

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 430/94

Thursday, the first day of September, 1994.

Coram:

HON'BLE MR. P. V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

M.N. Chacko
Senior Auditor
Defence Account Department,
Defence Pension Disbursing Officer
Kollam

Applicant

By Advocate Mr. M. Rajagopalan

vs.

1. Union of India represented by the
Secretary, Ministry of Defence,
New Delhi

2. Controller of Defence Accounts,
506, Anna Salai Teynampet,
Madras-18

3. Officer I/c Airforce Records,
Air Force Record Office,
Subroto Park, New Delhi

Respondents

By Advocate V. B. Unniraj, ACGSC

O R D E R

Applicant who is working as Senior Auditor in the Defence Pension Disbursing Office, Kollam is an ex-serviceman who served the Indian Air Force from 5.6.64 to 30.6.79. His pay at the time of his retirement from the Indian Air Force was Rs. 400/-. On re-employment, his pay was fixed at Rs. 330/-. The applicant is aggrieved by the fact that the respondents have not granted him additional increments at the time of fixation of his pay on re-employment considering the service rendered by him in the Air Force.

2. The learned counsel for applicant relied on the Full Bench decision rendered in B. Ravindran & others vs. Director General (Posts), New Delhi and others, 1991 (15)ATC 195. The Tribunal has answered the contentions raised by the respondents in this case that hardship is to be considered by taking into account the pay plus pension plus pension

equivalent of gratuity whether ignorable or not being less than the last pay drawn at the time of retirement. Answering this contention, the Tribunal has held:

"(a) We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of the re-employed post in accordance with the 1958 instructions (Annexures IV in O.A.3/89) the whole or part of the military pension of ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983 (Annexures V, V-a and VI respectively), cannot be taken into account to reckon whether the minimum of the pay scale of the re-employed post plus pension is more or less than the last military pay drawn by the re-employed ex-serviceman."

3. The Government has issued instructions on 8.2.83 that in the case of personnel below Commissioned officers' rank the entire pension may be ignored in fixing their pay on re-employment. The order further enables persons already on re-employment to opt to come under these orders. Applicant comes within this category and it is admitted that he has given his option.

4. Respondents would say that:

"his case was examined.... and it was found that once he opted to come under the provisions of O.M. dated 8.2.83, his pay has to be again re-fixed only at the minimum of the scale of pay of Auditor which is Rs. 330/-..the pension allowed to be drawn by him in full is Rs. 187/- per month. Thus, the total of the above works out to Rs. 517/- which is Rs. 117/- more than the last pay drawn by him....No hardship whatsoever has been caused to the applicant..."

5. This is categorically contrary to the decision of the Full Bench cited above. Respondents have further argument that the Full Bench has stated that the instructions issued in 1983 do not have retrospective effect. This, in any case does not prejudicially affect the applicant since his pay fixation relates to the year 1980.

6. Respondents have a further contention that the decision of the Full Bench has been taken up on appeal and that it is pending before the Supreme Court. Learned Counsel for respondents submitted that a stay has been granted by the

Supreme Court in respect of the decision of the Full Bench.

7. Learned counsel for applicant cited decision of the Tribunal in O.A. 272/93 to meet this contention. In O.A. 272/93, the Tribunal stated:

" we have allowed a number of similar cases following the law laid down by the Full Bench of this Tribunal in O.A. 3/89... we have also held in similar cases that the decision of the Full Bench is binding on the Tribunal notwithstanding the pendency of the SLP filed by the Government against the same."

8. Following these decisions, I allow the application.

The second respondent is directed to fix the pay of the applicant protecting his last pay drawn in the Indian Air Force and ignoring his pension from 20.11.1980 with all consequential benefits.

9. The application is allowed as above. No costs.

Dated the 1st of September, 1994.


P. V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

Kmn 1.9.94