

CENTRAL ADMINISTRATIVE TRIBUNAL: ERNAKULAM BENCH

Date of decision: 27.10.89

Present

Hon'ble Shri NV Krishnan, Administrative Member
and

Hon'ble Shri N Dharmadan, Judicial Member

DA 441/89

1 PM Thomas
2 P Varkey
3 KV Kunhirama Marar
4 M Onakkan
5 PK Kunhiraman Nambiar : Applicants

Vs

1 Director General of Posts
Department of Posts, New Delhi.

2 Union of India rep. by its
Secretary, Ministry of
Communications, New Delhi.

3 Postmaster General
Kerala Circle, Trivandrum.

4 Superintendent of Post Offices,
Cannanore Division, Cannanore.

5 Superintendent of Post Offices,
Kasargod Division, Kasargod. : Respondents

M/s OV Radhakrishnan and
Radhamani Amma : Counsel of Applicants

Mr K Karthikeya Panicker, ACGSC : Counsel of Respondents

ORDER

Shri NV Krishnan, Administrative Member.

The 5 Applicants, in this case are Pensioners re-employed as either ED Branch Post Masters or as ED Sub Post Masters. ~~As~~ ED Agents like the applicants, are paid only a consolidated allowance, which will be referred, as the basic allowance hereafter. The allowance amount of is paid irrespective of the pension they receive or the relief on such pension given to them and further that pension is not taken into account in determining the basic allowance.

2 It is stated that in addition to the basic allowance, the applicants started receiving Dearness Allowance thereon with effect from 1.1.86, in pursuance of the Department of Post's letter No.14-6/87-PAP dated the 15th July, 1987. However, orders were issued subsequently stating that ED Agents, like the applicants, who are re-employed pensioners, will be entitled to draw either the relief on the pension which they receive or the Dearness Allowance on the basic allowance they get as ED Agents, but not both.

the Respondent-1, Thus, it was clarified in letter of the Director General of P&T, No.14-26/87-PAP dated 14.4.88 that pensioners re-employed as ED Agents, ~~xxxxxx~~ opt for drawal of dearness relief on pension or Dearness Allowance on the basic allowance (Ext.A3). By another of Respondent-1, letter dated 9.12.88 (Ext.A4) it was clarified that the provisions of the Ext.A3 letter will take effect from 1st January, 86. Further, by a letter dated 29th December, 88 (Ext.A5), the Postmaster General, Kerala Circle (Respondent-3) directed that over payments, if any, may be recovered from the pensioners working as ED Agents on account of their having drawn both Dearness Allowance on basic allowance and Dearness Relief on pension. Such overpayments were directed to be recovered by Ext.A6 order in instalments not exceeding Rs 50/- per month (Ext.A6). The applicants have impugned all the above orders and have sought a direction to the Respondents to grant them

the benefit of Dearness Allowance on the basic allowance as a separate element, in addition to the relief on pension being drawn by them.

3 When the case came up for hearing, it was mentioned by the counsel for the applicant that in OAK 610/88 the same issue was involved and the matter has been concluded by a decision dated 31.8.89 to which, one of us (NV Krishnan) was a party. In that decision, which itself is based on the principles enunciated by a decision of the Larger Bench in TAK 732/87, it was held that the applicants were entitled to both the relief on pension as well as the Dearness Allowance on the basic allowance they get as ED Agents.

4 The learned counsel for the Respondents, however, tried to distinguish this case from OAK 610/88. However, we find that the issues involved in that case are exactly the same as the issues involved in the present case. Therefore, the decision dated 31.8.89 rendered in OAK 610/88 is binding on us, unless we are persuaded to come to a different conclusion.

5 The learned counsel for the Respondents emphasised only the facts already considered in the earlier decision namely, that the applicants are part time employees and they cannot enjoy the benefit of two Dearness Allowances simultaneously. We notice that these matters have already been considered in the aforesaid decision and we are not ⁱⁿ ~~persuaded~~ to dis-agree from the view taken in that case.

6 We are also, therefore, of the view that in the light of the decision in OAK 610/88 and the principles enunciated by the Larger Bench of the CAT in TAK 732/87, this application has to be allowed.

The principles enunciated in TAK 732/87 are as follows:

" (a) If, in determining the pay of a retired pensioner on his re-employment to a post, the pension drawn by him (or a part thereof) is considered and the pay on the re-employed post fixed - generally by reducing the pension therefrom - then he will not be entitled to dearness relief on pension (or the portion of the pension, as the case may be), which has gone into calculations in regard to the fixation of pay on the re-employed post, for, as a result of the orders obtaining at present, the dearness allowance will be payable on an amount which is inclusive of the reduced pay as well as the pension, taken into account for the purposes of arriving at the reduced pay. Payment of relief on pension will amount to double relief.

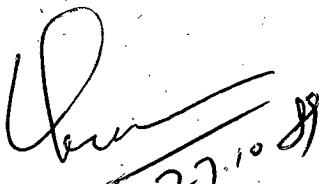
(b) If on the contrary, the pension(or a part thereof) does not go into calculations for determining the pay on re-employment, then keeping in view the manner in which the dearness allowance is fixed, the dearness relief on such pension or part thereof which does not enter into calculation of pay fixation cannot be withheld".

7 In the present case it is clear that the pension does not figure at all in the calculation of the allowance. In this view of this matter, the applicants are entitled to receive both the relief on their military pension as well as the dearness allowance on the basic allowance they receive as ED Agents. That position is not affected either by the consideration that they are only part time employees or that they do not receive any pay but only an allowance for the work done by them. The principle will still be the same.

8 Accordingly, the impugned orders Viz Ext.A3 - Respondent 1's letter dated 14.4.88, Ext.A4 - Respondent 1's letter dated 9.12.88, Ext.A5 - Respondent 3's letter dated 29.12.88 and Ext.A6 - Respondent 3's letter dated 30.5.88 are quashed. We do not find it necessary to quash the Ext.A2 order of Respondent-1 dated 10.2.88 as this concerns serving Central Government and State Government employees. The Respondents are directed to pay back the applicants the sums, if any, which may have been deducted from their emoluments or denied to them on the authority of these impugned orders. We declare that the applicants are entitled to receive both the relief on their military pension as well as the dearness allowance on the basic allowance they receive as ED Agents.

9 The application is allowed. There will be no order as to costs.


(N Dharmadan) 27/10/89
Judicial Member
27.10.89


(NV Krishnan) 27/10/89
Administrative Member
27.10.89

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM

O.A. No. 441/1989

P.M. Thomas & others : Applicants

Vs Posts
Director-General and others : Respondents

Reply filed for and on behalf of the respondents

I am the Assistant Director (Establishment and Mails) attached to the Office of the 3rd respondent. I know the facts of the case as disclosed by relevant files. I am filing this reply on behalf of the respondents. All the averments and allegations contained in the application are denied except those that are specifically admitted hereunder.

2. The application is not maintainable either in law or on facts. It is filed without any bonafides. The impugned proceedings are legal and valid and are issued in accordance with the provisions of law. The applicant cannot assail them on any of the grounds mentioned in the application.

3. Regarding the averments contained in paragraph 4 (1, 2, 3, 4, 5 and 6) of the application, it is submitted that the applicants are working as Extra-Departmental Sub-Postmaster/Branch Postmaster in various post offices in Cannanore and Kasafagod Postal Division. They are re-employed pensioners in the ED posts. The allowance of the ED Agent is fixed, on the basis of the workload. In the case of pensioners re-employed as ED Agents also, the allowance is not refixed on the basis of the pension of the re-employed pensioners. The question of refixation of pay as in the case of pensioners re-employed in the departmental post does not arise in the case.

(.....2)

Parishuram

4. Regarding paragraph 4(7) of the application, it is submitted that while revising the allowance of ED Agents pursuant to the recommendation of the Savoor Commission, vide Annexure A-1, the Govt. have decided that the dearness allowance will be treated as a separate element and will be payable to the ED Agents on the same pattern as applicable to the departmental employees.

5. Regarding paragraph 4(8) of the application, it is submitted that as per Annexure-A2 Central Government/ State Government employees working as ED Agents are not eligible for payment of dearness allowance. This instructions regarding non-payment of D.A to Central/State Govt. employees working as ED Agents was made applicable to the pensioners working as EDA gents vide Annexure A-3. It was also further clarified vide the above order that a pensioner who has been re-employed as ED Agents is to opt for drawal of either D.A.on the basis allowance or dearness relief on pension. The D.A.on basic allowance is payable to such pensioners who opt for stoppage of dearness ~~as~~ relief in their pension and the Dearness Allowance will be paid from the date from which the pension disbursing authority furnishes certificate about stoppage of dearness relief on pension. The intention of the order is that re-employed pensioner shall not take double advantage i.e. dearness allowance on ~~an~~ basic allowance and dearness relief for pension. As per Annexure A4 letter, the DG P&T clarified that Annexure-A2 and ~~A3~~ A3 are of clarificatory nature and hence they are deemed to take effect from 1-1-1986. It has been further clarified that instalments of dearness allowance sanctioned from 1-7-1986 onwards (D.A was sanctioned only from 1-7- 1986) are not admissible to such reemployed pensioners who were in receipt of relief

(.....,3)

Parishram Rao

as pension and hence the overpayment is to be recovered. In accordance with the above clarification of the DG P&T vide Annexure-A4 letter, the 3rd respondent issued A5 letter dt. 29-12-1988 to review the cases and recover the over payment. The mode of recovery has been clarified by the Postmaster-General vide Annexure A-6letter according to which it has been directed to recover the amount in convenient instalment of not exceeding of Rs.50/- per month.

6. Regarding the averments contained in para 4(9) of the application, it is submitted that over paid amount is liable to be recovered to guard against undue benefit to the applicants i.e. dearness allowance on basic allowance and dearness relief for pension. The over payment ~~is to be recovered from the applicants; but the same is deferred in view of the order passed by this Hon'ble Tribunal.~~ *Recovery has already started in respect of 1st, 2nd and 5th Applicant.*

7. There are no merits in the various averments and allegations contained in the grounds urged in the application. Regarding ground A, it is submitted that while revising the allowance of ED Agents pursuant to the Savoor Commission Recommendation, the Government has decided that the dearness allowance will be treated as a separate element and will be payable to the ED Agent on the same pattern as applicable to the departmental employees. But that decision cannot in any way be interpreted that the pensioners who are re-employed as ED Agents can enjoy double advantage of dearness allowance on basic allowance and dearness relief on pension as an employee of any nature cannot at the same time enjoy two dearness allowance. It follows that the impugned clarification and orders are legal and sustainable and the same will not infringe Article 14 and 16 of the Constitution as they alleged.

(.....4)

Temporary

8. Regarding Ground 'B', it is submitted that Annexure A2 clarification issued by the 1st respondent will not defeat the decision of the Government contained in Annexure-A1 as the Govt. has only decided that the dearness allowance will be treated as separate element. It is a fact that dearness allowance varies from time to time. It is also a fact that an employee cannot enjoy two dearness allowance as the word dearness allowance itself is explanatory in nature. The decision of the Govt. that dearness allowance will be treated as a separate element and will be payable to the ED Agent on the same pattern as applicable to the Govt. employees cannot be in any way interpreted that the re-employed pensioner can enjoy double advantage as dearness allowance on basic allowance and dearness relief for pension. So, it follows that Annexure-A2 is only a clarification of Annexure-A1. The applicants have not been denied any benefits assigned on them by virtue of Annexure A1 by the issue of A2 clarification letter and as such it is legal and sustainable. The allegations are denied.

9. Regarding Ground 'D', it is submitted that ~~Annexure A2 is only a clarification to Annexure A1 by which no benefit has been denied to the ED Agents like the applicants and hence the allegations are false, unfounded and denied.~~

10. Regarding Ground 'D', it is submitted that relief on pension is a property within the meaning of Art-300 A and the same cannot be taken away by administrative instructions. In the case on hand, such a right is not taken away by the clarification letter as they alleged. The Govt. decision vide Annexure-A1 is that dearness allowance will be treated as a separate element. The entitlement is subject to law. The re-employed pensioners cannot take double advantage of dearness allowance on basic allowance and dearness relief on pension. They can enjoy either

dearness allowance on the basic allowance or dearness relief on pension. The Govt. decision vide Annexure-A1 is only of such nature and Annexure-A2 is a clarification to Annexure-A1 and the same will not infringe Art 300 A of the Constitution as they alleged.

11. Regarding ground 'E', it is submitted that as stated by the applicant relief on pension is paid for the service rendered. A Government servant is entitled for pension for his past service as otherwise he cannot survive and therefore pension is a right. Pension itself is granted on ~~the~~ ^{his} retirement, when a Government servant retires from service, as far as the employer is concerned, he retires for ever and thereby he is granted pension for his survival. Relief on pension is granted to him as a concession to cope with the increase in the cost of living. Such reliefs are policy matter of the Government. So, if a Govt. servant is already retired from service and thereby receiving pension and be lucky to be re-employed he cannot take double advantage of dearness allowance on the basic allowance and dearness relief on pension. The applicants can enjoy only those benefits that are permitted by law. Annexure-A1 Govt. decision does not confer on them any such undue benefits. It follows that they are not denied any benefits as they alleged.

12. Regarding ground 'F', it is submitted that a Govt. servant while he is in service he is paid his salary plus dearness allowance and on retirement he is paid pension and relief on pension. Relief on pension varies from time to time and the same is a policy matter of the government. When a government servant retires from service, as far as the government employer is concerned he is ~~retired~~ for ever. Re-employment is also a policy matter of the government. There is no rigid rule to the effect that all pensioners should be re-employed. If they are

re-employed, they are lucky. ED Agents are paid allowances and the Government have decided to pay the dearness allowance as admissible to the Govt. employees. When a person is employed for the first time in his life as an ED Agent, he is paid allowance prescribed for the EDAs plus dearness allowance as decided by Annexure-A1. But when a pensioner is re-employed as ED Agent, the claim for dearness allowances on basic allowance and dearness ~~allowance~~ relief for pension is too much and the same has no legal sanction by any law or government decision.

~~Even~~ ^{Even} ~~in~~ However, we may go in deep, we cannot get such a view of the Government in Annexure A-1 decision of the Government. The EDAs are doing the same work as stated by the applicants. But that is not the question to be decided here. Equal pay for equal work is a settled ~~is~~ ^{is} dictum and if the same ~~is~~ denied, naturally, Art.14 of the Constitution would be infringed. The question is only that whether on re-employment of a pensioner, he can enjoy double advantage of D.A. on basic allowance and dearness relief for pension. As per the law, they are not permitted to enjoy the same. As per Annexure-A1, the Government have also not decided so. The applicants have not established their legal right before this Hon'ble Tribunal for such a double advantage and as such the recovery of the over-payment cannot be said ~~denied~~ ^{denial} of dearness allowance.

For the reasons stated above and in the interest of justice, it is humbly prayed that this Hon'ble Tribunal be pleased to dismiss the application with costs

Dated this the 5 th day of October, 1989.

Verification

I, T. Krishnan Nair, son of K. Kannan Nair, aged 52 years, working as Assistant Director(Establishment

(.....7)

T. Krishnan Nair

and Mails) in the Office of Chief Postmaster-General, Kerala Circle, residing at Trivandrum, do hereby verify that the above contents of paras are true to the best of my knowledge and belief and that I have not suppressed any material facts.

Deponent

DEPONENT

Solemnly affirmed and signed by the deponent who is personally known to me in my presence on this the day of October, 1989 in my office at Trivandrum.

K. K. KUTTAN

ATTESTING OFFICER
K. K. KUTTAN
Assistant Postmaster General (C & PG)
Kerala Circle, Trivandrum-695 033

18/10/89
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J. 12

BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM.

O.A. No. 441/1989

P.M. Thomas and others : Applicants
Vs.

Director-General and
others. : Respondents

Reply for and on behalf of the
Respondents.



K. Karthikeya Panicker,
Counsel for the respondents.

Received
16/10/89
Ch. Am. O.V. Radhakrishnan
Advocate

4/10/89
20/10/89
16/10/89