

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 614 of 2000

Jabalpur, this the *14th* day of *June* 2004

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Shri Varghese Thomas, S/o.
Shri V.T. Varghese, Aged about
59 years, C/o. Shri Bijoy George,
Quarter No. 27 (Type-II), T&D Colony,
Theatre Road, Jabalpur (MP). ... Applicant

(By Advocate - Shri S.P. Rai on behalf of Smt. S. Menon)

V e r s u s

1. Union of India, through the
Secretary, Ordnance Factory Board,
10-A SK Bose Road,
Calcutta - 700 001.
2. The Principal Controller of Accounts
(Fys.), 10-A Shahid Khudi Ram Bose Road,
Calcutta - 700 001.
3. The General Manager,
Grey Iron Foundry (GIF),
Jabalpur (MP). ... Respondents

(By Advocate - Shri B.da.Silva)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has
claimed the following main reliefs :

"(i) to quash the memo of 9.6.2000 and be further
pleased to direct the respondents to fix the pay of
the applicant in accordance with the Office Memorandum
of 12.6.1963/Annexure A-3 & A-4 respectively with
effect from the date of his re-employment as LDC and
grant all consequential monetary benefits with
interest."

2. The brief facts of the case are that the applicant
prior to his employment with the respondent was working
in the Armed Forces in the Ordnance Corps as a Clerk
(General Duty) with effect from 25.6.1963 to 14.8.1973.
The applicant came to be appointed as a Lower Division
Clerk in GIF, Jabalpur with effect from 7.12.1979. The

applicant was asked to submit option form which he accordingly did, being ex-serviceman and in his application, alongwith the option he had also requested that his past services rendered in the Army be considered towards the pensionary benefits. The respondents had issued the office memorandum, wherein it has been specifically detailed about the fixation of pay of ex-service combatant clerks in the civil post. This office memorandum postulates that service rendered as a combatant clerk (sepoy and above and equivalent ranks in Navy & Air Force) can be treated as equivalent to service as LDC/Junior Clerk in the Ministry of Defence irrespective of pay drawn in Armed forces and that such persons who are absorbed in the post of LDCs/Junior Clerks in the Ministry of Defence after their release/retirement from the Armed Forces, their initial pay in the post of LDCs/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 applicant further submitted that several ex-Army personnels were granted re-employment with the respondents and one such case of Shri Johnson G. who came to be appointed as LDC likewise applicant. In his case necessary fixation of pay on re-employment was done by the respondents. The applicant vide his application dated 21.2.1990 requested respondent No. 3 that necessary fixation of pay on re-employment as LDC in GIF be kindly done and he was also informed that the matter has been taken up by the Management. Since no communication was received about the pay fixation the said application was submitted by the applicant. In response to the said application dated 21.2.1990, the Works Manager on behalf of the General Manager, informed the applicant vide his correspondence dated 19.4.1990 that as per the instructions contained in CSR Vol. I, Article 156, the fixation of pay in respect of ex-serviceman are done in case where the ex-servicemen have been drawing Military

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pension from the Armed Forces. Since the applicant was not a military pensioner and was released from the Army, the question of fixation of pay does not arise. Aggrieved by the communication dated 19.4.1990 the applicant submitted a detailed representation, wherein he brought to the notice of the authorities concerned that they have mis-interpreted and mis-applied Article 156 of CSR Vol.I and office memo. of 1963. The record officer, Army Ordnance Corps, in their communication to the Secretary, OF Board enquired about the fixation of pay of the applicant vide correspondence dated 5.12.1990. Since neither reply was received nor communication was made thereof, the applicant submitted yet another application requesting therein for fixation of pay for ex-combatant clerk on re-employment as LDC in the civil office. The respondent i.e. the Director General of Ordnance Factories in its communication to General Manager GIF, Jabalpur dated 9.6.2000 detailed therein that the applicant is not entitled for fixation of pay, as requested for by him. The said communication of 9.6.2000 has not been served by the respondents upon the applicant. The contents of the said communication are wholly incorrect and contrary to the documents and record in possession of the authorities concerned. Besides that the respondents have also misconstrued and mis-interpreted the memorandum dated 19.6.1963 and the corrigendum issued thereafter. In no circumstances, the pay of a Ex-serviceman can be fixed in contra to the provisions of memorandum of 1963. The applicant has also submitted that the respondents be directed to produce the said memorandum dated 9.6.2000 which is illegal and invalid and it seems that is the reason why the copy of the said communication has not been made available to the applicant in order that he may not challenge the same before the competent court of law. Aggrieved by this the applicant has filed this Original Application claiming the aforesaid


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reliefs.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that in para 4.9 of the O.A. it is clearly mentioned that the Memorandum dated 9.6.2000 was neither communicated nor supplied to the applicant so that he may not challenge the same before the competent court of law. It is further argued that one Mr. Johnson G. came to be appointed as L.D.C. likewise the applicant and in his case the necessary fixation of pay on-employment was done by the respondents. The relevant submission and document is submitted by the applicant in para 4.3 of the O.A. which is also not denied by the respondents in their reply. The applicant has relied upon the copy of the O.M. of Ministry of Defence dated 12th June, 1963 (Annexure A-3), about fixation of pay of Ex-service Combatant Clerks released from service in the Armed Forces on re-employment as IDCs/Junior Clerks in civil posts. Hence, the applicant is entitled for all the reliefs claimed in this O.A.

5. It is argued on behalf of the respondents that the applicant cannot draw any benefit from any internal correspondence i.e. O.M. dated 9.6.2000 and cannot rely on the same for seeking relief by way of the instant Original Application. It is further argued that the applicant was discharged from the Indian Army on his own request with effect from 14.8.1973. He was ^{not} sanctioned pension for his service rendered in the Army. Further he was appointed as a L.D.C. in the GIF, Jabalpur on 7.12.1979 i.e. after a gap of more than 6 years. It is submitted by the respondents that the applicant was not absorbed in a civil post immediately after being released from the Armed Force Services. As per CSR Volume-I 156 the applicant had not submitted his option for fixation of pay on re-employment on civil post within the stipulated



period of one ~~month~~^{month} from the date of his re-employment.


6. Against it the learned counsel for the applicant has argued that it is clearly shown in Annexure A-2 letter dated 24.1.1990 that the applicant had given his option as required within due time and he has also drawn our attention towards the letter dated 12th June, 1963 (Annexure A-3) in which it is clearly mentioned that after their release/retirement from the Armed Forces their initial pay in the posts of LDCs/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. In the said letter pension is not mentioned anywhere and further stressed that in a similar case another person, namely, Shri Johnson G. was granted the similar relief claimed by him. This fact is not denied by the respondents in the reply.


7. We have given careful consideration to the rival contentions of the parties and we find that the alleged office Memorandum dated 9.6.2000 on which the applicant is placing reliance was neither communicated nor supplied to the applicant being internal/confidential correspondence of the respondents. Hence, the applicant cannot draw any benefit on the basis of a document which is never supplied to him. It is also surprising that how the applicant came to know about the contents of the aforesaid internal/confidential documents which have been mentioned in the present O.A. by the applicant. Since the aforesaid O.M. dated 9.6.2000 has neither been communicated nor supplied to the applicant and the same has not been annexed with the O.A., no order can be passed by the Tribunal in absence of the said order.

8. As regards the contention of the applicant that his pay should have been fixed at par with one Shri Johnson G., who was similarly placed employee, it is seen from the record that the applicant had submitted his option admittedly on 24.1.1990 vide Annexure A-2 while he was appointed on re-employment on

7.12.1979 as L.D.C. While as per rules he was required to submit his option for fixation of his pay within one month from the date of his re-employment which the applicant has failed to exercise. Hence, the applicant cannot claim parity in pay with Shri Johnson G. Moreover, service particulars of the said employee is also not before us, hence we cannot comment on the said issue. It is further seen that the employees who retired ~~from~~ from Armed Force Services without sanction of pension, their pay is to be fixed at the minimum of pay in the event of their appointment in civil post. Accordingly the pay of the applicant was fixed at the minimum scale of pay for L.D.C. in accordance with para 11(b) of C.S.R. Vol.I - 156. Since the applicant ~~was~~ retired on his own request without sanction of pension, the respondents have committed no irregularity or illegality in fixing the pay of the applicant.

9. In view of the above discussion, we find no ground to interfere in the action of the respondents and the O.A. deserves to be dismissed and the same is accordingly dismissed. No costs.


(Madan Mohan)
Member (Judicial)


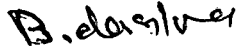

(M.P. Singh)
Vice Chairman

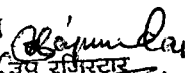
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पृष्ठांकन सं ओ/ल्यो.....जबलपुर, दि.....

परिशिष्टि अर्थात् विस्तार:-

- (1) सचिव, उच्च न्यायालय, न्याय भवन, जबलपुर
- (2) अध्यक्ष श्री/श्रीमती/कु.....के कार्यालय
- (3) प्रत्यक्षी श्री/श्रीमती/कु.....के कार्यालय
- (4) न्यायालय, को.प्र.अ., जबलपुर न्यायाधीश सूचना एवं आवश्यक कार्रवाई हेतु


S. Meher

B. Dasgupta


Rajendra
21.6.04

Issued
On 21-6-04
BS