

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

I.O.A.No.060/00277/2014

Date of Decision : 1. 5. 2015.

II. O.A.No.060/00827/2014

Reserved on : 28.04.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

I.O.A.No.060/00277/2014

1. Prithvi Nath Tiwari, son of Bali Ram Tiwari.
2. Om Parkash son of Ram Nagina Vishwakarma.
3. Ram Lal son of Pooran Singh.
4. Jeet Ram son of Nanku Ram.
5. Kulwant Singh son of Jarnail Singh.
6. Desh Raj son of Param Ram.
7. Ramesh Chand son of Gopal Singh.
8. Karamveer son of Lehari Ram.
9. Iwanirman Singh Kanyal son of Balwan Singh Kanyal.
10. Shyam Singh son of Ram Khelawan Singh.
11. Nathuni Choudhary son of G.S. Chaudhary.
12. Zile Singh son of Ajit Singh.
13. Husiyar Singh son of Sher Singh.
14. Inder Singh son of Ganpat Ram.
15. Gurmeet Singh son of Chandan Singh.
16. Suresh Parshad Shah son of Baldev Singh.
17. Satyaveer Singh son of Rati Ram.

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18. Bhag Singh son of Shera Singh.
19. Mohan Singh son of Shri Ram.
20. Tara Singh son of Udam Singh.
21. Jagdev Sharma son of Bhagi Ram.
22. Narinder Singh son of Kushal Singh.
23. Swaran Singh son of Ajit Singh.
24. Baldev Singh son of Bailing Singh.
25. Raj Kumar son of Vichitar Singh.
26. Vijay Singh Rawat son of Manohar Singh Rawat.
27. Dharam Chand son of Karam Chand.
28. Amlon Kumar Mandal son of Ara Binda Mandal.
29. Kochuman Aj son of Amjolh.
30. Yashpal Sharma son of Gian Chand.
31. Mohan Lal son of Gian Chand.
32. Rajpal Singh son of Ram Asra.
33. Bhuri Singh son of Gulaba Ram.
34. Prem Singh Atri son of Ran Singh.
35. Umesh Chander son of Shambu Parsad.
36. Bhupinder Singh son of Harbans Singh.
37. Nater Pal son of Amarnath.
38. Suram Singh son of Malkiat Singh.
39. Jagdish Kumar son of Thagi Lal.
40. Tej Bar Singh son of Makonda Singh Pawar.

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41. Davinder Singh son of Bharat Singh.
42. Darban Singh son of Dayal Singh.
43. Naresh Kumar son of Bharat Singh
44. Sunder Singh son of Bhalwan Singh.
45. Pawan Kumar son of Shiv Dayal.
46. Jagbeer Singh son of Tarlok Singh.
47. Vijay Singh son of Dilwan Singh.
48. Ajmer Singh son of Gurdas Singh.
49. RPS Chouhan son of Dharam Singh.
50. Mohan Chander Bhat son of Bishnu Das Dutt.
51. Sita Ram son of Ruwalu Ram.
52. Jagpal Singh son of Harneek Singh.
53. Partap Chand son of Roop Lal.
54. Rakesh Ram son of Jeet Ram.
55. Amar Singh son of Ram Dev.
56. Bhajan Singh son of Jeet Singh.
57. Narwinder Singh son of Waryam Singh.
58. Atam Parkash son of Din Dayal.
59. Bashudev Mishra son of Ram Kant Mishra.
60. Nain Ram son of Magat Singh.
61. Kulbhushan Singh son of Kehar Singh.
62. Ram Jeevan Sharma son of Ravi Dath Sharma.
63. Jagmohan Singh son of Kewal Singh. 16

64. Ajaybir Singh son of late Dara Singh.
65. Raghbir Singh son of Dhian Singh.
66. Balram son of Jagan Nath.
67. Praduman Singh son of Bawa Singh.
68. Ashok Kumar Sharma son of Ram Ji Sharma.
69. Dinesh Singh son of D.B. Nakihawa.
70. Jeet Singh son of Lal Singh.
71. Pawan Kumar son of Shiwat Dyal.
72. Brish Bhan son of Narta Ram.
73. Mohan Singh son of Padam Singh.
74. Sukhdev Mishra son of Deepa Ram Mishra.
75. Gurtej Singh son of Bachan Singh.
76. Sawinder Singh son of Harbans Singh.
77. Baidev Singh son of Niranjan Singh.
78. Balkar Singh son of Ranjeet Singh.
79. Amarpal Singh son of late Shri Mehar Singh.
80. Satvir Singh son of Daya Anand.
81. Suresh Pal son of Jagdish Parsad.
82. Dharam Pal Singh son of Ram Chander Singh.
83. Hardev Singh son of Davinder Singh.
84. Dharam Singh son of Tungal Singh.
85. Balwan son of Surat Singh.
86. H.S. Dixit son of Ram Kisore Dixit.

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87. Ganga Singh son of Karam Singh.
88. Deep Chand son of Krashna Ram.
89. Satish Chander son of Jhabru Dath.
90. Jay Bhagwan Singh son of Maghe Ram.
91. Narinder Singh son of Kunwar Singh.
92. N.S. Bist son of Kanwar Singh.
93. Mohinder son of Shin Singh.
94. P.K. Sharma son of Jagan Nath Sharma.
95. Shonbir Singh son of Shri Dilawal Singh.
96. Shishupal Singh son of Indra Singh.
97. Gajender Singh son of Umed Singh.
98. Roop Ram son of Partap Singh.
99. Santosh Kumar son of Prem Chander.
100. Gurdeep Singh son of Prasanna Singh.
101. Gulab Singh son of Gaja Singh.

All posted as Helper at office of the Chief Workshop Manager,
Jagadhri Workshop, Jagadhri District, Ambala.

Applicants

Versus

1. Union of India, Northern Railway Head Office, Baroda House, New Delhi, through its General Manager.
2. Union of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training through its Secretary.

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3. Divisional Railway Manager, Northern Railway, Ferozepur, District Ferozepur.
4. Chief Workshop Manager (CWM) Jagadhari, Jagadhari Workshop Northern Railways, Jagadhari, District Ambala through its Manager.

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Respondents

II. O.A.No.060/00827/2014

1. Narinder Pal son of Sh. Satpal.
2. Ram Kumar son of Sh. Babu Ram.
3. Harbhajan Singh son of Sh. Karam Singh.
4. Sube Singh son of Sh. Amarnath.
5. Shakti Chand son of Sh. Onkar Singh.
6. Tilak Raj Singh son of Sh. Babu Ram.
7. Nagar Singh son of Sh. Hazara Singh.
8. Satya Paul son of Sh. Swami Ram.
9. Jaipal Singh son of Sh. Saoran Singh.
10. Sukhdev Singh son of Sh. Tishlu.
11. Raghbir Singh son of Sh. Rulda Ram.
12. Bachittar Singh son of Sh. Sarwan Singh.
13. Kamlesh Kumar son of Sh. Prem Singh.
14. Harbans Kumar son of Sh. Shesh Ram Verma.
15. Ashok Kumar son of Sh. Om Parkash.
16. Hans Raj son of Sh. Kehar Singh.
17. Hem Raj son of Sh. Hukam Singh.
18. Suresh Kumar son of Sh. Sita Ram.

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19. Dinesh Kumar son of Sh. Mahant Ram.
20. Mukesh Kumar son of Sh. Devi Ram.
21. Jagbir Singh son of Sh. Maha Singh.
22. Mangal Singh son of Sh. Waryam Singh.
23. Chaman Lal son of Sh. Phina.
24. Baljit Singh son of Sh. Darshan Singh.
25. Dinesh son of Sh. Kuldeep Singh.

All posted as Helper, Gateman, Trachman, at office of the Divisional office, Ambala Cantt., Northern Railways, Ambala, District Ambala.

Applicants

... Versus

1. Union of India, Northern Railway Head Office, Baroda House, New Delhi, through its General Manager.
2. Union of India, Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training through its Secretary.
3. Divisional Railway Manager, Northern Railway, Ferozepur, District Ferozepur.
4. Divisional Office, Northern Railways, Ambala Cantt, District Ambala, through its Manager.
5. Headquarter Office, Church Gate Mumbai, Mumbai through its G.M.

Respondents

Present: Mr. Bikramjit Singh Bajwa, counsel for the applicants

Mr. Lakhinder Bir Singh, counsel for respondents no.1, 3 & 4 in OA No.060/00277/2014

Mr. Deepak Agnihotri, counsel for respondent no.2 in OA No.060/00277/2014

Mr. Rohit Sharma, counsel for the respondents in OA No.060/00827/2014.

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ORDER

HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. The claim made in both these OAs relates to the fixation of pay of Ex-Servicemen appointed as Helpers in the Railways on re-employment. Since the background of the matter and the grounds for relief are similar, these are disposed of through a common order. However, for convenience the facts are taken from OA No.060/00277/2014 wherein relief has been sought as follows:-

"8 (i) For quashing the order dated 09.01.2014 passed by respondent no.4 Chief Workshop Manager, Jagadhari being illegal, arbitrary on the ground that neither the notification of Ministry of Personnel was taken into consideration, nor any opportunity for having is granted to applicants before passing the order. Hence order dated 09.01.2014 passed by respondent no.4 is illegal, arbitrary and against principles of natural justice.

(ii) The order dated 09.01.2014 passed by respondent no.4 in which respondent no.4 have not considered the service rendered by the applicants in Army for fixation the pay in the form of increment for the service so recorded. As they are re-employed with respondent no.4 as the order is passed without giving them any opportunity of hearing.

(iii) For setting aside the order dated 09.01.2014 passed by respondent no.4 on the ground that neither the applicants were given any opportunity of hearing, nor they are allowed to place on record the relevant notifications which are ignored while passing the order which it say is against the principle of natural justice."

2. Averment has been made in the OA that Northern Railway issued advertisement dated 12.11.2010 for recruitment of Ex-Servicemen for posts of various categories in the Pay Band of Rs.5200-20,200 + 1800

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GP. The applicants applied for jobs against this advertisement and on 31.01.2011, they were all called for verification of original documents and medical examination. On 11.03.2011, all the applicants were issued the appointment letters recruiting them as Mechanical Helpers in Category 'f' i.e. Group 'D' at Northern Railway at Amritsar and the pay of the applicants was fixed at the entry level in the pay scale.

3. It is stated that later the applicants came to know that they were entitled to get their past service in the Army counted for fixation of pay with increments. They filed their representations in this regard before the respondents but to no avail. The applicants then filed OA No.1358/HR/2013, which was disposed of through order dated 04.10.2013 (Annexure A-7) directing the respondents to decide the representations of the applicants. However, the respondents without considering the facts and circumstances of the case and without affording opportunity of personal hearing to the applicants passed the impugned order dated 09.01.2014 rejecting the claim of the applicants (Annexure A-8). Hence, this OA.

4. In the grounds for relief, it has been stated that the notification dated 08.11.2010 (Annexure A-4) had been ignored by the respondents while fixing their pay on re-employment. Also the applicants being below 55 years of age at the time of their retirement from the Army were entitled to pay protection on their re-employment.

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5. In the written statement filed on behalf of the respondents, it has been stated that the applicants reported for joining at Jagadhar Workshop in March, 2011 and were posted after giving their consent for the post of Helper in Grade Pay of Rs.1800 in Pay Band of Rs.5200-20,200 subject to usual terms and conditions for governing their appointment. Their pay was fixed at the minimum of Pay Band i.e. Rs.5200-20,200 + GP Rs.1800 which they accepted without any objection (Annexure A-2 & A-2 Colly). The applicants' claim fixation of their pay by counting their service in Defence Forces which is not permissible as per Railway Board Circular RBE 2/87. It has further been stated that after introduction of running Pay Bands and Grade Pay as a result of the recommendations of the 6th Central Pay Commission, DOPT amended the relevant provisions of their 1986 orders by issuing OM dated 05.04.2010, which was adopted by the Railway Board order vide RBE 167/2011 dated 12.12.2011 (Annexure R-3). It was clarified that re-employed pensioners shall be allowed to draw pay only in the prescribed pay scale / pay structure of the posts on which they are re-employed. No protection of the scales of Pay / Pay Structure of the post held by them prior to retirement shall be given. Para 4(b) (i) states that in all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per entry pay in the revised pay structure of the re-employed post applicable in the case of direct recruits appointed on or after 01.01.2006. Para 3 stipulates that since Military Service pay is granted to Defence Forces officers /

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Personnel while they are serving in the Defence Forces, therefore, question of grant of Military Service Pay to such officers / personnel on re-employment in Civil Organizations does not arise. The applicants are ex-servicemen direct recruits, appointed after 01.01.2006 against the post of Helper PB Rs.5200-20,200+GP Rs.1800 in terms of notification of Railway Recruitment Cell, Northern Railway, dated 12.11.2010. They accepted the terms and conditions mentioned therein at the time of their appointment as Helper and hence they are estopped from claiming the pay which they were drawing at the time of their retirement from Military Service. They can draw pay only in the pay scale / pay structure in which they are re-employed and no benefit of past service is permissible to them.

6. Rejoinder has been filed on behalf of the applicants claiming that Western Railway had allowed the benefit of pay fixation with increments as sought by the applicants be treated similarly. Also pay fixation orders in respect of some re-employed ex-servicemen have also been appended with the rejoinder.

7. Arguments advanced by the learned counsel for the parties were heard, when learned counsel pressed that the pay of the applicants on re-employment should have been fixed taking into account their pay at the time when they were retired from the Army. Learned counsel stressed that the applicants were entitled to pay protection as they were ex-servicemen and they had been retired before the age of 55 years. He also

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referred to notification dated 08.11.2010 (Annexure A-1) regarding counting of Military Service Pay. Learned counsel also cited judgments in UOI & Ors. Vs. Vishva Deo in CWP No.534 of 2003, decided on 05.03.2003 and in UOI & Ors. Vs. Mool Singh & Anr. in CWP No.3946 of 2001, dated 07.12.2001, wherein it had been held that where a person who had retired before attaining the age of 55 years, on re-employment pay is to be fixed not at the minimum of the pay scale applicable to the post but at the same stage as last pay drawn before retirement.

8. Sh. Lakhinder Bir Singh, learned counsel for the respondents no.1, 3 & 4 in OA No.060/00277/2014, stated that the pensions of the applicants had been ignored while fixing their pay at the minimum of the pay scale of the post to which they recruited. He stated that this was in accordance with the copy of the Employment Notice dated 12.11.2010 (Annexure R-1). He also referred to RBE letter No.167/2011, dated 12.12.2011 (Annexure R-3) on the subject of "Applicability of Railway Services (Revised Pay) Rules, 2008 to persons re-employed in Railway service after retirement and whose pay is debitable to Railway Estimates, wherein reference has been made to OM dated 05.04.2010 issued by DOPT on the subject of "Applicability of CCS (RP) Rules, 2008 to persons re-employed in Government service after retirement and whose pay is debitable to Civil Estimates". Learned counsel drew attention to para 4(a), 4(b) (i) and 4(d) that read as follows:-

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

Note: Under the provisions of CCS (RP) Rules, 2008, revised pay structure comprises the grade pay attached to the post and the applicable pay band.

4(b)(i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per entry pay in the revised pay structure of the re-employed post applicable in the case of direct recruits appointed on or after 01.01.2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008.

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

- (i) No charge (for persons manning below Group A posts)
- (ii) In the case of Commissioned Service Officers belonging to the Defence Forces and Civilian pensioners who held Group 'A' posts at the time of their retirement, the first Rs.4000/- of the pension and pension equivalent retirement benefits shall be ignored."

He stated that the applicants were getting their pension on the basis of their Military Service. They had been provided re-employment as a measure of rehabilitation and had been appointed against the post of Helpers. As per the Employment Notice, the vacancies were to be filled in Pay Band-I Rs.5200-20,200 + GP Rs.1800 and on their joining their pay had been fixed accordingly.

9. Sh. Rohit Sharma, learned counsel for the respondents in OA No.060/00827/2014 seconded the arguments advanced by Sh. Lakhinder

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Bir Singh, learned counsel for respondents no.1, 3 and 4 in OA No.060/00277/2014.

10. We have given our careful consideration to the matter. From the content of para 4(a), 4(b) (i) and 4(d) as reproduced above it is quite clear that the applicants who retired after 01.01.2006 and who were reemployed in 2011 are not entitled to protection of their Military Service Pay as claimed by them. The judgments cited by the learned counsel for the applicants are not material to this case as these relate to the pre 2006 position while the applicants have retired after 2006 and have only got re-employment in 2011. They have also accepted the employment with open eyes as it was clear to them as per their appointment letters that no pay protection would be admissible to them. Hence, there being no merit in these OAs, the same are rejected. Copy of this order may also be placed in file relating to OA No.060/00827/2014.

**(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.**

**(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER**

Place: Chandigarh

Dated: 1. 5. 2015

Certified True Copy/प्रमाणित सत्य प्रतिलिपि

SV:

अनुभाग अधिकारी (न्याय/Secretary Officer (Jud.)

केंद्रीय न्यायिक अधिकारण

Central Administrative Tribunal (C.A.T.)

चंडीगढ़ वीट/ Chandigarh Bench

चंडीगढ़ / Chandigarh