

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD**

OA/020/01272/2015

Date of CAV : 30.09.2021

Date of Pronouncement : 06.10.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

D.Subbarama Raju S/o Venkateswarlu,
Aged about 45 years, Occ : Sub Post Master,
Mupalla (VKD) SO, Narasaraopet Division,
Guntur District, Andhra Pradesh.

...Applicant

(By Advocate : Dr. A. Raghu Kumar)

Vs.

- 1.The Union of India, rep by its Secretary,
Department of Posts, Dak Bhavan,
Ministry of Communications and Information
Technology, Parliament Street, New Delhi 1.
- 2.The Chief Postmaster General,
AP Circle, Abids, Hyderabad-01.
- 3.The Director of Postal Services,
O/o Postmaster General, Kurnool Region,
Kurnool.
- 4.The Superintendent of Post Offices,
Tirupati Division, Tirupati - 517501.
- 5.The Postmaster,
Chandragiri HO, Tirupathi Division,
Chittoor District.

....Respondents

(By Advocate : Mrs. Megha Rani Agarwal, Addl. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to re-fixation of pay of the applicant on joining the civilian stream after having been discharged from the Army.



3. Brief facts of the case are that the applicant, who was discharged from the Indian Army as Subedar on 31.10.2010, was selected as Postal Assistant (*for short PA*) in the respondents' organization on 6.6.2011 under Ex-servicemen Quota. DOPT issued instructions vide OM dt. 31.07.1986 in regard to fixation of pay of Ex-servicemen when they join civilian posts after retiring from the Army. The pay of the applicant was fixed as Rs.23,420 with Grade Pay of Rs.4600 and also the arrears of pay was worked as Rs.9,40,337/- vide letter dated 8.11.2014, upon representation of the applicant dt. 12.08.2014. While so, without following the DOPT instructions, the respondents directed the applicant vide OM dated 29.11.2014 to credit a sum of around Rs.9,40,337/- towards excess payment made due to wrong pay fixation. Aggrieved, the OA is filed.

4. The contentions of the applicant are that instructions of DOPT contained in memos dated 31.7.1986, 11.11.2008, 5.4.2010, Rules 4 & 5 of the Central Civil services (Fixation of Pay of Re-employed Pensioners) Orders 1986 (*for short Rules 1986*) have not been properly followed. When the Staff Unions took up the issue, a Committee was formed and based on the recommendations of the committee, the matter was taken up with R-1 for clarification. Without waiting for the clarification, recovery commenced

from August 2015 on the strength of the Audit objection raised on 17.11.2014, stating that the pay fixation was incorrect in terms of clauses 4(a), 4 (b)(i) & 4 (d) (i) of DOPT OM dated 5.4.2010. The pay of the applicant drawn in the Army has to be protected. Recovery has been ordered in haste.



5. Respondents confirm that the applicant was selected as PA under ex-servicemen quota on 7.6.2011 in Pay Band of Rs.5,200-20,200 with grade pay of Rs.2400 as is fixed for direct recruits appointed on or after 1.1.2006 in accordance with Section II, Part A of First Schedule to CCS (RP) Rules, 2008. The OM dated 11.11.2008 (Annexure R-1) applies to those reemployed as on 1.1.2006 and not to the applicant, who was re-employed after 1.1.2006. The fixation of pay was done as per clarification received from Postal Directorate dated 15.9.2015 (Annexure R-II). Respondents cited the judgment of Hon'ble Apex Court in CA No.9873/2013 that the pay of the reemployed pensioner who held posts below Commissioned Officers would not be protected. Though based on representation of the applicant on 12.8.2014, the pay of the applicant was re-fixed and arrears of pay were paid vide memo 8.11.2014, but with the objection raised by Director of Accounts (Postal), who incidentally was not made a party, notice was issued for crediting the arrears paid in one lump sum on 29.11.2014. Thereafter, during audit inspection in 2015, the issue of recovery was again raised and hence, recovery @ Rs.15,000/- per month from August 2015 onwards was ordered. There are no orders from Chief PMG to stop recovery and that R-4, who filed the reply statement on behalf

of the others, was not aware of formation of the committee. The applicant has submitted a declaration (Annexure R-V) that he has no objection for recovery of any excess payment made.



Applicant filed a rejoinder stating that the respondents relied on DOPT memo dated 28.8.2015 in their letter dated 15.9.2015, stating that the instructions do not provide for protection of last pay drawn before retirement in such cases. DOPT OM's dated 11.11.2008 & 05.10.2010 read with Presidential Order vide OM dt.31.07.1986 are to be considered in fixing the pay, in particular para 3(5) of the later OM cited. Military Service Pay is paid to ex-servicemen as a part of basic pay and this element cannot be deducted from the pay re-fixed. The issue involved in the dispute is pay fixation and not protection of pay. The Hon'ble Apex Court judgment cited by the respondents has been distinguished based on facts and circumstances. The Hon'ble Principal Bench in OA 4357/2011 has held that Ex-servicemen recruited in Central Govt. cannot be treated as direct recruits and also observed that the relief sought was for grant of advance increments for service rendered in Army and not protection of pay. Hon'ble Chandigarh Bench of this Tribunal in TA No.98-CH-2009 on 22.4.2010 directed reconsideration of the cases and Hon'ble Bangalore Bench on 18.6.2014 in OA 1094/2013 has held that para 2(4)(a) of the OM dt. 5.4.2010 is not applicable to Ex-servicemen re-employed for fixing pay on last pay drawn. Railway Board vide letters dated 27.12.2011/25.6.2013 by referring to OM dated 5.4.2010 has allowed fixation of pay on last pay drawn. In an appeal under RTI Act, it was observed in File No.10/2/2011-E-III(a) that the pay of direct recruits and others are different. The

Additional Junior Civil Judge, Giddalur on 29.1.2014 has granted pay fixation to a Typist as is sought in the present OA. FR (22)(1)(a)(1) applies to the case of the applicant. The Departments of Income Tax, Labour and Employment, Postal, Employees State Insurance Corporation have extended the relief sought.



6. Heard both the counsel and perused the pleadings on record.

7. I. The dispute is about pay fixation of ex-servicemen who have been re-employed in the Civilian Ministries. The claim of the applicant is that the last pay drawn in the Army has to be considered for pay fixation n being recruited in the Civilian side. The applicant was discharged as Subedar from the Army with basic pay of Rs.16,820 and grade pay of Rs.4600 and on joining the Postal Dept. in June 2011 his pay was fixed on 8.11.2014 as Rs.23,420 with grade pay of Rs.4600 and arrears of pay of around Rs.9.40 lakhs were also paid. The Director of Accounts (Postal) has taken objection that the pay was wrongly fixed against the instructions of DOPT OM dated 05.04.2010 and the Postal Directorate clarification dated 15.9.2015. Based on the Director of Accounts (Postal) objection dt. 17.11.2014, the applicant was directed to credit the arrears amount, by the 5th and 4th respondents vide letters dt. 29.11.2014 & 20.12.2014 respectively. The matter was taken by the Staff Unions with the R-2, who, in turn, formed a Committee and based on the recommendations of the Committee, the matter was referred to R-1 for consideration, as ascertained by a similarly situated employee through an RTI query dated 6.8.2015. Before a decision could be taken by R-1, respondents have ordered recovery. The issue is covered by DOPT OMs dated 31.7.1986, 11.11.2008,

5.4.2010, Rules 1986 and respondents' letter dated 15.09.2015, which we have gone through carefully, in detail. The Hon'ble Apex Court judgment cited by the respondents has been properly distinguished by referring to the relevant facts and circumstances by the applicant. The conflict is in regard to interpretation about pay protection or pay fixation of the applicant in the context of GOI instructions and relevant judgments delivered by the legal fora on the subject.



II. R-4, the Superintendent of Post Offices, Tirupati Division, who filed the reply statement on behalf of all the respondents, claims that he is not aware of the formation of the Committee and its recommendation. When he is filing the reply statement, he has to verify and file the reply statement and not based on his personal knowledge. The applicant has also not made the Director of Accounts (Postal) as a party since it is his order/ objection, which formed the basis for the impugned orders issued by the respondents 4 & 5, which are under challenge. Thus, the OA suffers from non-joinder of proper and necessary party. However, as the matter pertains to the salary of the applicant with the OA filed in 2015 and after 6 years, dismissing the OA on this count may be unjust.

III. The applicant has cited many instances where the benefit sought has been extended to employees working in Central Govt. Departments viz. Income Tax, Labour and Employment, Employee State Insurance Corporation, Railways, including respondents organization. The case of Sri V.K.Shukla working for Delhi Postal Circle was cited. This needs to be verified since in the same Department there can be no discrimination in

granting similar relief. Applicant has enclosed along with the rejoinder the various judgments of the different Benches of this Tribunal and that of the superior judicial fora favouring his cause.



IV. In view of the submissions of the applicant in the rejoinder, which require a closer look by the respondents, we are of the view that the respondents should examine the same and take it up with R-1, who is already seized of the matter in view of the fact that the relevant Committee report having been submitted to him/her, for taking an appropriate decision. Particularly, in the context of some in the respondents organization having been extended the benefit and other Central Govt. Departments extending the relief sought, as submitted by the applicant. Without giving an opportunity to the respondents to examine the said details, any decision of the Tribunal would not be fair.

V. Therefore, considering the circumstances cited, the respondents are directed to re-examine the issue in the context of pleadings submitted in the rejoinder and take an appropriate decision in accordance with Rules and Law, by issuing a speaking and reasoned order, by touching upon each and every contention in the rejoinder. Time allowed to implement the judgment is 3 months from the date of its receipt. Till then the interim order issued on 23.9.2015 would hold good. The OA is accordingly disposed of, with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

evr

(ASHISH KALIA)
JUDICIAL MEMBER