

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.11.2013

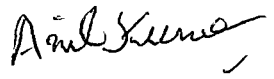
OA No. 606/2012

Mr. Mahendra Shah, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents nos. 1 to 3 and 5.

None present for respondent no. 4.

Heard learned counsel for the parties. The OA is disposed of by a separate order.


(Anil Kumar)
Member (A)

ahq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 606/2012

Jaipur, the 19th day of November, 2013

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Durga Prasad Yadav son of Late Shri Radha Krishnan Yadav,
aged about 63 years, resident of 2, Shri Ram Nagar -B, B,
Kalwad Road, Jhotwara, Jaipur.

... Applicant

(By Advocate: Mr. Mahendra Shah)

Versus

1. Union of India through its Secretary, Department of Personnel & Training, Ministry of Personnel, Public Grievance & Pension, North Block, New Delhi 110 001.
2. The Secretary (Service & Vigilance), Department of Personnel & Training, North Block, New Delhi 110 001.
3. The Director General (Resettlement), West Block, R.K. Puram, New Delhi - 110 066.
4. The Regional Director (NR), Staff Selection Commission, Northern Regional Office, Block No. 12, CGO Complex, Lodhi Road, New Delhi - 110 003.
5. The Principal Accountant General (A&E), Jan Path, C-Scheme, Jaipur- 302 005.

... Respondents

(By Advocate: Mr. Mukesh Agarwal- Respondent nos. 1 to 3 & 5)
None for respondent no. 4.

ORDER (ORAL)

Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicant was initially appointed in Defense Service on the post of Sowar on 15.03.1972. That the applicant sought voluntary retirement from Defense Service after completion of 20 years 7 months and 15 days on 31.01.1992.

Anil Kumar

2. That in 1993, Staff Selection Commission (SSC) advertised the post of Clerk in the pay scale of Rs.950-1500/- for which ex-servicemen were also eligible for appointment. The applicant applied for the appointment of LDC in pursuance to the advertisement dated 17.04.1993 under Ex-Servicemen quota.

3. The SSC did not treat the applicant as Ex-Serviceman and sought clarification from the Defense Department. The Director General (Settlement), Ministry of Defense, clarified on 17.10.1994 that the applicant is ex-serviceman based on Memorandum dated 14.04.1987 wherein the definition of 'Ex-Serviceman' is given subject to retirement after earning pension. The applicant after rendering 20 years 7 months and 15 days started earning pension.

4. That the SSC even after the aforesaid clarification did not give appointment to the applicant despite the fact that he was duly selected.

5. That against the aforesaid action of the SSC, the applicant filed an OA No. 45/1995. The Central Administrative Tribunal disposed of the OA with the direction to consider fresh representation of the applicant in the light of the communication dated 17.10.1994 issued by the Director General (Resettlement).

Anil Kumar

6. The respondents did not give appointment to the applicant despite the directions of the Tribunal; therefore, the applicant filed a Contempt Petition.

7. That during the pendency of the Contempt Petition, the respondents treated the applicant Ex-Serviceman vide order dated 19.05.2001 making it clear that the appointment of the applicant was delayed by six years. Other selected candidates who appeared in the examination of 1993 were given appointment in the year 1995.

8. The learned counsel for the applicant submitted that the Hon'ble Supreme Court has held that if there are lapses on the part of the Government for giving appointment or other benefits, the incumbent cannot be made to suffer. To support his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Jagannath Achitya Kanadikar**, AIR 1989 SC 1133. The applicant retired from the office of the Accountant General on 30.04.2010. He has been requesting for pensionary benefits by treating his services from the year 1995 in place of 2001. There is shortfall of one year and six months for attraction of pensionary benefits. Had the applicant been treated as appointee of the year 1995, he would have rendered more than 15 years service at the time of retirement. Aggrieved by the inaction of the respondents, the applicant filed an OA No. 534/2011 for not computing the period from 1995 to 2001 for the purpose of pensionary benefits.

Anil Kumar

9. The Central Administrative Tribunal vide order dated 17.11.2011 directed the respondents to consider the case and decide the notice for demand of justice dated 28.09.2011 and to pass a speaking order expeditiously but not later than three months from the date of receipt of a copy of the order.

10. When the respondents did not take any action on the order of the CAT, the applicant filed Contempt Petition. During the pendency of the Contempt Petition, respondent no. 4 passed the impugned order dated 31.07.2012 (Annexure A/1) stating that the case of the applicant was treated as a special case and also held that the services of the applicant is to be counted from the date of his actual joining.

11. The learned counsel for the applicant further submitted that the contention of the respondents is that the applicant's case was treated as a special case is not correct. No special circumstances have been shown by the respondents to treat his case as a special case. On the contrary, the applicant was found eligible for appointment against CG Examination 1993 against Ex-Serviceman quota after the receipt of the clarification dated 10.10.1995. Therefore, the applicant should be treated as an appointee of 1995 and hence his entitled for the pensionary benefits.

Anil Kumar

12. On the other hand, the learned counsel for the respondents submitted that the applicant joined his duties on 24.01.2001. After his appointment, the applicant submitted his representation dated 09.09.2002 with the request that his seniority be fixed in the batch of 1993 viz-a viz other candidates of that batch. He was duly informed vide letter dated 24.12.2002 (Annexure R-5/3) that his seniority has been correctly fixed. Moreover, the rank of Durga Prasad Yadav (applicant) is placed below all the candidates who joined AG Office on the basis of 1993 Batch Examination.

13. The applicant filed an OA No. 186/2003 before CAT, Jaipur Bench, Jaipur, which was decided vide its order dated 12.09.2007 and it was held that the applicant is not entitled to any arrears of salary, fixation and seniority with effect from July/August, 1995 (Annexure R-5/10).

14. That the applicant has rendered the qualifying service of 08 years, 6 months and 08 days. Hence he is not entitled for the benefit of minimum pension in terms of Rule 49 (2) (B) of CCS (Pension) Rules 1972. To secure the benefit of pension, the service of minimum 10 years is required and since the applicant has not completed 10 years service, therefore, he is not entitled for pensionary benefits.

15. The respondent no. 4 submitted that the case of the applicant was treated as a special case in the light of OM dated

Anil Kumar

09/10 October, 1995. The applicant joined as LDC in AG Rajasthan on 24.10.2001 and retired from service on 30.04.2010 on superannuation. Since his case was treated as a special case, he could not be given parity with his juniors in CG Examination 1993. Giving appointment to the applicant was itself a favour viz-a-viz similarly situated candidates. Therefore, he was not entitled to be treated at par with other similarly situated junior in CG Examination 1993. The applicant was granted the benefits as applicable to the Ex-Serviceman from the date he joins the service. There was no lapse on the part of the respondents in rejecting the case of the applicant for granting the benefit of Ex-Serviceman at par with his juniors in CG Examination 1993. Therefore, the applicant is not entitled for any relief in the present OA.

16. Heard the learned counsel for the parties, perused the documents on record and the case law, referred to by the learned counsel for the parties. The admitted facts of the case are that the applicant appeared in the examination in 1993 and was duly selected but he was not given appointment to the post of LDC because there was a controversy whether the applicant is covered under the Ex-Serviceman quota or not. He was offered appointment in the year 2001 after the DOPT clarification that the applicant is a Ex-Serviceman. The applicant joined his duties on 24.10.2001 and he retired on superannuation on 30.04.2010. The claim of the respondents is that since the applicant has not completed 10 years service, he is not entitled for any pensionary

Anil Kumar

benefits. On the contrary, the claim of the applicant is that he cleared the examination in 1993 along with others while other candidates were given appointment in the year 1995 whereas he was denied appointment by the respondents. He is not at fault for this delay of 6 years. Therefore, he should be treated as appointee of the year 1995 for the purpose of pensionary benefits and to support his claim, the learned counsel for the applicant referred to the judgment of the Hon'ble Supreme Court in the case of **State of Maharashtra vs. Jagannath Achyut Karandikar**, AIR 1989 SC 1133 (supra). I have carefully gone through the judgment of the Hon'ble Supreme Court. In this case, the Hon'ble Supreme Court has held that the power to relax the conditions of the rules to avoid undue hardship in any case or class of cases cannot now be gainsaid. Therefore, the Government was justified in individual cases to relax the power for passing the examination. In the case before the Hon'ble Supreme Court, the Government for some reason or other could not ~~hold~~^{hold} the examination every year as was required. Therefore, the persons who passed the examination at a later stage were restored their legitimate seniority in the promotional cadre. The ratio decided by the Hon'ble Supreme Court is squarely applicable in the present case. It is not disputed by the respondents that the applicant passed the examination of the LDC in pursuant to the advertisement dated 13.04.1993 but the applicant was not given offer of appointment because there was a dispute regarding his being Ex-Serviceman or not. Subsequently on the basis of the clarification issued by the

Anil Kumar

Anil Kumar

DOPT, the applicant was given appointment in the year 2001. Thus it cannot be said that the applicant is at fault. In fact, the delay of 6 years in not giving appointment to the applicant is on the part of the respondents. Had the applicant was given appointment in the year 1995 along with other successful candidates, he would have rendered more than 15 years of service at the time of his retirement. If he is not given the benefit of his passing the examination in the year 1993 then he would suffer irreparable loss and undue hardship and then he would not be entitled for the pensionary benefits as has been mentioned earlier for the delay of 6 years from the year 1995 to 2001, the applicant cannot be held responsible. The applicant ^{has} ~~had~~ already suffered a loss of seniority of 6 years and also the salary for the same period because he was given appointment in 2001 instead of 1995 for no fault of the applicant. Therefore, the respondents are directed to give the benefits to the applicant at least of minimum pension, which he would be eligible on completion of 10 years of service.


17. I have carefully gone through the order of the CAT in OA No. 186/2003 decided on 12.09.2007 (Annexure R-5/10), referred by the learned counsel for the respondents, and I am of the view that this order is not applicable for the purpose of the present OA. In the order dated 12.09.2007, the Tribunal has held that the applicant is not entitled for any arrear of salary, fixation and seniority with effect from July/August, 1995, pursuant to OM dated 09/10.10.1995, cannot be made

Anil Kumar

applicable to this OA of the applicant. In the present OA, the applicant is not claiming salary/fixation of his seniority but he is claiming the benefit of service to be counted for the purpose of pension.

18. In the interest of justice, the applicant is entitled for a minimum pension based on 10 years of service because he is not at fault for the delay in the issuance of the appointment to the applicant. The delay was on account of correspondence between the respondent department. Therefore, the respondents are directed to sanction pension to the applicant, as stated above, expeditiously but not later than a period of three months from the date of receipt of a copy of this order.

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


(Anil Kumar)
Member (A)

AHQ