

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/01531/2018

DATED THIS THE 11th DAY OF OCTOBER, 2019

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

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

Honnaly Reddy M.H.
S/o. Hema Reddy
Aged about 53 years
Working as Office Assistant
Office of Superintendent of Post Office
Chitradurga-577 501.

....Applicant

(By Advocate Sri Izzhar Ahmed)

Vs.

1. Postmaster General
S.K.Region
Bangalore-560001.

2. Union of India
through the Secretary
Ministry of Communication & Information Technology
Department of Posts
Dak Bhavan
Parliament Street
New Delhi-01.

....Respondents

(By Advocates Sri B.G.Vijayakumaraswamy, ACGSC & Sri M.V.Rao, Sr.PC)

ORDER

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

The brief facts of the applicant's case is that he was discharged from Indian Army Service on 30.4.2004 as Naik Subedar with the last basic pay of Rs.6050/- revised to as Rs.8371/- after 1.1.2006 as per Pension Payment Orders(PPO) dtd.24.3.2004 & 4.10.2011(Annexure-A1). He was re-employed as Postal Assistant vide appointment order dtd.27.9.2005(Annexure-A2) issued by the respondents under ex-serviceman quota granting initial pay of Rs.4000/- in scale

of Rs.4000-100-6000. He was below the commissioned officer rank as on the date of reemployment. When the applicant filed a representation dtd.22.6.2015(Annexure-A3) to the 1st respondent for pay fixation at the stage of his last pay drawn in military service, the Sr.Accounts Officer issued a letter dtd.20.7.2015(Annexure-A4) stating that the same is pending for consideration before DA(P), Karnataka Circle. The respondents issued a letter dtd.15.9.2015(Annexure-A5) clarifying the pay of reemployed ex-servicemen while retiring below the age of 55 years and below the commissioned officer and further directing to dispose of the cases of ex-servicemen regarding pay fixation. The applicant had earlier filed an OA.1724/2015 before this Tribunal wherein he wrongly challenged the DoP&T ID Note dtd.28.8.2015 instead of letter dtd.15.9.2015. The Supdt. of Post Office, Chitradurga issued a letter dtd.27.10.2015(Annexure-A6) wherein he mentioned the representation dtd.22.6.2015 of the applicant, letter dtd.15.9.2015 and ID Note dtd.28.8.2015 considering the eligibility of the applicant. Therefore, it is not stated that the applicant was not eligible for pay fixation on re-employed post. Being unable to understand the procedure and clarification of DoP&T ID note dtd.28.8.2015 regarding eligibility criteria for pay fixation on reemployed ex-servicemen, he challenged the said ID note in OA.1724/2015 which was dismissed on 17.8.2017(Annexure-A7). When the applicant filed representation dtd.11.1.2018 and reminder dtd.22.2.2018(Annexure-A8) to the 1st respondent on the error of misunderstanding the prescribed rules and requesting to consider his case in terms of DoP&T ID note dtd.28.8.2015 and the procedure prescribed by the DoP&T dtd.5.4.2010 in terms of eligibility criteria, the 1st respondent has not taken any action and the representation is kept pending. Then the applicant issued legal notice dtd.17.5.2018(Annexure-A9) to the 1st respondent requesting

for disposal of his representation dtd.11.1.2018 within the stipulated time but the 1st respondent has not taken any action on the legal notice which is a suo-motu contempt against the 1st respondent for ignoring the legal notice. The 1st respondent issued a letter dtd.28.5.2018(Annexure-A10) to the SPO, Chitradurga regarding para-wise remarks on the representation of the applicant dtd.11.1.2018 but it is not known that what action was taken by the 1st respondent and the 1st respondent has not taken any documents from the applicant regarding the eligibility criteria. The applicant referred to DPAR Notification dtd.15.12.1979(Annexure-A11) and amendment dtd.4.10.2012(Annexure-A12) in regard to Ex-servicemen (Re-employment in Central Civil Services and Posts) Rules, 1979 and 2012 as per which the re-employment of the ex-servicemen is under ex-servicemen quota only and cannot be re-employed under direct recruitment quota being relaxation of age. The applicant referred to Min. of Expenditure OM dtd.25.11.1958(Annexure-A13) 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 undue 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 in Civil Appeal Writ Petition No.3946/2001*, 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 All India Radio, Mysore exercised option of re-employed ex-servicemen and fixed pay counting of military service by annual increment and granted consequential benefits also on the past services. But the 1st respondent has not exercised option for pay fixation of ex-servicemen counting of military service of re-employed post on the service records of the applicant in Military. The applicant also referred to DoP&T OM

31.7.1986(Annexure-A14) stating that the respondents are bound to follow the procedure prescribed under the said OM at Para-4(b)(ii). The DoP&T issued OM dtd.5.4.2010(Annexure-A15) referring OMs dtd.11.11.2008 & 31.7.1986 while introducing running pay band as prescribed in 6th CPC. The DoP&T issued clarification dtd.25.8.2015 in terms of Para-4(b) (i) & 4(d) (i) of OM dtd.31.7.1986 as amended vide OM dtd.5.4.2010. The respondents have not implemented the clarification of DoP&T vide ID dtd.28.8.2015 & 15.9.2015 ignoring the guidelines prescribed in OMs dtd.25.11.1958, 31.7.1986, 5.4.2010 & 8.11.2010(Annexure-A16) on the facts of the record. The applicant referred a few cases of other departments who have fixed pay of the ex-servicemen on re-employed post on annual increment counting of military service without change of recruitment scale as per the fixation orders dtd.25.6.2013, 3.7.2014, 1.1.2015, 11.3.2015 & 19.6.2015(Annexure-A17). The applicant has referred the DoP&T clarification dtd.18.5.2015(Annexure-A18) which is adopted in the Dept. of Revenue, Min. of Labour & Defence by conforming to the pay fixation. The applicant cited the identical cases of *Director General of Posts vs. B.Raveendaran* in *Civil Appeal No.4079/1992/SLP(C)No.10747/92* & *State of Punjab vs. Gurubax Singh* in *RAS-561/2005* decided by Hon'ble High Court of Punjab & Haryana, *Ram Prakash Rajan vs. All India Radio & Manohar Singh Channa vs. Min. of Home Affairs* in *OA.No.34/2009* held by the Principal Bench of CAT, *P.V.Subha Rao vs. Dept. of Posts* in *OA.146/2004* decided by the Hyderabad Bench of this Tribunal and *U.T.Chandigarh vs. Gurucharan Singh* in *Civil Appeal No.9873/2013* of Hon'ble Apex Court in support of his contentions. In view of the above cases, the applicant is eligible for re-fixation of pay on re-employed post by removing hardship in terms of OM dtd.25.11.1958 and the same was ignored by the 1st respondent. The respondents have violated Articles 14, 309 and 311 of the

Constitution as well as guidelines issued by DoP&T for pay fixation of ex-serviceman on re-employed post. Aggrieved by the same, the applicant filed the present OA seeking the following relief:

- i. Direct the respondents to consider the representation of the applicant dtd.11.1.2018(Annexure-A8) for fixation of pay on re-employed post adding annual increment counting military service in the recruitment scale following the prescribed procedure by the Ministry of Expenditure and the DoP&T with all consequential benefits within the stipulated time.*
 - ii. Grant relief or relief as deemed fit and proper, with costs, in the interest of justice and equity.*
2. On the contrary, the respondents have submitted in their reply statement that the applicant retired from Military Service as Naik Subedar on 30.4.2004 which is below rank of Commissioned Officer. He was re-employed as 'Postal Assistant' w.e.f. 12.1.2006 under ex-servicemen quota with the pay scale of Rs.4000 in the grade of 4000-100-6000 with the month of next increment as September. After implementation of 6th CPC w.e.f. 1.1.2006, his initial pay was fixed at Rs.9910/- in PB-1 + GP Rs.2400 as per Rule 8 of CCS(RP) Rules 2008(Annexure-R1). The applicant vide his representation dtd.11.1.2018 requested the 1st respondent to re-fix his initial pay considering the last pay drawn by him at the time of his retirement from Military service in terms of DoP&T OM dtd.5.4.2010 and ID note dtd.28.8.2015. In accordance with DoPT OM dtd.5.4.2010 and DoPT ID Note dtd.28.8.2015, 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 scale of pay/pay structure of the post held by them prior to retirement shall be given. In terms of para 4(b)(i) of the said OM, 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 of CCS(A) Rules 2008. Para 4(d)(i) of the above OM provides that in case of ex-servicemen who held the 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. The Directorate vide OM dtd.15.9.2015(Annexure-R2) has clarified that the above instructions do not provide for protection of last pay drawn before retirement. This was communicated to the applicant by the Supdt. of Post Offices, Chitradurga Dvn., Chitradurga vide letter dtd.27.10.2015(Annexure-R3). In response to the representation of the applicant dtd.11.1.2018, the 1st respondent communicated vide letter dtd.15.10.2018(Annexure-R4) to the Supdt. of Post Offices, Chitradurga Dvn., to inform the applicant that he retired from Indian Army as Naik Subedar which is below the rank of Commissioned Officer and as per the letter at Annexure-R2 dtd.15.9.2015, there is no protection of last pay drawn before retirement. Hence, the pay of the applicant was fixed at Rs.7510+2400(GP) as applicable as entry pay to Direct Recruits appointed on or after 1.1.2006. The SPOs, Chitradurga vide letter dtd.22.10.2018(Annexure-R5) communicated the same to the applicant. The applicant had previously approached the Tribunal in OA.No.1724/2015 which was dismissed as devoid of any merit observing that the applicant was not entitled to any further relief in the matter of pay fixation.

3. The respondents submit that the present OA filed by the applicant is barred by limitation as the initial pay of the applicant was fixed on 12.1.2006. He has not filed any MA for condonation of delay in filing the OA. The OM dtd.25.11.1958 quoted by the applicant is not relevant since the said OM was superseded by

another OM dtd.31.7.1986 as per which at para 4(a) it stipulates that re-employed pensioners shall be allowed to draw pay only in prescribed scales of pay for the posts in which they are reemployed. No protection of the scales of pay of the post held by them prior to retirement shall be given. DoP&T vide ID Note dtd.28.8.2015 has clarified that the instructions do not provide for protection of last pay drawn before retirement. DoP&T OM dtd.5.4.2010 para 4(b)(ii) quoted by the applicant is related to the cases where the entire pension and pensionary benefits are not ignored for pay fixation. As per para 4(d)(i) of the said OM, the applicant retired before 55 years of age from Military service as Naik Subedar which is below the rank of Commissioned Officer and therefore the entire pension and pension equivalent of retirement benefits shall be ignored. The pay on his re-employment was fixed at the entry pay applicable to the Direct Recruits. The DoP&T OM dtd.8.11.2010 referred to by the applicant deals with Military service pay which has no relevance in the applicant's case for fixation of his initial pay. The orders of various courts cited by the applicant are applicable to the parties in the case and cannot be made applicable generally. The averment of the applicant that the respondents have violated Articles 14, 309 & 311 of the Constitution is not correct and all the averments of the applicant are denied and the OA is liable to be dismissed.

4. The applicant has filed rejoinder reiterating the submission already made in the OA and submits that the respondents have admitted that the applicant was re-employed to the post of Postal Assistant under ex-servicemen quota. Therefore, the pay fixation is on the recruitment scale of pay and the same is not disputed by the respondents in their reply statement. The requisite eligibility criteria for the pay fixation on re-employed post 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 fulfilled by the applicant as he was re-employed on 27.9.2005 at the age of 41 years. The eligibility criteria for pay fixation of ex-servicemen on re-employed post is prescribed in OM dtd.25.11.1958 by the Min. of Expenditure and guidelines of the DoP&T OM dtd.5.4.2010. The respondents are unable to understand the said OMs and have not applied mind that the applicant is not asking 'pay protection on re-employed post' either in the OA or in his representation. The respondents have wrongly interpreted the CCS(RP) Rules 2008 in case of the applicant. The notification dtd.29.8.2008 produced by the respondents has no relevancy in the present case. And also the Annexures-R2 & R3 referred to by the respondents are not related to the present case. The respondents are misleading the issue stating that the applicant's pay is fixed at Rs.9910 but it is revision of pay under 6th CPC because the applicant was re-employed on 27.9.2005 i.e prior to 1.1.2006. 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 have implemented the said para granting one increment counting of military service on the same eligibility. The Hon'ble Apex Court has also considered the prescribed procedure of OM dtd.25.11.1958 in CA.No.4049/1992, SLP(C).10747/1992(Annexure-Re19) and Civil Writ Petition No.3946/2001(Annexure-Re20). The statement of the respondents that the OM dtd.25.11.1958 issued by the Min. of Expenditure has been superseded by OM dtd.31.7.1986 issued by the DoP&T. The DoP&T has no delegated powers to supersede the OM of the Min. of Expenditure. The contention of the respondents that the OA is barred by limitation is denied as false as the pay fixation is recurring cause of action.

5. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. The applicant has filed written arguments note along with memos enclosing therewith the orders of the Tribunal, Hon'ble High Court and Supreme Court. The issue in this case was already considered in detail by this Tribunal in OA.No.1724/2015 vide order dtd.17.8.2017 where the claim of the applicant for fixation of his pay based on the last pay drawn at the time of retirement of military service was considered in detail and the OA was dismissed. The present application has been filed citing several other cases and also citing certain orders of various departments where the ex-servicemen on being re-employed have got their pay fixed based on annual increments on counting of military service as given vide Annexure-A17. The respondents have stated that the orders quoted by the applicant are related to various other departments and the clarification regarding fixation of pay of re-employed ex-servicemen was issued by the Directorate in the Department of Posts vide letter dtd.15.9.2015 which was based on a clarification issued by the DoP&T vide ID note dtd.28.8.2015 which is as follows:

2. The matter has been examined in this Department. It is pointed out that paras 4(a), 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 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 OM 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.

6. Further in OA.No.14/2018 vide order dtd.8.8.2019, a similar issue has been considered in detail and in that case in para-7, this Tribunal held as follows:

“.....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.

This Tribunal dismissed the said OA based on the above grounds. As mentioned earlier, the case of the applicant in OA.No.1724/2015 has already been considered in detail by this Tribunal and it was dismissed vide order dtd.17.8.2017.

7. Considering all the above, we find no merit in the OA and therefore dismissed.

No costs.

(C.V.SANKAR)
MEMBER (A)

/ps/

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

Annexures referred by the applicant in OA.No.170/01531/2018

- Annexure-A1: A copy of Pension Payment dtd.24.3.2004
Annexure-A2: A copy of offer of appointment dtd.26.9.2005
Annexure-A3: A copy of representation dtd.22.6.2015
Annexure-A4: A copy of letter dtd.20.7.2015
Annexure-A5: A copy of letter dtd.15.9.2015
Annexure-A6: A copy of letter dtd.27.10.2015 along with 15.9.2015 and DoP&T's ID Note dtd.28.8.2015
Annexure-A7: A copy of order dtd.17.8.2017 in OA.1724/15
Annexure-A8: A copy of representation dtd.11.1.2018 and reminder dtd.12.2.2018
Annexure-A9: A copy of Legal Notice dtd.17.5.2018
Annexure-A10: A copy of letter dtd.28.5.2018
Annexure-A11: A copy of Notification dtd.15.12.1979
Annexure-A12: A copy of Notification dtd.4.10.2012
Annexure-A13: A copy of OM of Ministry of Finance dtd.25.11.1958

Annexure-A14: A copy of DoP&T's OM dtd.31.7.1986

Annexure-A15: A copy of DoP&T's OM dtd.5.4.2010

Annexure-A16: A copy of DoP&T's OM dtd.8.11.2010

Annexure-A17: A copy of order of pay fixation dtd.25.6.2013, 3.7.2014, 1.1.2015,
11.3.2015 & 19.6.2015

Annexure-A18: A copy of DoP&T's OM dtd.18.5.2015

Annexures with reply statement:

Annexure-R1: Gazette dtd.29.8.2008

Annexure-R2: The Directorate OM dtd.15.9.2015

Annexure-R3: Letter dtd.27.10.2015

Annexure-R4: Letter dtd.15.10.2018

Annexure-R5: Letter dtd.22.10.2018

Annexures with rejoinder:

Annexure-Re19: A copy of order dtd.8.11.1996 in SLP.10747/1992

Annexure-Re20: A copy of DB Civil Appeal Writ Petition No.3946/2001 dtd.7.12.09

Annexures with written arguments note filed by the applicant:

-NIL-

Annexures with memo dtd.14.8.2019 filed by the applicant:

Annexure-M01: A true copy of reply under RTI dtd.22.5.2019 along with orders of
the Tribunal(P), High Court and Supreme Court

Annexures with memo dtd. .8.2019 filed by the applicant:

Annexure-M01: A true typed copy of the orders in OA.3286/2002, WP & SLP
