

OA.No.170/00027/2017/CAT/Bangalore Bench
 CENTRAL ADMINISTRATIVE TRIBUNAL
 BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00027/2017

DATED THIS THE 29th DAY OF AUGUST, 2017

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

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

T.R.Ramesh Kumar
 S/o.T.Hanumantha Rao
 Aged about 43 years
 Working as Postal Assistant
 General Post Office(GPO)
 Bangalore.01.Applicant

(By Advocate Shri Izzhar Ahmed)

Vs.

1. Union of India
 Through the Secretary
 Ministry of Communication & Information Technology
 Department of Posts
 Dak Bhavan
 Parliament Street
 New Delhi -01.
2. The Senior Superintendent of Posts
 Bangalore East Division
 Department of Posts
 Bangalore-25.
3. The Director of Accounts (Postal)
 Department of Posts
 Karnataka Circle, GPO Building
 Bangalore.
4. The Secretary
 Department of Personnel & Training
 North Block
 New Delhi-110 001.Respondents

(By Advocates Shri M.Raja Kumar)

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. *Set aside the impugned letter No.132/PAM-1/RK/OA.413/2016 dated 05.07.2016(Annexure-A7) as illegal and against the*

notification dated 25.11.1958, 15.12.1979, 14.08.2014 and the DoP&T's OM dated 31.07.1986, 11.11.2008, 05.04.2010 and the letter dated 19.05.2015 and also against the parameters of the rules of law prescribed for the pay fixation of ex-servicemen.

ii. Direct the respondents to consider the case of the applicant for pay fixation on re-employed post as Postal Assistant considering the last pay drawn counting of past services with all consequential benefits.

2. The applicant submits that after serving 18 years and 04 months in the Indian Air Force as Photo Fitter, he was discharged on 12.12.2008 in the pay of Rs.10,780/- in PB-1 with grade pay of Rs.2800. He was allowed pension vide Pension Payment Order dated 17.7.2009(Annexure-A1 & 2). Pursuant to the notification issued by the Chief Postmaster General, Andhra Pradesh for recruitment of the Postal Assistant against the vacancies of Ex-servicemen quota (Annexure-A3), the applicant applied for the said post and was re-employed under the ex-servicemen quota on 3.6.2011. His pay was fixed at the entry level i.e. Rs.7710/- in scale of PB1 with Grade Pay of Rs.2400. Thereafter the applicant filed representation dated 11.9.2014 for fixing his pay in the re-employed post based on the last pay drawn in Indian air Force. However the same was rejected by the respondents on 20.5.2015(Annexure-A4). Thereafter, the applicant has filed a further detailed representation referring to relevant guidelines of the DOPT and rules prescribed for pay fixation of pay in case of ex-servicemen counting of past service(Annexure-A5). Since no action was taken, the applicant filed OA.No.413/2016 before this Tribunal and the Tribunal vide order dated 1.4.2016 disposed of the OA directing the respondent No.3 to consider and pass reasoned and speaking order on the representation(Annexure-A6). The respondent No.3 however rejected the claim of the applicant vide order dated 5.7.2016(Annexure-A7) stating that in terms of the clarification of DOPT vide OM dated 15.9.2015 and 28.8.2015(Annexure-A20 & 21), the pay was correctly fixed at Rs.7710/-. According to the applicant, the respondent No.3 did not consider basic formula for pay fixation prescribed by DOPT OMs dated 25.1.1958,

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11.11.2008, 31.7.1986, 5.4.2010, 28.8.2015 & 15.9.2015 and failed to apply its mind on the prescribed rule. According to the applicant, he was re-employed under the ex-servicemen quota and hence his pay should be fixed in terms of DOPT OM dated 11.11.2008.

3. Applicant further referred to Rule-19 of Central Civil Service (Pension) Rule-1972 which provides for the government servant to exercise the option under that sub-rule within three months of date of issue of such order. On re-employment, his pay was fixed without allowing to exercising option by considering past service and the last pay drawn by him while fixing his pay at the re-employed post. He also submits that respondent No.3 has not considered the prescribed procedure of eligibility for pay fixation of ex-servicemen on re-employed post vide DOPT OM dated 31.7.1986. The DOPT had issued an OM dated 5.4.2010 referring OMs dated 11.11.2008 and 31.7.1986 while introducing running pay band and amended relevant portions of OM dated 31.7.1986. The respondents have not considered Para-(2)(vii) of OM dated 11.11.2008 while rejecting the case of the applicant. The applicant has also referred to the order issued by the Chief Postmaster General regarding pay fixation of ex-serviceman on re-employed post. He has also referred to the judgments of the Tribunal as well as the Hon'ble High Court and Hon'ble Supreme Court in support of his contention though the said orders have no relevance to the case of the applicant. However the applicant submits that he is entitled to the relief sought by him.

4. The respondents have filed reply statement in which they have admitted the fact that the applicant retired from Indian Air Force holding the post below the rank of a commissioned officer and joined the Department of Posts on 3.6.2011 as Postal Assistant. In accordance with the extant rules on the subject, the applicant's initial pay was fixed in accordance with Rule 8 of CCS(RP) Rules, 2008 and under the provisions of Para 4(b)(i) of CCS(fixation

of pay of re-employed pensioners) orders 1986 as amended vide OM dated 5.4.2010. The said OM provides for fixation of pay as per entry pay in the revised pay structure of 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 the First Schedule to CCS(RP) Rules, 2008. The applicant has filed OA.No.413/2016 before this Tribunal challenging the fixation of pay of ex-servicemen on re-employment. Based on the direction of the Tribunal vide its order dated 11.4.2016 to consider the representation and pass a reasoned speaking order, the matter was considered by respondent No.3 and a detailed speaking order was issued on 5.7.2016 and the same was informed to the applicant. The speaking order covers all the aspects raised by the applicant and held that the applicant's pay was correctly fixed.

5. The respondents submitted that several DOPT OM's referred to by the applicant have no relevance to the present case. The Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders 1986 was in supersession of all the previous orders on the subject and stated that the initial fixation of pay and other benefits on re-employment of ex-servicemen pensioners will be governed by the CCS(Fixation of Pay of Re-employed Pensioners) Orders 1986. Under Rule-19 of CCS(Pension) Rules 1972, re-employed ex-servicemen have an option to continue to draw military pension/retain gratuity received on discharge from military service or have his previous military service as qualifying service for civil pension. This option too comes with provisos and is exercisable within 3 months from the date of issue of order of appointment. The option is for counting of military service for civil pensions only and not for initial pay fixation. Hence, Rule-19 of the CCS(Pension) Rules 1972 cannot be invoked for pay fixation purposes. Clause 4(b)(i) of OM dated 5.4.2010 states that in all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed as per

OA.No.170/00027/2017/CAT/Bangalore Bench 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. In the case of the applicant, the pension is fully ignored and hence the initial pay fixation has been done correctly. There is no scope for exercising option for fixation of pay on re-employment in civil service for any category of ex-servicemen other than those who served as combatant clerks and store man. This concession for combatant clerks and store keepers is because these posts in the services are viewed as on par with the UDC/Jr.clerk and storekeeper in civil establishment also. For all other categories, the initial pay fixation is in accordance with the CCS(Fixation of pay of re-employed pensioners) orders 1986 and time to time Government of India decisions, orders and clarifications thereto.

6. The respondents further submitted that the Directorate have vide their letter dated 15.09.2015 circulated the clarification given by the DOPT vide DOPT ID Note No.1101965/2015-Estt.(Pay-(iii) dated 28.8.2015. The Directorate, vide letter dated 25.7.2016 reiterated the fact that initial pay in respect of ex-servicemen who held post below the rank of a commissioned officer, retired before attaining the age of 55 years and whose pension is completely ignorable and re-employed in civilian posts shall be fixed as is done in respect of fresh recruits after 1.1.2006. The last pay drawn in military service is of no consequence. Referring to various Court judgments quoted by the applicant, they submit those cases are applicable to that of individual cases and cannot be made applicable to the instant case. They also referred to the order dated 3.2.2017 passed in OA.No.414/2016 and also order dated 28.7.2016 passed in OA.No.1377/2015 by this Tribunal(Annexures-R1 & R2) wherein it was clearly held that when the applicant continues to draw pension, his salary on his re-employment shall have to be fixed as per the entry pay in the revised pay structure of the re-employed post as applicable in the direct recruits.

Therefore, they submit that the applicant's contention does not hold any merit.

7. During the hearing, the Learned Counsel for the applicant referred to the contention made in the OA. However, he agreed that in similar cases, this Tribunal had dismissed the OA filed by the applicants as contended by the respondents. The Learned Counsel for the respondents also referred to the earlier decision passed by this Tribunal in such and submits that the speaking order passed by respondent No.3 is justified and in accordance with the extant rules on the subject.
8. We have considered the facts as submitted by both sides. There is no dispute in the fact that the applicant was an ex-serviceman having retired from the Indian Air Force and continues to draw the pension for the service rendered in the Air Force. He was re-employed in the Postal Department under the ex-serviceman quota. The issue of pay fixation of ex-serviceman who continues to draw pension was earlier considered by this Tribunal in OA.No.1337/2015 & OA.No.414/2016. The Tribunal in its order dated 3.2.2017 in OA.No.414/2016 held vide para-14 to 16 as follows:

14. A reference has been made by both the sides to OM dated 05.04.2010 relating to applicability of CCS (RP) Rules, 2008 to persons re-employed in Government service after retirement. The Paragraph 4(a) and 4(b) (i) of the said OM mentions as follows:-

Existing Provision	Proposed Revised Provision
Para 4(a):- 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.	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 CCS (RP) Rules, 2008, revised pay structure comprises the grade pay attached to the post and the applicable pay band.
Para 4(b) (i):- 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	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

pay of the re-employed post.	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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The above provision indicates that for the re-employed pensioners holding posts below the rank of commissioned officer (Armed Forces) and whose pension is completely ignored, initial pay of re-employment shall be fixed as per the last pay drawn of the re-employed post in case of direct recruits.

15. During the hearing, learned counsel for the applicant mentioned that the applicant continues to draw the pension. Hence in this case when 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 and as applicable to the direct recruits appointed on or after 01.01.2006. The Rule 8 of the CCS (RP) Rules, 2008 also provides for fixation of pay in the revised pay structure of employees appointed as fresh recruits on or after 01.01.2006. It has also been submitted by the learned counsel for the respondents that based on the representation of the applicant, the matter was referred to the Directorate, who took up the matter with DoP&T seeking clarification and the DoP&T ID No.1101965/2015-Estt(Pay-II), dated 28.08.2015, clarified as follows:-

“.....It is pointed out that paras 4(a), 4(b) (i) and 4(d) (i) of CCS (Fixation of Pay of Re-employed Pensioners), Orders, 1986 as amended vide this Department’s OM No.3/19/2009-Estt(Pay-II), dated 05.04.2010, provide that 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 OM No.3/19/2009-Estt.(Pay-II) dated 05.04.2010, 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 01.01.2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008. These instructions do not provide for protection of last pay drawn before retirement, in such cases....”.

A similar issue was also raised before this Tribunal in OA No.170/01337/2015 and vide its order dated 28.07.2016 the Tribunal held as follows:-

“Whenever a military Ex-servicemen retiree applies for and obtains a new engagement under the government, his prospects shall be fixed in two ways. If the military pension is ignored, then it shall be at the rate of minimum scale available under direct recruitment at the same level, but if it is not ignored and taken into account in fixing his pay, then his earlier service will come into play and in accordance with only that pay will be fixed.

But in this case, both the parties admit that pension is ignored while fixing the pay and it is given in accordance with Rule 4(b), therefore, there is no lacunae in the order passed by the respondents. OA lacks merit and is, therefore, dismissed. No order as to costs.”

16. On detailed consideration, we are of the view that since in this case, the applicant continues to draw the pension, his salary on his re-employment shall have to be fixed as per the entry pay in the revised pay structure of the re-employed post as applicable in the direct recruits. Therefore, we do not find

anything unjustified or irregularity in the action taken by the respondents in fixing the pay of the applicant.

9. The case of the applicant in the present OA is exactly similar to the said cases and he continues to draw pension for the service rendered in the Air Force. Therefore, his salary on re-employment in the Postal Department shall have to be fixed as per the entry pay in the revised pay structure of the re-employed post as applicable to direct recruits. Hence, we do not find anything unjustified in the stand taken by the respondents and the speaking order passed by them on 5.7.2016(Annexure-A7).

10. Therefore, 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)

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Annexures referred to by the applicant in the OA.170/00027/2017

Annexure-A1: A copy of service certificate dated 12.12.2008

Annexure-A2: A copy of pension payment order dated 17.7.2009

Annexure-A3: A copy of notification dated 05.10.2010

Annexure-A4: A copy of letter dated 20.5.2015

Annexure-A5: A copy of representation dated 27.6.2015

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- Annexure-A6: A copy of order dated 01.04.2016 in OA.No.413/2016
- Annexure-A7: A copy of impugned letter dated 05.07.2016
- Annexure-A8: A copy of notification dated 09.01.2002
- Annexure-A9: A copy of letter dated 18.11.2011 and Notification dated 03.11.2011
- Annexure-A10: A copy of extract Rule-19 of Pension Rule-1972
- Annexure-A11: A copy of Notification dated 15.12.1979
- Annexure-A12: A copy of Notification dated 04.10.2012
- Annexure-A13: A copy of DoP&T's OM dated 14.08.2014
- Annexure-A14: A copy of OM of Ministry of Finance dated 25.11.1958
- Annexure-A15: A copy of DoP&T's OM dated 31.07.1986
- Annexure-A16: A copy of Notification dated 29.08.2008
- Annexure-A17: A copy of DoP&T's OM dated 11.11.2008
- Annexure-A18: A copy of DoP&T's OM dated 05.04.2010
- Annexure-A19: A copy of DoP&T's OM dated 08.11.2010
- Annexure-A20: A copy of DoP&T's OM dated 28.08.2015
- Annexure-A21: A copy of letter dated 15.09.2015
- Annexure-A22: A copy of application under RTI dated 09.01.2016 and reply dated 15.02.2016
- Annexure-A23: A copy of office order dated 08.05.2012
- Annexure-A24: A copy of office order dated 25.06.2013
- Annexure-A25: A copy of office order dated 03.07.2014
- Annexure-A26: A copy of office order dated 13.07.2015
- Annexure-A27: A copy of office order dated 14.07.2015
- Annexure-A28: A copy of index of OA.413/2016 dated 29.03.2016

Annexures with reply statement:

- Annexure-R1: A copy of the order dated 03.02.2017 passed in OA.No.414/2016
- Annexure-R2: A copy of the order dated 28.07.2016 passed in OA.No.1337/2015
