

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01696/2015

DATED THIS THE 04th DAY OF AUGUST, 2017

HON'BLE JUSTICE SHRI HARUN UL RASHID, MEMBER (J)

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

P.N.Shankara
S/o.Narayana Bhat
Aged 47 years
Working as Postal Assistant
Puttur (D.K.) HPO
Puttur-574 201
Residing at Panjigudde House
P.O. Padnur
Puttur (D.K.)-574 220.

.....Applicant

(By Advocate Shri A.R.Holla)

Vs.

1. Union of India
By Secretary
Department of Posts
Dak Bhavan
New Delhi - 110 001.

2. The Secretary
Ministry of Personnel, Public Grievances & Pension
Department of Personnel & Training
Khan Market
New Delhi-110 003.

3. The Postmaster General
S.K.Region
Bngaluru-560 001.

4. The Senior Superintendent of Post Offices
Puttur (D.K.) Division
Puttur (D.K.)-574 201.

.....Respondents

(By Advocates Shri M.Raja Kumar for R1-4)

O R D E R (ORAL)

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

The applicant has filed the present OA seeking the following relief:

i. *To quash the DoPT ID Note No.1101965/2015-Estt. (Pay-II) dated 28.08.2015 issued by the respondent No.2 read with the order dated 15.09.2015 issued by the respondent No.1 and communicated by the respondent No.4 vide Endt.No.B1/9-5/dlgs dated at Puttur the 30.09.2015, collectively produced herewith as Annexure-A6.*

ii. *Direct the respondents to fix the initial pay of the applicant at the stage drawn by him in military service on his re-employment in Postal Department, as per Rule 7 of the CCS(RP) Rules, 2008, in pursuance of the O.M. dated 05.04.2010, Annexure-A8 and extend consequential benefits accordingly.*

2. The applicant retired from the Indian Army on 31.09.2008 and his pension was fixed vide Pension Payment Order (PPO) dated 6.9.2009 (Annexure-A1). He was holding the post below commissioned officer rank while in military service. He was reemployed as Postal Assistant in the Postal Department in PB-1 i.e. Rs.5200-20200 with Grade Pay of Rs.2400 on 11.7.2010 (Annexure-A2).
3. The applicant submits that his pay was fixed at the minimum of the re-employed post and hence he was of the view that his fixation of pay is not as per the extant rules and the pay drawn by him in military service at the time of his retirement was not considered. Therefore, the applicant along with other similarly situated employees submitted representation to the respondent No.1 on 28.7.2015 bringing to his notice the anomaly in fixing his pay and with a request to set right the same by directing the concerned officers to fix his pay as per Rule 7 of the CCS(RP) Rules,2008 (Annexure-A5). However, the said request was turned down by the respondent No.1 vide order dated 15.9.2015 citing the clarification issued by the respondent No.2 dated 28.8.2015 (Annexure-A6). The clarification states that as per para 4(b)(i) of CCS(Fixation of pay of re-employed Pensioners) Orders, 1986, as amended by OM dated 5.4.2010, the initial pay on reemployment shall be fixed as per the entry pay in the revised pay structure of the reemployed post applicable in the case of direct recruits appointed on or after 1.1.2006 as notified vide

Section II, Part A of First Schedule to CCS(RP) Rules, 2008. There is no provision for protection of last pay drawn before retirement in such cases.

4. The applicant submitted that the reemployed Government servants were excluded from the purview of the CCS(RP) Rules, 2008 initially vide Rule 2(2) (vii) thereof. However, it became applicable to the reemployed Government servants after retirement as per the Office Memorandum dated 11.11.2008 issued by the respondent No.2 (Annexure-A7). Further, the ex-servicemen are reemployed as per the guidelines of the Government of India notified vide 'Ex-Servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 and their initial pay is regulated vide OM dated 31.7.1986 as amended by OM dated 11.11.2008 and 5.4.2010. The orders governing the initial pay fixation of re-employed ex-servicemen in the Central Government Civil Departments have been streamlined and promulgated under CCS(Fixation of pay of re-employed pensioners) 1986 vide OM dated 31.7.1986. Para 4(d) (i) of OM dated 31.7.1986, which has been kept intact vide OM dated 5.4.2010 provides that in case of persons retiring before 55 years and who are re-employed, pension (including pension equivalent of gratuity and other forms of retirement benefits) shall be ignored for initial pay fixation in case of ex-servicemen who held posts below Commissioned Officer Rank in Defence Forces. Further para 2(1) of the OM dated 11.11.2008 provides that the initial pay of a re-employed Government servant who is deemed to have elected to be governed by the revised pay scales from 1.1.2006 shall be fixed according to the provisions of Rule 7 of the CCS(RP) Rules, 2008. This implies that the initial pay of the applicant should be fixed in respect of his pre-retirement pay (substantive pay) and hence the present fixation of pay is not correct. The impugned order dated 28.8.2015 r/w 15.9.2015 indicates that the instructions issued for fixation of pay do not provide for pay protection. The applicant is

not asking for pay protection, but for fixation of his initial pay on re-employment in the pay structure of the re-employed post duly applying Rule 7 of the CCS(RP) Rules, 2008 as contemplated in OM dated 11.11.2008. Therefore, the applicant prays that his initial pay on re-employment should be fixed at the stage he was drawing before retirement from military service by granting the grade pay attached to the re-employed post in the applicable pay band.

5. The respondents have filed their reply statement in which they corroborated the fact that the applicant retired from military service when he was holding the post which is below the rank of Commissioned Officer. He was reemployed in the Postal Department as Postal Assistant under the Ex-Servicemen quota. His pay was fixed in the pay band (PB-I) of Rs.5200-20200 with Grade Pay of Rs.2400. The respondents referred to DOPT OM dated 5.4.2010 regarding applicability of CS(RP) Rules, 2008 to persons re-employed in Government Service after retirement saying that re-employed pensioners who held posts below the rank of Commissioned Officer (Armed Forces) and whose pension is completely ignorable, shall draw pay in the minimum of the prescribed pay scale/ prescribed entry level pay corresponding to the applicable grade pay of the post in which they are re-employed as the case may be. They have also referred to Rule 8 of the CCS(RP) Rules, 2008 which related to fixation of initial pay in the revised pay structure employed on or after 1.1.2006 and say that the said rules would be relevant to the applicants and accordingly their pay was fixed. The applicant had submitted representations to the respondents with a request to re-fix their initial pay on their reemployment at the same stage of pay last drawn by them at the time of their retirement from military service. Though there was absolutely no merit in the said claim, a reference was made to the Postal Directorate seeking their clarification of the matter who in turn took up the

matter with the nodal Ministry of DOPT. The DOPT vide ID Note dated 28.8.2015 clarified that in case of Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement before 55 years of age, the entire pension and pension equivalent of retirement benefits shall be ignored, that is no deduction on this count is to be made from the initial pay fixed on re-employment. Further the initial pay on reemployment shall be fixed as per the entry pay in the revised pay structure of the reemployed post applicable in the case of direct recruits appointed on or after 1.1.2006. The clarification given by the DOPT vindicates the stand taken by the respondents which in any case was based on hard facts and extant rules on the subject. Fixing initial pay on reemployment at the same stage would amount to protection of last pay drawn which is not mandated by the rules. There is no provision for protection of last pay drawn before retirement, in such cases. The fact was communicated to the applicant by the respondent No.4.

6. The respondents further submitted that the pay of the applicant was rightly fixed as per Rule 8 of the CCS(RP) Rules, 2008 at the minimum entry level of pay of the re-employed post. Referring to OM dated 11.11.2008 they stated that para-7 of CCS(RP) Rules 2008 deals with fixation of initial pay in the revised pay structure of a Government Servant, who are elects or is deemed to have elected to come over to the new pay structure w.e.f. 01.01.2006. According to the rule, the pay in the pay-band/pay-scale will be determined by multiplying the existing basic pay as on 01.01.2006 by a factor of 1.86 and the resultant figure rounded off to the next multiple of 10. The option to come over to the new pay structure w.e.f. 01.01.2006 is available only to those government servants in employment/re-employment as on 01.01.2006. This makes it amply clear that Rule 7 can be applied only in cases where the

person was already in re-employment as on 1.1.2006. Therefore, demand for applying Rule 7 or fixing initial pay on re-employment at the same stage of pay as drawn by the applicant before retirement from military service is farfetched and not substantiated by rules. Therefore, the pay of the applicant was fixed rightly in accordance with Rule 8 of the CCS(RP) Rules 2008.

7. The respondents further submitted that it is important to understand the logic behind the fact that initial pay of re-employed ex-servicemen whose pension is completely ignored cannot be at the same stage as drawn at the time of retirement. The applicant is eligible to receive two pensions, one military and one civil. The Military Pension is calculated on the LPD. Again at the time of retirement from civilian post, his pension will again be based on LPD. Therefore, if the initial fixation on re-employment from military service, it would amount to taking this element twice for pensionary benefits. No government servant shall be allowed to enjoy unintended benefit not mandated by the rules by sheer illogical misinterpretation of rules to self-serve.
8. The respondents further submitted that there is nothing unjustified in the clarification issued by the DOPT and by the respondents and also the manner in which the pay of the applicant was fixed on his reemployment in the Postal Department following his retirement from the Army. The respondents have also filed memo enclosing therewith the order passed by this Tribunal in OA.No.1337/2015 and also OA.414/2015 whereby the Tribunal had held that when the applicant continues to draw the pension on retirement from Army, his salary on his re-employment shall have to be fixed as per the entry pay in the revised pay structure of the reemployed post as applicable in the direct recruits.
9. Heard the Learned Counsel for the parties. The Learned Counsel for the

applicant while reiterating the submission made in the OA, submits that in terms of OM dated 11.11.2008, the pay of the applicant should have been fixed as per Rule 7 of the CCS(RP) Rules, 2008 and the last pay drawn by the applicant in his job in military service should be considered while fixing his pay in the re-employed post in the Postal Department. Referring to the order of the Tribunal which was submitted by the respondents in some OAs, he submitted that the order was passed relying on the Hon'ble Apex Court order in Civil Appeal No.9873/2013. In the said of the Apex Court, the employee therein had agreed to get his pay fixed as per the minimum of pay in the pay scale of Clerk which is not the case of the present applicants. Moreover, the applicant has been reemployed in civilian post after the new pension scheme came in to force and hence, the applicant would not be getting double pension as envisaged. Therefore, he submitted that the pay of the applicant should have been fixed taking into account the last pay drawn by him while in military service.

10. The Learned Counsel for the respondents, on the other hand, referred to the detailed submission made in the reply statement and submits that the OM dated 11.11.2008 deals with fixation of pay of a person who was on reemployment as on 1.1.2006. The applicant joined on reemployment after 1.1.2006 i.e. after the implementation of the 6th CPC. Hence the OM dated 11.11.2008 has no applicability in the case of the applicant and his pay has to be fixed in terms of Rule 8 of CCS(RP) Rules. This has also been stated by the DOPT in an ID note which has been circulated by the Postal Department. He further submits that the arguments of the Ld.Counsel for the applicant that since he has joined after 1.4.2004, they will not be getting pension from the civilian post is also not correct as he will come under the new pension scheme which is also a pension scheme but with a difference in accordance

with Govt. of India policy. This issue has also been decided by the Tribunal with reference to the order of the Hon'ble Apex Court in Civil Appeal No.9873/2013 and it was clearly held that where the applicant was continued to draw pension, his pay has to be fixed as per entry pay in the revised pay structure of the reemployed post applicable in the case of direct recruits. Hence there is no ambiguity in the action taken by the respondents and the contention of the applicants has no merit.

11. It is clear from the facts of the case and submissions made by either side that the applicant retired from military service and is getting pension for the service rendered by him while in Indian Army. He was subsequently reemployed as direct recruits in the ex-servicemen quota in the Postal Department. On his joining to the Postal Department, his pay was fixed as per the entry pay in the revised pay structure of the reemployed post which is applicable to the direct recruits. The applicant has claimed for fixing their pay taking into consideration the service rendered by them in Indian Army and fix his pay at the same stage last drawn pay prior to retirement from the defence service. The matter was examined by the Postal Department in consultation with the DOPT and they clarified the position vide their communication dated 15.9.2015 enclosing the ID Note of the DOPT dated 28.8.2015 which is under challenge in the present OA.

12. The DOPT in their ID note dtd.28.8.2015 has observed as follows:

Department of Personnel & Training

Establishment (Pay-II)

Reference preceding notes

D/o Posts may please refer to their proposal on preceding page seeking clarification regarding fixation of pay of re-employed/ex-servicemen pensioners retiring before attaining the age of 55 years, who held posts below commissioned officer rank in the Defence Forces and also whether the last pay drawn before retirement is subject to protection.

2. The matter has been examined in this Department. It is pointed out that paras 4(a), 4(b)(i) and 4(d)(i) of DOS (Fixation of Pay of Re-employed Pensioners) Orders, 1986 as amended vide this Department's OM. No.3/19/2009-Estt.(Pay.II) dated 5.4.2010, provide that in case of ex-servicemen who held post below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement before 55 years of age, the entire pension and pension equivalent of retirement benefits shall be ignored, that is, no deduction on this count is to be made from the initial pay fixed on re-employment. Also, in terms of the Para 4(b)(i) of CCS (Fixation of Pay of Re-employed Pensioners) Orders, 1986, as amended vide this Department's O.M. No.3/19/2009-Estt.(Pay.II) dated 5.4.2010, the initial pay on re-employment shall be fixed as per the entry pay in the revised pay structure of the re-employed post applicable in the case of direct recruits appointed on or after 1.1 .2006. as notified vide Section II, Part A of First Schedule to CCS(Revised Pay) Rules, 2008. These instructions do not provide for protection of last pay drawn before retirement, in such cases.

3. Deputy Secretary (Pay) has seen.

sd/-

(Pushpender Kumar)
Under Secretary(Pay)

D/o Posts [ADG (Estt.)], Dak Bhawan, New Delhi
DoPT ID Note No. 1101965/2015-Estt.(Pay-II) dated 28th August 2015.

13.The OM dated 5.4.2010 which has been referred to by both sides regarding applicability of CCS(RP) Rules, 2008 to persons re-employed in Government Service after retirement provides as follows:

After the introduction of the system of running pay bands and grade pays, it has been decided to amend the relevant provisions of CCS (fixation of pay of re-employed pensioners) Orders, 1986 in the manner indicated below: -

Existing Provision	Proposed revised provision
<u>Para 4(a):</u> Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay of the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.	<u>Para 4(a):</u> 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.
<u>Para 4(b)(i):</u> In all cases where the	<u>Para 4(b)(i):</u> In all cases where the

pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.	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 1.1.2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008.
<u>Para 4(d)</u> : 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:-	<u>Para 4(d)</u> : 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:-
<u>Para 4(d)(i)</u> : In the case of ex-servicemen who held posts below Commissioned Officer rank in the Defence Forces and in the case of civilians who held posts below Group 'A' posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.	<u>Para4(d)(i)</u> : No change.

14.The Hon’ble Apex Court in Civil Appeal No.9873/2013 arising out of SLP(C)

No.17881/2008 observed vide para-10 of its order as follows:

10. Upon hearing the learned counsel and upon perusal of the option form dated 18-7-1990, in our opinion, the High Court was in error while allowing the petition because it is clearly revealed from the option form that the respondent had agreed to get his pay fixed as per the minimum of pay in the pay-scale of the Clerk, the post to which he had been re-employed. It is pertinent to note that the respondent has been getting regular pension from the Indian Army for his past services rendered to the Indian Army. As per the provisions of the Orders and as per the option exercised by the respondent, service rendered by the respondent to the Indian Army cannot be taken into account for the purposes of his pay fixation as the respondent would be getting his pension and there would not be any deduction from his pension or his salary on account of the pension received by him from the Indian Army. If nothing has been deducted from the pension of the respondent upon being re-employed and as the respondent would continue to get his pension and other benefits from the Army for his past services, in our opinion, the High Court was not right while permitting the respondent to get his higher pay fixed by taking into account the services rendered by the respondent to the Indian Army. Even from sound common sense, it can be seen that for the past service rendered to the Indian Army, the respondent is getting pension and other perquisites which a retired or discharged soldier is entitled to even after being re-employed. The respondent would, therefore, not have any right to get any further advantage in the nature of higher salary or a higher pay scale, especially when nothing from his salary was being deducted on account of his getting pension or perquisites from the earlier employer.

15.The order of the Hon’ble Apex Court is very clear. The applicant is getting

pension and other perquisites for the past service rendered to the Indian Army even after being re-employed. Therefore, he would not have any right to get any further advantage in the nature of higher salary or a higher pay scale since the pension and other perquisites are not being deducted. The Learned Counsel for the applicant had mentioned that the applicant will come under the new pension scheme as he has joined after 1.4.2004 and hence he cannot said to have been receiving two pensions. We do not agree with the said contention. The applicant will be covered under the new pension scheme which is applicable to all the employees who joined service after 1.4.2004 in addition to drawing pension for the service rendered in the Army.

16. This Tribunal vide order dated 18.6.2014 in OA.No.1093/2013 and order dated 3.2.2017 in OA.No.414/2016 also held that when the military pension is ignored and the applicant continued to draw pension, his salary on reemployment shall have to be fixed as per entry pay in the revised pay structure as applicable in the direct recruits. Hence, there is nothing wrong in the stand taken by the respondents or the manner in which the pay of the applicant has been fixed.

17. The OM dated 11.11.2008 is specifically applicable for fixation of pay on reemployment in Government Service on 1.1.2006. Since the applicant has been reemployed after 1.1.2006 and has been allowed the revised pay scales, Rule 7 of the CCS(RP) Rules, 2008 will have no applicability in his case.

18. On detailed consideration, we are of the view that there is no ambiguity in the stand taken by the DOPT in its ID Note dated 28.8.2015 which was circulated by the Postal Department vide their communication dated 15.9.2015. We also hold that the manner of pay fixation of the applicant under Rule 8 of the

CCS(RP) Rules 2008 on his reemployment in the Postal Department is clearly in order. Therefore, there is nothing irregular or unjustified in the action taken by the respondents in the fixation of pay of the applicant. Hence, we hold that the OA is clearly devoid of any merit and is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

