

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00014/2018

DATED THIS THE 08th DAY OF AUGUST, 2019

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Keshava Bhat K
S/o.Shri Krishna Bhat K
Aged about 46 years
Working as Postal Assistant
o.o: Sub-Post Office
Uppinangady Post-574241
Karnataka.

....Applicant

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Senior Superintendent of Post Office
Puttur (DK) Division
Puttur (DK)-574201.
2. Union of India
through the Secretary
Department of Post
(Establishment Division)
Dak Bhavan
Sansad Marg
New Delhi-110 001.

....Respondents

(By Advocates Sri V.N.Holla, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant in a nutshell is that the applicant was discharged from the post of Combatant Clerk after completing 20 years 9 months of service from Indian Army on 30.11.2010(Annexure-A1). He was drawing last pay of Rs.11,830 + GP Rs.4200 while discharging from Indian Army. After going through the selection process vide notification dtd.5.10.2010(Annexure-A2), he was

appointed by the 1st respondent for the post of Postal Assistant in the initial pay of Rs.9,910 + GP Rs.2400 vide appointment order dtd.5.4.2011(Annexure-A3). He filed the OA.No.1655/2015 challenging the DoP&T ID Note dtd.28.8.2015, which was dismissed by this Tribunal vide order dtd.4.8.2017. Then he submitted representations dtd.14.8.2017, 16.10.2017 & 26.9.2017(Annexures-A4, 5 & 6 respectively) requesting for pay fixation under Para 16 of OM dtd.31.7.1986 counting of service following annual increments and requested to permit for exercising option. The 1st respondent vide impugned letter dtd.15.12.2017(Annexure-A7) rejected the representations stating that the OM dtd.31.7.1986 has been amended by OM dtd.5.4.2010(Annexure-A8). The applicant submits that the 1st respondent has not stated as to how para-16 of order 1986 which is not amended in subsequent OM dtd.5.4.2010, is not applicable in his case and passed non-speaking order. Aggrieved by the same, he filed the present OA seeking the following relief:

i. Set aside the impugned letter No.B1/9-24A/dlgs at Puttur dtd.15.12.2017 (Annexure:A-07) as illegal, against the OMs dtd.25.11.1958 and 31.7.1986 and ID note dtd.28.8.2015 as well as against the parameters of the rules of law.

ii. Direct the respondent-01 to consider the case of the applicant for pay fixation on re-employed post following one increment each year of Military service in terms of the Policy vide OM dtd.25.11.1958(Annexure-A9) and para-16 of the OM dtd.31.7.1986(Annexure-A10) providing an opportunity of option in terms of the orders dtd.24.9.2007 in WP.32064/2008(Annexure:A18) and dtd.26.9.2014 in OA.4047/2013 (Annexure-a20) with arrears and consequential benefits.

iii. Grant relief or relief as deemed fit and proper, with costs while applying wrong rules, in the interest of justice and equity.

2. The applicant referred to Min. of Expenditure OM dtd.25.11.1958(Annexure-A9) regarding pay fixation of ex-servicemen wherein at para(b) it states that 'pay fixation following one increment for each year of service' will cause under hardship (the last pay drawn in Military should be higher to the pay of the re-

employed post). In view of the above OM, in the case of *Union of India & Ors. Vs. Mool Singh & Anr* the Hon'ble High Court of Rajasthan held that 'It appears to be true that for removing such hardship by fixing the pay at the minimum of pay scale under OM dtd.25.11.1958'. The applicant referred to DoP&T OM 31.7.1986(Annexure-A10) stating that the respondents are bound to follow the procedure prescribed under the said OM. The respondents have wrongly applied para-4(b) (i) of OM dtd.5.4.2010 in the impugned order dtd.15.12.2017.

3. The applicant submits that the Dept. of Expenditure issued notification dtd.29.8.2008(Annexure-A11) i.e. CCS(RP) Rules 2008 wherein para-2(2) (vii) states that 'persons re-employed in Govt. Service after retirement' which shall not be applied. The DoP&T issued amendment of Rule 2(2) (vii) of (RP) Rules 2008 vide OM dtd.11.11.2008(Annexure-A12) wherein Rule-6 states that 'in the case of persons who are already on re-employment, the pay may be fixed on the basis of the orders w.e.f. 1.1.2006, provided they opt to come under these orders'. The applicant being re-employed on 11.4.2011 is eligible to exercise option in terms of para-16(2) of DoPT OM dtd.31.7.1986 following Rule 6 of CCS(RP) Rules 2008 and the same is not considered by the respondent No.1 to exercise the option by the applicant. The respondents have not provided opportunity to the applicant to exercise the option within the prescribed period from the date of re-employment as per Rule-19 of CCS(Pension) Rule 1972(Annexure-A13). The 2nd respondent issued a letter dtd.15.9.2015(Annexure-A14) for implementation of the DoP&T's ID note dtd.28.8.2015(Annexure-A15) in the Dept. of Posts considering the eligibility criteria for pay fixation of ex-servicemen on re-employed post. The 1st respondent has not considered the eligibility criteria of the applicant in the impugned letter dtd.15.12.2017. The DoP&T issued a clarification

dtd.10.2.2016(Annexure-A17) regarding pay fixation of ex-combatant clerk as per Para 16 of OM dtd.31.7.1986 which is not amended by DoP&T OM dtd.5.4.2010. He submits that Dept. of Posts issued an order of pay fixation of a Postal Assistant dtd.21.1.2015(Annexure-A16) counting of service following increment value of 3% but whereas it is not applied in his case. He submitted representation dtd.14.8.2017 quoting the identical cases of *P.N.Raveendaran Pillai vs. UOI in WP.No.32064/2008* of Hon'ble High Court of Kerala(Annexure-A18) and *Gurubachan Singh vs. UOI in OA.No.4047/2013* of CAT, Principal Bench(Annexure-A20) stating that he is also eligible to be extended the same benefits given in those cases. The 1st respondent has violated Articles 14, 311(2) and 309 and ignored the letter dtd.15.9.2015 and the DoP&T OM dtd.10.2.2016 in the impugned order.

4. On the contrary, the respondents have submitted in their reply statement that the applicant at the time of applying to the post of Postal Assistant under Ex-servicemen quota with the respondent department, furnished his designation in military service as 'JCO Clerk'(Annexure-R1) which is below Commissioned Officer Rank. He was re-employed as 'Postal Assistant' w.e.f. 11.4.2011 and his pay was fixed as per Rule 8 of the CCS(RP) Rules, 2008 at the minimum entry level of pay of the re-employed post i.e. in PB-1 + GP Rs.2400. In accordance with DoPT OM dtd.5.4.2010 and DoPT ID Note dtd.28.8.2015, re-employed pensioners below the rank of commissioned officer whose pension is completely ignorable, 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 scale of pay/pay structure of the post held by them prior to retirement shall be given. When a representation dtd.3.11.2014 submitted by the applicant to re-fix his initial

pay on his re-employment, at the same stage of pay last drawn by him at the time of his retirement from military service, a reference was made to the Postal Directorate seeking clarification for uniform application of the provisions governing the subject. Then the DoPT issued clarification vide ID note dtd.28.8.2015. In terms of para 4(a), 4(b)(i) and para 4(d)(i) of CCS (Fixation of pay of re-employed pensioners) Orders, 1986, as amended vide DoPT OM dtd.5.4.2010, 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. The initial pay on re-employment of such pensioners 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(Revised Pay) Rules, 2008. These instructions do not provide for protection of last pay drawn before retirement, in such cases. The decision of the Directorate was communicated to the applicant vide 1st respondent endorsement dtd.30.9.2015(Annexure-R2). Then the applicant approached this Tribunal in OA.No.1674/2015 & batch to fix his pay as per Rule 7 of CCS(RP) Rules 2008 and the Tribunal vide order dtd.4.8.2017(Annexure-R3) dismissed the same holding that the pay fixed in their case is in order. The applicant filed representations requesting to refix his initial pay as per Para 16 of CCS(Fixation of Pay of Re-employed Pensioners) orders 1986 promulgated vide DoPT OM dtd.31.7.1986 applicable to the ex-combatant clerks of Army re-employed as LDC or Junior Clerks in Civil posts. The applicant was communicated with the reply vide letter dtd.15.12.2017 stating that the DoPT

OM dtd.31.7.1986 has been amended subsequently by the Government vide OM dtd.5.4.2010. Having retired before attaining the age of 55 and having served in a non-commissioned post wherein the entire portion of pension is ignorable, his pay was fixed at the minimum of the band/grade as applicable to his entry cadre in accordance with Rule 4 of the CCS(Fixation of Pay of re-employed pensioners) orders, 1986. As per Para 16 of CCS orders, 1986, the option to have the initial pay fixed is available to ex-combatant clerks on their re-employment in civil establishment as LDCs/Junior Clerks only. In the instant case, the applicant joined civil employment as Postal Assistant which is not equal to that of LDC. The DoP&T clarification vide dtd.10.2.2016 is specific to ex-combatant clerks re-employment as Junior Court Assistants. There is no dispute in the fact that ex-combatant clerks have the option to get their pay fixed initially on employment in civil establishment as LDC/Junior Clerk. But, whether those reemployed as PAs who claim to be ex-combatant clerks whereas their recorded rank is something different, Naib Subedar in the instant case is to be established. In other words whether Naib Subedar is a combatant post and PA comes under the category of LDC/Junior Clerk is to be decided. In the instant case the post of PA cannot be equated to that of an LDC/Junior Clerk as PA is higher grade. At the time of appointment as PA, the applicant did not submit that he served in the armed forces as a combatant clerk. Further the PPO indicates his rank as Naib Subedar only based on which initial fixation was done. The certificate dtd.17.9.2016 submitted by the applicant which is not in any official letter head of the issuing office, cannot be taken at face value because it needs to be established that the post held by the ex-servicemen was indeed a combatant post vis-à-vis the rank held being Naib Subedar.

5. The respondents submit that as per Rule 19 of the CCS(Pension) Rules, 1972, the ex-servicemen on re-employment in a civil service or post have the 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. It is very clear that the option is for counting of military service for civil pension only and not for initial pay fixation. The provisions of these rules shall apply to such persons also who were in re-employment on 1.1.2006. However the applicant was appointed as Postal Assistant on 11.4.2011 which is after 1.1.2006. The Directorate letter dtd.15.9.2015 and ID Note dtd.28.8.2015 are perfectly in order. This vindicates the manner in which the applicant's initial pay on re-employment was fixed. It is only now, the applicant is claiming to have been a combatant clerk in the armed forces whereas his rank mentioned in the PPO is Naib Subedhar. The cases cited by the applicant are case specific applicable to the parties of the case concerned and cannot be made applicable to all universally. Accordingly, the OA being devoid of merit is liable to be dismissed.
6. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the respondents have admitted that the applicant was discharged from Military service from the post of JCO Clerk and was re-employed to the post of Postal Assistant as clerical post the nature of duty for the administrative requirement. Therefore, the eligibility criteria for the pay fixation i.e. (a) below 55 years at re-employment (b) below commissioned officer and (c) the last pay drawn in Military service should be higher to the re-employed post is not denied by the respondents. The office order dtd.30.9.2015(Annexure-R2) is

not against the applicant following common eligibility either Para 16 or Para 4 of OM dtd.5.4.2010 and para-16 of DoP&T OM dtd.31.7.1986 has not been amended by the DoP&T OM dtd.5.4.2010. It is well settled rule that the last pay drawn and the scale in Military service should not be protected in terms of Para 1(b) of OM dtd.25.11.1958 and the applicant also not requested the same. Hence, para 4 of OM dtd.31.7.1985 as amended by the DoPT OM dtd.5.4.2010 is not applicable in his case. The judgments cited by him were not challenged by the respondent department. The OA.4047/2013 was disposed of on 26.9.2014 with the direction for pay fixation of ex-servicemen on re-employed post in terms of Para 16 of OM dtd.31.7.1986 which the respondents implemented without challenging it on the ground that Para 16 has not been amended. Hence, the order has binding effect on the respondents in the case of the applicant also and the impugned order is liable to be set aside on this ground. The DoP&T OM dtd.8.11.2010(Annexure-Re24) protected the pension of the ex-servicemen regarding fixation of pay on re-employed post. Para 1(b) of OM dtd.25.11.1958 is eligibility criteria for pay fixation and the same is neither amended nor modified. The respondents vide letter dtd.1.1.2015(Annexure-Re25) has implemented the said para granting one increment counting of military service on the same eligibility. The CAT, Principal Bench in OA.No.34/2009 vide order dtd.20.2.2014(Annexure-Re26) has considered one increment for each year following para 1(b) of OM dtd.25.11.1958. Hence, the respondents are bound by the orders passed by the Courts because the same are implemented by them.

7. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Both the parties have filed their written arguments note. The applicant in this case had earlier filed an OA.No.1655/2015

which was dismissed by this Tribunal vide order dtd.4.8.2017 wherein this Tribunal had gone into the details of the contentions raised by the applicant relating to the fixation of pay and dismissed the same as clearly devoid of any merit. In the present application, the applicant would claim for the revised pay fixation based on para-16 of OM dtd.31.7.1986 wherein ex-combatant clerks on their re-employment as Lower Division Clerks or Junior Clerks have an option to fix their pay in accordance with the number of completed years of service rendered in the clerical posts in the armed forces. The applicant would also cite this Tribunal's order in OA.No.534/2017 dtd.16.4.2019 in which we had allowed the contentions of the applicant therein to be considered under para-16(2) of 1986 order. The issue in all these cases is relating to the fixation of pay duly taking note of the fact whether the pension or other retiral benefits are to be ignored totally or not. Consistently we have held the position that where the entire pension and other retiral benefits have to be ignored, the re-employed persons will have to be considered as per para-4(b)(i) of the OM dtd.5.4.2010 which reads as follows:

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 1.1.2006 as notified vide Section II, Part A of First Schedule to CCS (RP) Rules, 2008.

8. This Tribunal in OA.No.1655/2015 had quoted the orders of Hon'ble Apex Court in Civil Appeal No.9873/2013 arising out of SLP(C) No.17881/2008 wherein the Hon'ble Apex Court vide para-10 of its order had observed 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.

9. The applicant would like his pay to be fixed as per para 16 of the CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986 dtd.31.7.1986 but would like his entire pension and other retiral benefits to be untouched. This contention cannot be accepted. The OA lacks merit and therefore, dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred by the applicant in OA.No.170/00014/2018

- Annexure-A1: A copy of PPO of military service
Annexure-A2: A copy of newspaper notification dtd.5.10.2010
Annexure-A3: A copy of offer of appointment dtd.5.4.2011
Annexure-A4: A copy of representation dtd.14.8.2017
Annexure-A5: A copy of representation dtd.16.10.2017
Annexure-A6: A copy of representation dtd.26.9.2017
Annexure-A7: A copy of impugned letter dtd.15.12.2017
Annexure-A8: A copy of DoP&T's OM dtd.5.4.2010
Annexure-A9: A copy of Policy OM dtd.25.11.1958
Annexure-A10: A copy of DoP&T's OM dtd.31.7.1986

Annexure-A11: A copy of notification CCS(RP) Rule dtd.29.8.2008
Annexure-A12: A copy of DoP&T's OM dtd.11.11.2008
Annexure-A13: A copy of extract Rule-19 of Rule 1972
Annexure-A14: A copy of letter dtd.15.9.2015
Annexure-A15: A copy of DoP&T's ID Note dtd.28.8.2015
Annexure-A16: A copy of pay fixation dtd.21.1.2015
Annexure-A17: A copy of DoP&T's OM dtd.10.2.2016
Annexure-A18: A copy of order dtd.24.7.2009 in WP-32064/08
Annexure-A19: A copy of compliance order dtd.7.5.2010
Annexure-A20: A copy of order dtd.26.9.2014 in OA-4047/13
Annexure-A21: A copy of letter dtd.20.11.2017 under RTI

Annexures with reply statement:

Annexure-R1: Application form of the applicant
Annexure-R2: Endorsement of R1 dtd.30.9.2015
Annexure-R3: Order dtd.4.8.2017 in OA.1674/2015 & batch of this Tribunal

Annexures with rejoinder:

Annexure-Re22: A true copy of service certificate
Annexure-Re23: A true copy of letter dtd.17.9.2016
Annexure-Re24: A true copy of DoP&T's OM dtd.8.11.2010
Annexure-Re25: A true copy order of pay fixation dtd.1.1.2015
Annexure-Re26: A true copy of order dtd.20.2.2014 in OA.34/2009
Annexure-Re27: A true copy of order dtd.7.12.2001 in WP.3946/2001
Annexure-Re28: A true copy of letter dtd.15.9.2015

Annexures with written arguments note filed by the respondents:

-NIL-

Annexures with written arguments note filed by the applicant:

-NIL-
