

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01724/2015

DATED THIS THE 17th DAY OF AUGUST, 2017

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

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

Honnaly Reddy M.H.
S/o. Hema Reddy
Aged 51 years
Working as Office Assistant
O/o Superintendent of Post Offices
Chitradurga-577 501
Residing at No.315/A, 6th Cross, 2nd Main
IUDP Layout
Chitradurga-577 501.

.....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
Bengaluru-560 001.

4. The Superintendent of Post Offices
Chitradurga Division
Chitradurga-577 501.

....Respondents

(By Advocates Shri M.Raja Kumar)

O R D E R

(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 Order No.E2/Pay Fixation/dlgs dated at Chitradurga-577 501 the 27.10.2015 collectively produced herewith as Annexure-A7.

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-A9 and extend consequential benefits accordingly.

2. The facts of the case are as follows:

The applicant retired from the Indian Army on 30.04.2004. At the time of his retirement, he was holding the post of Naib Subedar, which is below commissioned officer rank. On his retirement, his pension was fixed vide Pension Payment Order (PPO) dated 24.3.2004 as amended subsequently on 15.6.2005 and 4.10.2011(Annexure-A1). On being selected by the Postal Department as direct recruit candidate for the post of Postal Assistant vide order dated 26.9.2005(Annexure-A2), he was directed to undergo induction training commencing from 27.9.2005 to 10.12.2005. During the training period, he was to get a stipend of Rs.2800+ admissible DA. On completion of his training, he was appointed as Postal Assistant vide order dated 5.1.2006 in the pay scale of Rs.4000-100-6000(Annexure-A3). The applicant submits that his pay was initially fixed at Rs.4000(at the minimum of the re-employed post) as would be evident from the pay slip at Annexure-A4 which corresponds to Rs.7510+2400 as per CCS(RP) Rules, 2008. According to the applicant, his pay was not fixed as per the extant rules and the pay drawn by him in the military service at the time of his retirement was not considered. Therefore, the applicant submitted representation to the respondent No.3 on 22.6.2015 with a request to fix his initial pay on re-employment at the same stage of pay last drawn by him before retirement from military service (Annexure-A5). He also submits that in terms of Rule 7 of the CCS(RP) Rules, 200, his pay is required to be fixed in the pay structure/pay scale of the re-employed post at the same stage of pay last drawn by him in military

service. However, his pay was fixed as per Rule 8 of the CCS(RP) Rules, 2008 at the minimum entry level pay of the re-employed post. The representations of the applicant and other similarly situated employees were referred to the Director of Accounts(Postal) and subsequently it was turned down by order dated 15.9.2015 citing the clarification issued by the respondent No.2 dated 28.8.2015 stating 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.

3. 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-A8). 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.

4. 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 on 5.1.2006. His pay was fixed in the pay band (PB-I) of Rs.5200-20200 with Grade Pay of Rs.2400. His initial pay was fixed at Rs.9910/-. 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 applicant and accordingly his pay was fixed. The applicant had submitted representation to the respondents with a request to re-fix his initial pay on his reemployment at the same stage of pay last drawn by him at the time of his 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.
5. 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 candidate 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.

6. 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.
7. 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 applicants was fixed on their reemployment in the Postal Department following their 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.

8. Heard the Learned Counsel for the parties. The Learned Counsel for the applicant while highlighting the submission made in the OA stated that the applicant was deemed as appointed in September 2005 when he was sent for training and therefore in terms of OM dated 11.11.2008, his pay should have been fixed as per Rule 7 of the CCS(RP) Rules, 2008. Further 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 logic given by the respondents that the applicant cannot be allowed two pensions, he submits that the applicant has been re-employed in civil post after new pension scheme came into force. As such he cannot be given double pension as envisaged. Therefore, he prayed that the respondents be directed to fix the pay of the applicant taking into account the last pay drawn by him in the military service.
9. The Learned Counsel for the respondents, on the other hand, referred to the reply statement and submits that the applicant was formally appointed on 5.1.2006 i.e. after the CCS(RP) Rules 2008 came into effect w.e.f. 1.1.2006. Therefore, his pay was fixed in terms of Rule 8 of CCS(RP) Rules 2008. Further he submitted that the last pay drawn in the military service cannot be taken into consideration while fixing the pay. On the argument of the Learned

Counsel for the applicant that the applicant would not be getting two pensions, he submits that a person who joins the Government service after 1.4.2004, will be getting pension from civilian post under the new pension scheme which is also a pension scheme but with a difference in accordance with Govt. of India policy.

10. We have carefully considered the facts of the case and submissions made by either side. It is an admitted fact that the applicant retired from military service and is getting pension from the service rendered by him while in military service. Subsequent to his retirement, he was re-employed as Postal Assistant under the ex-servicemen quota in the Postal Department. On his selection, he was asked to undergo induction training from 27.9.2005 to 10.12.2005. After successful completion of induction training, he was formally appointed as Postal Assistant vide order dated 5.1.2006. After implementation of the 6th Pay Commission, his pay was fixed at PB-1 i.e. Rs.5200-20200 with Grade Pay Rs.2400 and with initial pay of Rs.7510+2400(GP). There are two issues involved in this case i.e whether the applicant's pay will be fixed in terms of Rule 7 or Rule 8 of CCS(RP) Rules 2008 and whether his pay will be fixed based on last pay drawn at the time of retirement from military service.

11. The applicant claims that his appointment should be reckoned from September, 2005 when he was sent for training and hence his pay should be fixed under Rule 7 of CCS(RP) Rules 2008. The respondents, on the other hand, claim that the applicant is appointed on 5.1.2006 and hence his pay should be fixed under Rule 8 of the CCS(RP) Rules, 2008. Rule 7 of CCS(RP) Rules 2008 reads as follows:

7. Fixation of initial pay in the revised pay structure.

(1) The initial pay of a Government servant who elects, or is deemed to have elected under sub-rule (3) of Rule 6 to be governed by the revised pay structure on and from the 1st day of January, 2006, shall, unless in any case the President by special order otherwise directs, be fixed separately in respect of his substantive pay in the permanent post on which he holds a

lien or would have held a lien if it had not been suspended, and in respect of his pay in the officiating post held by him, in the following manner, namely:-

(a) in the case of all employees:-

(i) the pay in the pay band/pay scale will be determined by multiplying the existing basic pay as on 1-1-2006 by a factor of 1.86 and rounding off the resultant figure to the next multiple of 10.

(ii) if the minimum of the revised pay band/pay scale is more than the amount arrived at as per (i) above, the pay shall be fixed at the minimum of the revised pay band/pay scale.

12. As mentioned above, the Rule 7 stipulates fixation of initial pay by multiplying the existing basic pay as on 1.1.2006 by a factor of 1.86 and if the minimum revised pay is more than the amount arrived at, the pay shall be fixed at the minimum of the revised pay band. Rule 7 does not stipulate that the pay of a re-employed person should be fixed based on the last pay drawn at the time of his retirement in his previous service. If theoretically the applicant's date of joining is taken in September 2005 i.e. prior to revised pay rules, it need to be seen the basic pay he will be entitled to by applying Rule 7 of the CCS(RP) Rules 2008. His appointment was in the scale of Rs.4000-100-6000 and initially it was fixed at Rs.4000. On multiplication by a factor of 1.86, the basic pay of Rs.4000 would come to Rs.7440 in the revised pay structure which is less than the minimum basic pay in which his pay was fixed in the revised pay scale i.e. Rs.7510. Therefore, even if the pay of the applicant is fixed under Rule 7 of CCS(RP) Rules 2008 then also he will only get the minimum pay fixed for that post in the revised pay structure which is Rs.7510. Therefore, in his case, it does not make any difference that whether his pay is fixed as per Rule 7 of the CCS(RP) Rules or Rule 8 of CCS(RP) Rules 2008 which stipulate fixation of pay in the revised pay structure of pay of the direct recruits to a particular post at the entry level.

13. The other issue is with regard to the claim of the applicant for fixation of his

pay based on the last pay drawn at the time of retirement in military service. As we have already mentioned that Rule 7 does not stipulate any fixation of pay of a re-employed person based on the last pay drawn at the time of previous service. In the case of a re-employed person, when the pension has been ignored, the revised pay has to be fixed at the minimum of the pay in the pay scale of a post in which he has joined. The observation of the Hon'ble Apex Court vide para-10 of its order in Civil Appeal No.9873/2013 arising out of SLP(C) No.17881/2008 is quite relevant. The said para-10 of the above order reads 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.

14. When a person is getting pension and other perquisites for the past service rendered to the Indian Army even after being re-employed, there would not have any right to get any further advantage in the nature of higher salary or a higher pay scale. This Tribunal also held vide order dated 18.6.2014 in OA.No.1093/2013 and order dated 3.2.2017 in OA.No.414/2016 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 level pay in the post to which they joined. Therefore, even if the pay of the applicant is fixed

under Rule 7 of the CCS(RP) Rules, it would not exceed the minimum of the pay in the revised pay structure. Had the applicant put on more service in the pre-revised pay scale and was drawing a basic pay which when multiplied by a factor of 1.86 would have exceeded than the minimum pay in the revised pay structure, then only his pay could have been fixed at a higher stage. But in the present case, even if theoretically the applicant's pay is fixed under Rule 7 of CCS(RP) Rule 2008, his basic pay will not exceed the minimum pay of direct recruits in the revised pay structure.

15. Therefore, in the light of the discussion in the preceding paras, we are of the view that the applicant is not entitled to any further relief in the matter of pay fixation. Accordingly, we hold that the OA is devoid of any merit and is liable to be dismissed.

16. Accordingly, the OA stands dismissed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(JUSICE HARUN UL RASHID)
MEMBER (J)

/ps/

