

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00602/2016

DATED THIS THE 03rd DAY OF FEBRUARY, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Dr.K.Mathivanan
Age 49 years, S/o.V.Krishnaraj
Farm Superintendent
Central Cattle Breeding Farm
Hessarghatta
Bangalore-560088.
.....Applicant

(By Advocate Sri B.Venkateshan)

Vs.

1. The Union of India
Represented by the Secretary
Ministry of Agriculture
Department of Animal Husbandry,
Dairying & Fisheries
Krishi Bhavan
New Delhi-110001.
2. The Joint Secretary
Cattle & Dairy Development (CDD)
Department of Animal Husbandry,
Dairying & Fisheries
Krishi Bhavan
New Delhi-110001.
3. Joint Commissioner
Cattle Breeding Farm (CBF)
Department of Animal Husbandry,

Dairying & Fisheries
Krishi Bhavan
New Delhi-110001.
....Respondents

(By Shri.S.Prakash Shetty, Senior Panel Counsel)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant has filed the present OA seeking a direction on the respondents to consider his case to protect his last pay drawn in the Army Service and regulate the pay in the civil post after he re-joined his previous post held by him before his deputation to Army service as per FR & SR rules, with all consequential benefits accruing there from, in the interest of justice.

2. According to the applicant, he initially served in the Tamilnadu Government from 22.1.1990 to 30.11.1990 in Group-B service. Thereafter, he was selected and joined the Army w.e.f. 20.7.1992 and worked in the Army up to 4.1.1998 reaching the rank of Major and at the time of discharge from the Army, he was in the scale of Rs.8000-13500 as applicable to Class-1 post in the Civil side of the Central Government. Following his discharge from the Army, he worked in a private company for about 15 months i.e. up to 13.3.1999. He had applied for a post of Veterinary Assistant Surgeon in the pay scale of Rs.6500-10500 pursuant to the notification issued by the UPSC and on being selected he was offered the appointment to the post of Veterinary Asst.Surgeon in Central

Cattle Breeding Farm vide OM dtd.13.8.1998(Annexure-A2). He joined the said post on 15.3.1999. In the year 1999, he again applied for a post of Farm Superintendent(Class-1) in the scale of Rs.8000-13500 to the UPSC and on being selected he was appointed as Farm Superintendent vide order dtd.19.6.2000(Annexure-A3). He joined the said post w.e.f. 12.7.2000 and he continues to work in the same post till now.

3. According to the applicant, his service rendered in the State Government as well as in the Army should be counted for grant of pension and retiral benefits including the last pay drawn in the Army service. Therefore his basic pay of Rs.10500/- which he was drawing at the time of discharge from the Army service has to be protected while fixing his pay in the civil post. He submitted that though various provisions have been prescribed for giving benefit of pay fixation, the applicant's pay drawn at the time of retirement was not protected while fixing his pay in civil post as provided under rules. On joining the civil post, his pay was fixed only at Rs.6500/- in Group-B cadre and subsequently when he was selected in Group-A scale, it was fixed at Rs.8000. The applicant further submitted that he has been representing to the authority concerned on several occasions between 1999 to 2006(Annexures-A4 to A11) to consider his case for protection of his pay last drawn with consequential benefits. But his case has not been considered till date. He also mentioned that in an identical case of Sri

Dr.R.K.Drolia, Veterinary Asst. Surgeon, his past service rendered by him from 1987 to 1992 was protected and his pay was fixed under Rules FR-22(1)(a)(11) based on his last pay drawn in the previous post (Annexure-A12). Therefore, the applicant claims that he is entitled for protection of his last pay drawn in the Army service while fixing his pay in the civil post.

4. The respondents have filed a reply statement in which they have submitted that the facts highlighted by the applicant was examined by the department and it is noted that before his re-employment in the Government, he had worked in a private company due to which there is a break of service of more than 14 months. As per the pay fixation in terms of Order 8 of the CCS(Fixation of Pay of re-employed Pensioners) orders, 1986, the benefit of advance increments equal to the number of completed years of military service under the order would be admissible only when the re-employment of the Officer is against an unreserved vacancy. No condonation of gap whatsoever is involved, as per the said 1986 orders. But in the case of applicant, there is a gap and discontinuity for more than 14 months between the discharge from the Military service and the applicant joining the civil post which disqualifies him for protection of pay.

5. The respondents further submitted that the applicant had been unauthorisedly absent from duty from 01.10.2009 to 02.06.2013 for which the departmental enquiries was conducted and major penalty was

imposed against him. The respondents further submitted that in an identical case of Dr.M.Santosh in the department, the matter has been referred to DoPT for clarification and in reply, DoPT has clarified that 'in so far as pay fixation in terms of Order 8 of the CCS (Fixation of Pay of re-employed Pensioners) orders, 1986 is concerned, the benefit of advance increments equal to the number of completed years of Military Service under the order would be admissible only when the re-employment of the officer is against an unreserved vacancy. No condonation of gap whatsoever is involved, as per the said 1986 orders'. Referring to the case of Dr.R.K.Drolia mentioned by the applicant, they stated that Dr.Drolia was in the State Government from 23.11.1987 to 17.06.1992 and he joined the Department of Animal Husbandry NCT, Delhi w.e.f. 18.6.1992. Therefore, he moved from one Government to another and accordingly his pay fixation was made. However, the applicant had worked for a private company for 14 months and hence there is a break of service. Any gap or discontinuity in the service will disqualify for the protection of pay.

6. The applicant has filed a rejoinder in which he practically reiterated the submission already made in the OA and say that various Govt. rules/OMs/FRSR provide for condonation of break in service for pay fixation and pension purposes even for temporary posts. Such condonation is done by Ministry up to one year of break in service and by the Govt. for a

period up to three years. Therefore, the Govt. can easily condone the break in service.

7. The respondents have filed additional reply in which they practically reiterated the submission already made in the reply statement and no new facts have been brought out.

8. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while reiterating the submission made in the OA and the rejoinder stated that the applicant was discharged from Army service and had received many medals while serving in Army. No doubt there is break in service during which the applicant worked for a private company. However, various rules and Government orders provide for condonation of break in service for pay fixation and also for pension purposes even for temporary posts. Therefore, the gap of 14 months can easily be condoned by the Government. However, the Government slept over the matter for so many years and denied the benefits which are due to the applicant.

9. Per contra, the Learned Counsel for the respondents while highlighting the submission made in the reply statement emphasised on the fact that the applicant had joined the private service in between for 15 months and there is break in service. Hence the applicant's request cannot be considered in terms of CCS (Fixation of Pay of re-employed

Pensioners) orders, 1986. He also referred to various infractions committed by the applicant including unauthorised absence for which penalty was imposed.

10. We have carefully considered the facts of the case and submissions made by either side. From the records, it is evident that initially after working in the State Government for nearly 10 months, the applicant joined the Indian Army under Short Service Commission from July 1992 till January 1998. Thereafter, he worked in a private firm for 14 months following which he first joined the Central Government in Group-B post through UPSC selection process in March 1999. Thereafter, he again joined the post of Farm Superintendent in July 2000 on being selected by the UPSC. The issue raised by the applicant is whether he is entitled to the pay protection of the Military service.

11. It appears from the records that the applicant made representation regarding his pay fixation between 1999 and 2006. But it was not raised anytime during the next 10 years till the present OA was filed in 2016. When the department had taken up the matter with DoPT they had referred to a similar stand taken earlier in the case of Dr. Santhosh M vide their ID Note No. No. 1148745/16-Estt. (Pay-II) and para 3 of the said note reads as follows:

“3. In so far as pay fixation in terms of Order 8 of the CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 is

concerned, the benefit of advance increments equal to the number of completed years of military service under the Order would be admissible only when the re-employment of the Officer is against an unreserved vacancy. No condonation of gap whatsoever is involved as per the said 1986 Orders.”

13. The respondents in terms of the advice of the DoPT had taken a stand that in view of the 14 months gap during which the applicant had served in a private company he is not entitled to any advance increment/pay protection. The applicant in the rejoinder and also during the hearing did not contradict the stand of the respondents and only submitted that the Government can condone the delay if they so wish. With reference to a case referred to by the applicant in the OA where shift from the State Government to the Government of India was involved, pay protection was allowed but there was no gap in service in that case. But in this case there is a gap of 14 months between the applicant's discharge from the armed forces and joining the government services, and as contended by the respondents, the applicant is not entitled to get the benefit. Whether the respondent department/Government of India can condone the delay and consider the matter as submitted by the applicant it is up to the respondents to take a view but they cannot be mandated to condone the gap and provide benefit to the applicant.

14. On detailed consideration of facts and circumstances of the case we hold that the contention made by the applicant does not merit

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any consideration and hence the OA being devoid of merit stand dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in the OA.170/00602/2016

Annexure-A1: LPC No.ARCH/M/179976 dt:11.3.1999
Annexure-A2: OM No.12-1/96-Admn.111, dt.13.8.1998
Annexure-A3: OM No.12-17/98/Admn-111, dt.19.6.2000
Annexure-A4: Applicant's representation dt.16.4.1999
Annexure-A5: Applicant's representation dt.14.3.2000
Annexure-A6: Applicant's representation dt.3.7.2000
Annexure-A7: Applicant's representation dt.21.1.2001
Annexure-A8: Applicant's representation dt.24.9.2004
Annexure-A9: Applicant's representation dt.24.9.2004
Annexure-A10: Applicant's representation dt.13.5.2005
Annexure-A11: Applicant's representation dt.16.5.2006
Annexure-A12: LPC No.F1[14]/92/AHD/Estt/4716-19, dt.25.1.95

Annexures with reply statement:

Annexure-R1: Copy of directions of DoP&T dated 16.08.2016
Annexure-R2: Copy of Last Pay Certificate

Annexures with rejoinder:

-NIL-

Annexures with addl. reply statement:

-NIL-
