.1996, Annexure 9. However, the said representation has not yet been disposed of.

3, The case of the applicant is that while fixing his pay the previous years of service rendered by him in the army was not taken into consideration by the authority, which according to the applicant was contrary to the office memorandum dated 11.4.1963. Hence the present application.

4. In due course the respondents have entered appearance and filed written statement controverting the claim of the applicant.

5. We have heard both sides. Mr M. Goswami, learned counsel for the applicant submits that as he was an ex Combatant Clerk his previous years of service rendered in the army ought to have been taken into consideration while fixing his pay. In this connection he takes the support of the Office Memorandum dated 11.4.1963 issued by the Ministry of Finance. Mr A. Deb Roy, learned Sr. C.G.S.C. does not dispute about the provisions contained in the said office memorandum.

6. We have perused the Office Memorandum dated 11.4.1963 which has been produced before us. We quote the relevant portion of the said office memorandum:



"Fixation of pay of ex-combatant clerks.- It has been decided, as a special case, that service rendered as a combatant clerk (Sepoy and above and equivalent ranks in Navy and Air Force) may be treated as equivalent to service as L.D.Cs./Junior Clerks in Civil Departments irrespective of the pay drawn in the Armed Forces and that when such persons are absorbed in posts of L.D.Cs./Junior Clerks in Civil Departments after their release/retirement from the Armed Forces, their initial pay in the posts of L.D.Cs./Junior Clerks may be fixed at a higher stage in the scale above the minimum equal to the number of completed years of service as combatant clerk.

The pension and pension equivalent of gratuity, if any, which does not exceed Rs.15 per mensem will be ignored. In respect of pensionary benefits exceeding Rs.15 per mensem the authority competent to determine the pay will have discretion to ignore Rs.15 or any smaller amount that it may consider justified depending upon the circumstances of the case.

The power to fix pay as above is hereby delegated to the Ministries of the Government of India. For the purpose of this order, the C & A.G. will have the same powers as Ministries of the Government of India. Orders fixing the pay in such cases should be issued by invoking the provisions of F.R.27,

According to the provisions of the above orders, service rendered as Combatant Clerk (i.e. Sepoy and above and equivalent ranks in Air Force and Navy) is only to be treated as equivalent to service as Lower Division Clerk/Junior Clerk. Consequently, any service rendered in a rank lower than Sepoy (and equivalent ranks in A.F./Navy) i.e. as Recruit Clerk etc. should not be taken into account for the purpose of computing the total completed years of service for purposes of grant of advance increment. This equally applies to ex-Combatant Storemen re-employed as Storemen in Civil posts whose pay is fixed under Order No.(16) below."

7. In para 5 of the written statement the respondents have replied to the claim of the applicant as follows:

"..... on receipt of the representation, the records of service and pay was obtained from the EME Record Office, Secundrabad for a re-examination of the case. The whole case was re-examined keeping in view the rules prevailing at the corresponding period of time. It was found that the pay which was fixed in 1973 was correct and that the applicant was not entitled for any higher initial pay on re-employment."



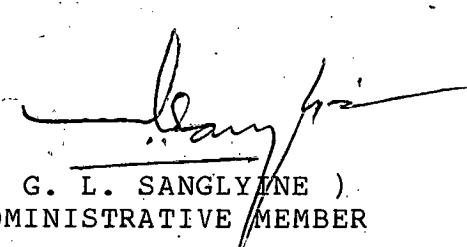
However, the respondents have not said anything as to why the applicant was not entitled to get the benefit of the Office Memorandum dated 11.4.1963

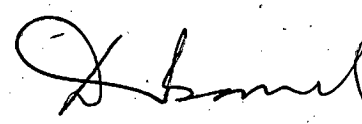
8. On perusal of the Office Memorandum dated 11.4.1963 and on hearing the learned counsel for the parties, we are of the opinion that the Office Memorandum dated 11.4.1963 is applicable to the applicant and his pay in the civil post should be fixed in the manner indicated in the aforesaid office memorandum, that is, the years of service rendered by the applicant as Combatant Clerk in the army should be taken into consideration.

9. Mr Goswami further submits that the Office Memorandum dated 11.4.1963 is still in force and it has not been superseded by any other notification. Mr Deb Roy is also not in a position to show that the Office Memorandum dated 11.4.1963 is no longer in force or that it has been superseded by any other memorandum.

10. In view of the above we direct the respondents to fix the pay of the applicant in the civil post taking into consideration of the previous years of service rendered by the applicant in the army strictly in accordance of the Office Memorandum dated 11.4.1963. This must be done as early as possible, at any rate within a period of three months from the date of receipt of the order.

11. The application is accordingly disposed of. No order as to costs.


(G. L. SANGLYINE)
ADMINISTRATIVE MEMBER


(D. N. BARUAH)
VICE-CHAIRMAN