

**NOTES OF THE REGISTRY**

**ORDERS OF THE TRIBUNAL**

11/12/2012

None present for applicant.  
Mr. Anupam Agarwal, Counsel for respondents

Case adjourned on the request of  
learned counsel for applicant (s) /  
respondent (s). Put up for hearing

~~09/01/2013~~

~~AR (A) M'~~  
Court Officer

Counter reply

filed

v2

MA 420/12

for condonation of  
delay listed

ON 9-1-13

v3

09-01-2013 (OA NO. 487/2010 with  
MA NO. 420/2012)

Mr. K.S. Panwar, Counsel for applicant.  
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

O.A. and M.A. are disposed of  
by a separate order on the  
separate sheets for the reasons  
recorded therein.

Anil Kumar  
[Anil Kumar]  
Member (A)

J. S. Rathore  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

**ORIGINAL APPLICATION No. 487/2010**  
**WITH**  
**MISC. APPLICATION NO. 420/2012**

Jaipur, the 09<sup>th</sup> day of January, 2013

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Krishna Kant Shukla son of Late Shri M.P. Shukla, Caste Brahmin  
aged 53 years, resident of 168, Panchvati Colony, Gali No. 3,  
Adarsh Nagar, Ajmer. Working as Sr. Clerk, DRM Office, Ajmer.

... Applicant

(By Advocate: Mr. K.S. Panwar)

Versus

1. Union of India through General Manager, North Western  
Railway, Jagatpura Road, Jaipur.
2. The Divisional Railway Manager, North Western Railway,  
Ajmer Division, Ajmer.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

**ORDER (ORAL)**

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

- (i) In view of the facts and grounds mentioned above,  
the applicant prays for the following relief:
- (ii) That the respondents be directed to fix the pay of  
applicant as per Railway Board's policy dated  
25.02.1987 i.e. as per Central Civil Services (Fixation  
of pay of Re-employed Pensioners) Order 1986 Para  
No. 4(b)(ii) with its amendment vide Railway Board's  
letter order No. E(P&A) 773/32 Vol. II dated  
30.8.1988/27.9.1988
- (iii) That the respondents be directed to made the  
payment of any arrear, if it is occurred due to revise  
fixation of pay of the applicant and also  
consequential benefits.

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- (iv) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances.
- (v) That the cost of this application may be awarded."

2. The brief facts, as stated by the learned counsel for the applicant, are that the applicant was initially appointed as Operator Radio & Key Board in the grade of Rs.950-1500 on 06.07.1972 in the Indian Army. That after completing 17 years of service, he took retirement on 01.04.1989. The applicant was drawing basic pay of Rs.1392/- and other allowances at the time of his retirement in the Army.

3. That the applicant subsequently was selected as Commercial Clerk through Railway Recruitment Board against the Ex. Service quota and was appointed as Commercial Clerk in the scale of Rs.975-1540 (R) on 17.07.1991 (Annexure A/6). The pay of the applicant was fixed at Rs.975/- as Commercial Clerk on his appointment in the Railways.

4. The learned counsel for the applicant further submitted that as per Railway Board's policy No. E(P&A) 773/32 Vol. II dated 25.02.1987 (Annexure A/1) and Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order 1986 Para 4(b)(ii) and its amendment vide Railway Board's letter No. E(P&A)773/32 Vol. II dated 30.08.1988/27.09.1988 (Annexure A/2), the fixation of the applicant of his initial pay should be equal to his last basic pay of his Defence Service.

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5. That the applicant made request through his representation dated 16.02.2000 (Annexure A/7) to re-fix his pay as per Railway Board's policy and also enclosed a letter issued by Jodhpur Division in which the pay of Shri Hari Ram Chaudhary, Ex. Serviceman, was re-fixed as per Railway Board's Policy. The case of the applicant was identical to the case of Shri Hari Ram Chaudhary but the respondents neither revised the pay of the applicant nor any reply was given by respondent no. 2. The applicant again made a request through his representation dated 24.06.2002 (Annexure A/8) stating an example of Shri S.N. Sharma whose pay was revised as per Central Administrative Tribunal's decision (Annexure A/9) but no action was taken by the respondents on that representation nor any reply was given. Thereafter, the applicant represented through recognized trade union on 23.01.2005 (Annexure A/10) but respondent no. 2 again did not take any action.

6. Learned counsel for the applicant further argued that the policy as laid down in order No. E(P&A) 773/32 Vol. II dated 25.02.1987 with its enclosures and order No. E(P&A) 773/32 Vol. II dated 30.08.1988/27.09.1988 issued by Headquarter office and Railway Board have been implemented in other divisions (Annexure A/1 and A/2 respectively). This policy was issued by the Government for the benefit of Ex-Servicemen and the applicant is an Ex-Serviceman.

7. Learned counsel further submitted that the applicant has the right of equity before the law as per the Constitution of India

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Article 14, as in other divisions the Ex-serviceman have got the pay fixation as per Annexure A/1 but the pay of the applicant has not been fixed according to the provisions of Annexure A/1 and A/2. Therefore, the OA be allowed and the respondents be directed to fix the pay of the applicant as per Railway Board's Policy dated 25.02.1987 i.e. As per Central Civil Services (Fixation of Pay of Re-employed Pensions) Order 1986 Para No. 4(b)(ii) with its amendment vide Railway Board's letter order No. E(P&A) 773/32 Vol. II dated 30.08.1988/27.09.1988.

8. With regard to the delay in filing this OA, the applicant has filed an MA No. 420/2012 for condonation of delay stating that if the pay fixation of the applicant is not done correctly then he would suffer loss in settlement amount and pension. He has further taken the plea that similarly situated persons (S/Shri Hari Ram Choudhary and S.N. Sharma) have been given the benefit of re-fixation of pay but in identical case, the applicant has been denied the same benefit. To support his averment, he referred to the judgment of the Hon'ble Supreme Court in the case of **K.C. Sharma & Others vs. Union of India & Others**, All India Services Law Journal 1998(1) 54. In Para No. 4 of the judgment, the Hon'ble Supreme Court has held that - "Having regard to the facts and circumstances of the case, we are of the view that this was a fit case in which the Tribunal should have condoned the delay in the filing of the application and the appellants should have been given the relief in the same terms as was granted by the Full Bench of the Tribunal....."

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9. On the other hand, the learned counsel for the respondents argued that the OA is barred by limitation. The salary of the applicant was fixed on his appointment with the respondents in the year 1991. He had accepted the same without any protest. Therefore, this OA is barred not only limitation but also in view of the principle of estoppels. He further argued that this issue, as raised by the applicant, has already been decided by this Tribunal in **OA No. 144/2009** (Ram Prasad Yadav vs. Union of India & Others decided on 07.07.2009) and **OA No. 130/2004** (Pasupathi Nath & Others vs. Union of India & Others decided on 24.12.2004). Therefore, the OA has no merit and it should be dismissed with costs.

6. Learned counsel for the respondents further argued that the applicant did not give his willingness at the time of his initial appointment in the Railways for not ignoring his pension and pensionary benefits of his previous service. Accordingly, the same was reduced from his pay while making fixation at his initial appointment. Thus Para 4(b)(i) of order dated 25.02.1987 (Annexure A/1) is applicable in the facts & circumstances of the case of the applicant. As such the pay of the applicant has been correctly fixed at the minimum of the scale of Rs.975/- at the time of his appointment in the Railway in the pay scale of Rs.975-1540/-.

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7. Learned counsel for the respondents denied that the representation of the applicant was received in the office of the respondents. With regard to the letter dated 08.01.2002 issued in favour of Shri S.N. Sharma, he submitted that the same has been issued in compliance of the order of the learned Tribunal dated 29.01.2002. (Annexure A/9). The case of Shri S.N. Sharma is quite different than that of the applicant. Shri Sharma's case fall under the terms of Para 16 of Annexure A/1 whereas the case of the applicant is falling under terms of Para 4(b)(i) of Annexure A/1. Therefore, the applicant cannot compare his case with that of Shri S.N. Sharma. He further argued that the respondents have implemented the policy in its correct perspective. Therefore, the OA has no merit and it should be dismissed with costs.

8. Heard the learned counsel for the parties, perused the relevant documents on record and the case law referred to by the learned counsel for the parties. With regard to the question of limitation, we are of the opinion that in view of the ratio decided by the Hon'ble Supreme Court in the case of **K.C. Sharma & Others vs. Union of India & Others**, All India Services Law Journal 1998(1) 54 and also in view of the grounds taken by the applicant in MA No. 420/2012, the delay needs to be condoned and, therefore, it is condoned. The MA No. 420/2012 is allowed.

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9. Learned counsel for the applicant argued that the respondents have allowed the benefit of the policy as laid down in order No. E(P&A) 773/32 Vol. II dated 25.02.1987 with its enclosures and order No. E(P&A) 773/32 Vol. II dated 30.08.1988/27.09.1988 issued by Headquarter office and Railway Board to other similarly situated employees such as S/Shri Hari Ram Choudhary and S.N. Sharma. That the applicant made the representation to the respondents on 16.02.2000 and 24.06.2002 (Annexure A/7 and A/8 respectively) but none of the representation was decided by the respondents. Therefore, the pay of the applicant should be fixed as per the policy laid down in order No. E(P&A) 773/32 Vol. II dated 25.02.1987 with its enclosures and order No. E(P&A) 773/32 Vol. II dated 30.08.1988/27.09.1988 issued by Headquarter office and Railway Board.

10. On the contrary, learned counsel for the respondents argued that the respondents did not receive any representation of the applicant. Therefore, there was no question of deciding the same. He further argued that the respondents have correctly fixed the pay of the employee as per the provisions of the policy as laid down in order No. E(P&A) 773/32 Vol. II dated 25.02.1987 with its enclosures and order No. E(P&A) 773/32 Vol. II dated 30.08.1988/27.09.1988 issued by Headquarter office and Railway Board. The applicant did not give any option to part with his pension received by him during his re-employment as provided in the Rules. Therefore, his pay was fixed at the

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minimum of the scale in which he was re-employed. Learned counsel for the respondents also drew our attention to **OA No. 130/2004** (Pasupathi Nath & Others vs. Union of India & Others decided on 24.12.2004) and **OA No. 144/2009** (Ram Prasad Yadav vs. Union of India & Others decided on 07.07.2009) by this Bench of the Tribunal. He submitted that the present case is squarely covered by the above decisions. We have gone through the orders of these two OAs. In **OA No. 130/2004** (Pasupathi Nath & Others vs. Union of India & Others decided on 24.12.2004), this Tribunal in Para No. 9 of the order as held as under:-

"9. Since admittedly the applicants were receiving their pension for their previous service rendered in the defence services and their pension have been fully ignored, as such, their initial pay was required to be fixed at minimum of the scale of pay of re-employed post. Accordingly, the action of the respondents cannot be faulted. For the reasons stated above, this OA is dismissed with no order as to costs."

11. In **OA No. 144/2009** (Ram Prasad Yadav vs. Union of India & Others decided on 07.07.2009), the Tribunal had dismissed the OA on the ground that learned counsel for the applicant had stated that it would not possible for the applicant to return the amount of pension at this stage. Therefore, in view of the statement made by the learned counsel for the applicant, the Tribunal held that applicant was not entitled to get any relief, as prayed for by him in terms of the provisions contained in Clause 4(b)(ii) of the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Order, 1986.

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12. In the present case according to the learned counsel for the respondents, the applicant has not given the option for ignoring the pension or not ignoring the pension received by him for the service rendered by him in the Army. Therefore, his pay has been correctly fixed. However, we are of the opinion that since the earlier representations of the applicant have not been decided by the respondents and in the interest of justice, the applicant is given liberty to file fresh representation before the respondents stating all the facts within a period of 15 days from the date of receipt of a copy of this order and the respondents are directed to decide the same expeditiously but in any case not later than a period of three months from the date of receipt of such representation made by the applicant according to the provisions of law by a speaking & reasoned order. The copy of the order so passed shall be supplied to the applicant. If any prejudicial order is passed against the applicant, he is at liberty to file substantive OA.

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

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K. S. Rathore*  
(Justice K.S.Rathore)  
Member (J)

*AHQ*