(Reserved on 19.09.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00777/2015

This the ***05th*** day of ***October, 2018***

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Daya Shanker Sharma, s/o Nageshwar Sharma, presently posted as Helper-II, Electric Loco shed, Fazalganj, Kanpur - 208012.

.....Applicant

By Advocate: In person

Versus

1. The Union of India through Ministry of Secretary, Ministry of Railways, New Delhi - 110001.
2. General Manager, North Central Railway, Head Office, Subedar Ganj, Allahabad.
3. Divisional Railway Manager, North Central Railway, Allahabad.

.....Respondents

By Advocate : Shri Pramod Kumar Pandey

O R D E R

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicant has prayed for following main reliefs:-

> "(a). Issue/ pass an order or direction of appropriate nature to the respondents to grant the deserved and entitled benefits with regard to fixation of pay and allowances on his re-employment in the Railways as per the policy (OM) No. 3/19/2009-Estt. (Pay-II) dated 05.04.2010 (Annexure A-1) and so endorsed by Respondent No. 2 vide their letter No. 2014-E-RB/SSB/Misc./Bunch 25, dated 18.11.2014 (Annexure No. A-2).
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> (b). To issue and order of appropriate nature to the respondents to cancel / set aside the order dated 13.11.2014 (Annexure No. A-3) being per se illegal, arbitrary, capricious in nature and according to official hierarchical functioning it is bereft of jurisdiction."

2. The facts in brief are that the applicant in this case is a retired military personnel who has been reemployed by the respondents vide order dated 12.08.2011 (Annexure A-5 to the OA) after his retirement from the military establishment on 31.07.2009 (para 4.1 of the OA). He was appointed in the pay band of Rs. 5200-20200 with the grade pay of Rs. 1800 and his initial pay was fixed at the basic pay of Rs. 5200 plus grade pay of Rs. 1800 (total Rs. 7000/-) as per the order dated 12.08.2011, which was accepted by the applicant, who joined the post on reemployment. Thereafter, he submitted the representations for re-fixation of his pay as per the para 3(v) of the circular dated 05.04.2010 of the Department of Personnel and Training (in short DOPT) which has been adopted by the Railway Board vide letter dated 12.12.2011 (Annexure CR-4 to the counter reply) for protecting the pay he was drawing at the time of his retirement from the military service. Since his representations were rejected, the present OA has been filed by the applicant.

3. The case of the respondents is that the applicant is not entitled to protection of pay as per the para 4(a) and 4(b) of the DOPT circular dated 05.04.2010 and that the applicant is not entitled for the benefit of para 3(v) of the said circular dated 05.04.2010, which is applicable for the cases of reemployment prior to 01.01.2006. The respondents, in their Supplementary Counter Affidavit (in short SCA), have enclosed a copy of the order dated 01.05.2015 of Chandigarh Bench of this Tribunal in the case of Prithvi Nath Tiwari vs. Union of India (OA No. 277/2014) as Annexure no. SCA-4 to the SCA, in which similar claim of other employees was rejected by the Tribunal.

4. Main grounds taken by the applicant in the OA as well as in the Rejoinder filed in reply to the counter reply filed by the respondents:-

i. The order dated 13.11.2014 (Annexure A-3) issued by the respondent no. 3 rejecting the applicant's representation is not as per the policy of the Railway Board and DOPT circular dated 05.04.2010 (Annexure A-1) and the letter dated 18.11.2014 (Annexure A-2) of the respondent no. 2 in reply to the order dated 13.11.2014 (Annexure A-3).

ii. Other Central Government organizations have considered the case of the reemployed retired military personnel and extended the benefit of pay protection to other similarly placed employees.

iii. Specific examples of pay protection granted by the authorities to other similarly placed retired military personnel have been cited by enclosing copy of the orders at Annexure RA-1 to RA-6 to the Rejoinder filed by the applicant.

iv. The applicant has also enclosed copy of the orders of the Tribunal in some other similarly placed employees and requests for similar relief.

5. Main grounds on which the respondents have repelled the averments of the applicant are the following:-

i. The benefit of pay protection as per the para 3(v) of the DOPT circular dated 05.04.2010 is not available to the applicant as the said benefit is for the cases where the employee had retired from military service prior to 01.01.2006, where as the applicant had retired from military service on 31.01.2010.

ii. The case of the applicant is covered under the para 4(a) of the DOPT circular dated 05.04.2010, according to which the benefit of pay protection to the applicant cannot be given.

iii. The claim of the applicant is raised after unexplained delay.

iv. In similar cases, Chandigarh Bench of the Tribunal has rejected the case of the employees similarly placed as the applicant and copy of the order dated 01.05.2015 of the Tribunal has been enclosed with the SCA filed by the respondents in reply to the Rejoinder.

6. We have heard the applicant in person who also filed a written synopsis of the case, mainly reiterating the grounds taken in the pleadings and enclosing copy of the following judgments in support of his case:-

(i). Dhananjay Malik & Ors Vs. State of Uttaranchal & Ors – 2008 (3) Recent Apex Judgments 249

(ii). Order dated 18.06.2014 passed by CAT, Bangalore Bench in OA No. 1189 to 1196/2013 – P.M. Kayerappa & Ors Vs. UOI & Anr.

(iii). Order dated 26.06.2015 passed by Hon'ble High Court of Karnataka at Bengaluru in Writ Petition No. 6186/2015 (S-CAT) – UOI & Anr. Vs. P.M. Kayerappa & Ors.

(iv). Order dated 22.07.2016 passed by CAT, Madras Bench in OA No. 310/01207/2015 – N. Kalyana Kumar & Ors. Vs. UOI & Ors.

(v). Order dated 18.06.2014 passed by CAT, Bangalore Bench in OA No. 1483 to 1490/13 – Ranvir Singh Yadav & Ors. Vs. UOI & Orse.

(vi). Order dated 18.06.2014 passed by CAT, Bangalore Bench in OA No. 1276/2013 – N.V. Nagraj Udupa Vs. UOI & Ors.

7. Learned counsel for the respondents was also heard and he has also filed his written submissions, reiterating the grounds and the judgments cited in the main pleadings.

8. We have carefully considered the pleadings on record as well as the submissions/arguments of the learned counsels. The only question to be decided is whether the applicant, on reemployment by the respondents, is entitled for the benefit of protection of pay in accordance with the circular

dated 05.04.2010 of the DOPT which has been adopted by the Railway Board vide letter dated 12.12.2011 (Annexure CR-4 to the counter reply).

9. The applicant relies upon the para 3(v) of the DOPT circular dated 05.04.2010 and the subject matter of the para 3(v) states as under:-

> "(v) **Fixation of pay of personnel/officers who retired prior to 1.1.2006 and who have been reemployed after 1.1.2006:**....."

It is clear from above that the para 3(v) is applicable to the personnel/officers who had retired from service prior to 01.01.2006 and re- employed after 01.01.2006. The applicant was retired from military service after 01.01.2006, due to which his case will not be covered by the para 3(v).

10. Other ground mentioned by the applicant is that in a number of cases of ex-military personnel on re-employment, have been allowed the benefit of pay protection. It is seen from some of the pay fixation orders enclosed by the applicant with the Rejoinder, that the benefit of pay protection under para 3(v) of DOPT circular dated 05.04.2010 has been allowed to some ex-military personnel retired after 01.01.2006. No specific denial of the pleadings in para 5 of the Rejoinder has been incorporated in the SCA filed by the respondents. It is seen from the DOPT circular dated 05.04.2010 that the benefit of pay protection can also be given under revised para 4(b)(ii) as stated in the Table in para 2 of the said circular, which states as under:-

> "Para 4(b)(ii): In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial basic pay on re-employment shall be fixed at the same stage as the lest basic pay drawn before retirement. However, he shall be granted the grade pay of the re-employed post....."

Hence, in cases where entire pension and pensionary benefits are not ignored for fixation of pay, the benefit of pay protection is to be extended to these cases. How the cases of other employees cited in the Rejoinder are similar to the case of the applicant have not been specifically mentioned in the pleadings.

11. Further, the revised para 4(a) of the para 2 DOPT circular dated 05.04.2010, which is cited by the respondents in the impugned order dated 13.11.2014 to deny the benefit of pay protection to the applicant, states as under:-

> "Para 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……."

Above provisions imply that the protection of pay scale/pay structure of the re-employed retired employee cannot be granted and the re-employed person is entitled to the pay scale/pay band as per the term of re-employment. But the said provisions in para 4(a) does not state anything about the basic pay at which the pay of the re-employed person is to be fixed. This para 4(a) does not deny the benefit of protection of basic pay of the applicant prior to his retirement, if it is considered by the employer. It does not give any guarantee of protection of pay or pay scale, but it does not preclude possibility of the benefit of protection of pay or pay scale to the re-employed person depending on the terms and conditions of the re-employment.

12. The applicant has enclosed copy of a number of judgments in support of his case in his written synopsis filed after the hearing. In the case of Dhananjay Mallik (supra), the issue decided by Hon'ble Apex Court was whether as administrative instruction can override the provisions of a rule. This has no application to the case of the applicant, who has not cited any rule under which his case is covered. The applicant relies upon the executive instruction of DOPT to advance his claim. In the case of P.M. Kayerappa (supra) decided by Bangalore Bench of the Tribunal, the respondents were directed to re-fix the emoluments of the applicants as per para 3(v) for the cases of the employees. It is not clear from the order if the cases covered in the said order are similar to the case of the applicant with the date of retirement after 01.01.2006. Hence, the cited order will not be helpful to the applicant. In the case of N. Kalyana Kumar and others (supra) decided by Madras Bench of this Tribunal, the respondents were directed to extend the benefit of the pay protection taking into account the case of Mr. Tarun Chakraborty who was allowed such benefit by the Income Tax department. From the order, it appears that for the case of Mr. Tarun Chakraborty, it is mentioned that his pay at the time of retirement was Rs. 11,170/- which was revised to Rs. 15,750/-. Hence, Mr. Tarun Chakraborty had retired prior to 01.01.2006, where as the applicant had retired after 01.01.2006. Hence, the cited case is distinguishable. In the case of Ranvir Singh Yadav and others (supra) decided by Bangalore Bench of the Tribunal, it is not clear if the case of the applicant is similar to the case of the employees covered in that OA who seem to have retired prior to 01.01.2006. Similarly, in the case of N.V. Nagraj Udupa (supra) decided by Bangalore Bench, the applicant has not shown how his case is similar to the case of N.V. Nagraj Udupa in respect of the retirement date and deduction or non-deduction of pension from the pay after re-employment.

13. The respondents have cited the order dated 01.05.2015 of Chandigarh Bench of the Tribunal in the case of Prithvi Nath Tiwari and others (supra) in OA No. 277/2014 and OA No. 827/2014, it was held as under:-

> "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:-
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> .....
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> 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."

14. It is clear from above, that in the case of the employees in the case of Prithvi Nath Tiwari (supra), the date of retirement from military service was after 01.01.2006 (as stated in para 10 of the order dated 01.05.2015 extracted above), which is also the case for the applicant in the present OA. Hence, the case of the applicant is squarely covered under the order dated 01.05.2015 (Annexure SCA-4) and the applicant in this case, will not be entitled to the relief claimed in the OA.

15. It is seen from para 8 of the counter reply, that the case of the applicant has been dealt by the respondents under para 4(a) read with para 4(d)(1) of the DOPT circular dated 05.04.2010 (Annexure CR-3 to the counter reply). Under para 4(d)(1), the pension of the re-employed employee is to be fully ignored. The contentions have not been contradicted by the applicant, who has argued that his case should have been covered under para 3(v) of the said circular dated 05.04.2010. In a similar case of the employees, where the pension on account of military service has been ignored for pay fixation, the matter came up before Bombay Bench of this Tribunal in the case of B.N. Chauhan and others vs. Union of India through the Secretary, Ministry of Defence and others (OA No.

401/2013), where the employees after retirement from Armed forces, were re-employed by the Ministry of Defence and in the OA No. 401/2013, they had claimed the benefit of protection of pay citing the DOPT circular dated 05.04.2010. The Tribunal, vide order dated 19.08.2013 dismissed the OA No. 401/2013, with the findings as under (indiankanoon.org/doc/168922553):-

> "6. We have gone through the O.M. issued by DOP&T dated 05.04.2010 which deals with the applicability of Central Civil Services (Revised Pension) Rules, 2008 to persons re-employed in Government service after retirement and whose pay is debitable to civil estimates. These Rules were amended after the introduction of a system of running pay band and the grade pay. The revised provision proposed in the said O.M. have been extracted and reproduced herein below for convenience:
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> > 'Para-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 C.C.S. (R.P.) Rules, 2008, revised pay structure comprises the Grade Pay attached to the post and the applicable Pay Band.
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> > Para-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.'
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> 7. We have carefully considered the contentions raised by the Applicants in the Original Application. We have also carefully perused the impugned order at Annexure A-1 dated 20.03.2012. Relevant portion from the impugned order is extracted hereinbelow for convenience:
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> > 'As per Para 4(a) of Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Personnel and Training, New Delhi, letter No.03.19.2009 Estt. (Pay-II) dated 5th April 2010, Re-employed Pensioners shall be allowed to draw only minimum of pay of the prescribed pay scale / Pay structure of the post in which they are re-employed on Protection of the scales of Pay/Pay Structure of the post held by them prior to retirement shall be given.
> >
> > Also refer Para 4(b)(I) of proposed revised provision wherein all cases where the pension is fully ignored, the initial pay on reemployment 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 notified vide Section II, Part 'A' of First Schedule to C.C.S.(R.P.) Rule 2008.'
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> 8. A perusal of the above provision would clearly reveal that the Applicants are entitled to draw only minimum of pay of the prescribed pay scale / pay structure of the post in which they were 8 OA.401/2013 re-employed since they are already drawing pension for the period of service rendered by them in the Army. In case, however, the Applicants would not have been drawing the Pension, their pay would have been fixed as contended by them in the present Original Application. We are,

therefore, not convinced by the arguments advanced by the Applicants that the pay has been wrongly fixed."

The applicant's case in the present OA before us is similar to the case of the employees in OA No. 401/2013 as the pension received by the applicant from the military establishment has been ignored fully while fixing his pay after re-employment under the Railways and the applicant was retired from Armed Forces after 01.01.2006 like the employees in the OA No. 401/2013.

16. Regarding the point of delay raised by the respondents, it is observed that the matter pertains to dispute about fixation of pay at the time of re-employment of the applicant vide order dated 12.08.2011. The claim pertaining to fixation of pay as per the rule is considered to be a recurring cause of action. Hence, the objection on account of delay has no force.

17. In the circumstances as discussed above, we are not able to accept the reliefs prayed for in the OA, which is liable to be dismissed following the order dated 01.05.2015 of Chandigarh Bench of the Tribunal in the case of Prithvi Nath Tiwari (supra). Accordingly, the OA is dismissed. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...