

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

Original Application No. 290/00141/2014

Date of Order: 01.07.2019

CORAM:

**HON'BLE MRS. HINA P.SHAH, MEMBER (J)
HON'BLE MS. ARCHANA NIGAM, MEMBER (A)**

Gajendra Singh Solanki s/o Shri Zalam Singh, aged 49 years, Khalasi in the office of JE-II, Carriage and Wagon, North Western Railway, Marwar Junction, District Pali, R/o Vilalge & Post Jojawar, District Pali.

...Applicant

(By Advocate: Shri Vijay Mehta)

Versus

1. Union of India through the General Manager, North Western Railway, Jaipur
2. Divisional Railway Manager, North Western Railway, Ajmer
3. Divisional Railway Manager (Establishment), North Western Railway, Ajmer.

...Respondents

(By Advocate: Shri R.K.Soni for resp. Nos. 1 & 2)

ORDER (ORAL)

Per Mrs. Hina P.Shah

The applicant has filed the present OA u/s 19 of the Administrative Tribunal Act, 1985, praying for the following relief:-

The applicant prays that order ANN A 1 may kindly be quashed. It is further prayed that the respondents may kindly be directed to grant basic salary of Rs. 9640/- from 29/4/2011, the date on which applicant joined his new assignment on his re-employment under the respondents. The respondents may kindly be directed to accordingly make payment of arrears of salary. Interest at the rate of 7.5 % on the due amount from 29/4/2011 may also be granted to the applicant. Any other relief, as may be deemed fit may kindly be granted to the applicant. Costs may also be awarded to the applicant.

2. The applicant was working on the post of Hawaldar in Electrical Engineer (Record), Secundrabad and retired at the age of 42 years from the post of Hawaldar on 31.8.2008. His last drawn basic salary at the time of retirement was Rs. 9640/- with Grade Pay of Rs. 2800/-. After retirement from the Army, he was appointed on the post of Khalasi under 20% quota of reservation for ex-servicemen vide order dated 28.4.2011 on the basic salary of Rs. 5200/- with Grade Pay of Rs. 1800/-. He joined his duty on 29.4.2011 and was posted at Marwar Junction, District Pali. It is his plea that he was not granted pay equal to the last salary drawn in the Army. The applicant relies on OM dated 5.4.2010 (Ann.A/4) which has been adopted by the Railway Board vide its order dated 24.7.2013. The applicant states that the respondents have

avoided and ignored the provisions contained in Para 4(b)(ii) of the OM dated 5.4.2010. From the said OM it is clear that in cases where the entire pension and pensionary benefits are not ignored, basic pay shall be fixed at the same stage as the last basic pay drawn before retirement. The ex-servicemen who retired before the age of 55 years from the Army and were below the commissioned rank, the pensionary benefits will be ignored while granting basic pay due to re-employment. However, the respondents have not considered the case of the applicant in the light of this provision. Further, the Railway Board order dated 21.1.1987 and 6.2.1998 has made provisions that those ex-servicemen who retired before attaining the age of 55 years from the Army and were below commissioned rank, pensionary benefits will be ignored while granting basic pay due to re-employment. But the applicant is being treated unequal to the similarly situated employees. Many re-employed employees have been granted initial pay equal to the last basic pay drawn by the Railway. Therefore, his case should be considered on the same line and footings.

3. The respondents by filing reply have controverted the averments made in the OA. They have stated that the representation of the applicant in this regard dated

26.9.2013 has already been replied by the respondents vide letter dated 24.3.2014 (Ann.A/1). It is their plea that both the provisions relied upon by the applicant pertaining to OM dated 5.4.2010 covers different controversies for the simple reason that both pertain to the cases where pension is fully ignored and where the pensionary benefits are not ignored. The respondents have relied upon DOPT OM dated 31.7.1986 and Railway Board circular dated 24.7.2013 (Ann.R/2) and stated that the applicant at the time of re-employment in the railways retired from the post of Hawaldar which was not of a commissioned rank, hence his case falls within the four corners of paragraph 4(b) (i) of Ann.A/4 dated 5.4.2010 and he has thus been rightly given fixation of pay at his initial re-employment. The submission of the respondents is that Para 4(b)(ii) is not applicable to the present controversy, therefore, there is no merit in this OA and no interference is called for.

4. The applicant has filed rejoinder referring to order dated 18.6.2014 (Ann.A/6) issued by the Western Railway, wherein by way of illustration it has been mentioned that basic salary of such employee has to be fixed according to the last pay drawn by such employee while he was in defence service. He has therefore, contended that some

similarly situated employees have been given benefit according to para 4(b)(ii) of OM dated 5.4.2010, but he has not been given the same.

5. Heard both parties.

6. During the course of arguments, the learned counsel for the applicant contended that he will be satisfied if his representation dated 26.9.2013 (Ann.A/3) is reconsidered in the light of the order dated 18.6.2014 (Ann.A/6) in its true spirit by passing a reasoned and speaking order.

7. In view of the facts and circumstances and the limited relief sought by the applicant at the time of hearing, without going into other aspects of the matter, we deem it just and proper to direct the respondents to reconsider the issue raised by the applicant in his representation dated 26.9.2013 and pass reasoned and speaking order within a period of three months from the date of receipt of a copy of this order. So far as plea of the applicant that he is being treated unequally with reference to similarly situated employee is concerned, the respondents shall clarify the position with regard to this aspect while disposing of his representation. Ordered accordingly.

8. The OA stands disposed of in above terms with no order as to costs.

(ARCHANA NIGAM)
ADMV. MEMBER

(HINA P.SHAH)
JUDL. MEMBER

R/