

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 447 1990
T. A. No.

DATE OF DECISION 27.3.91

K. R. Menon Applicant (s)

Mr. K. Ramakumar Advocate for the Applicant (s)

Versus

Dy. Regional Director, ESI Respondent (s)
Corporation, Trichur and others

Mr. N N Sugunapalan, SCGSC Advocate for the Respondent (s) 1-3

Mr. C. S. Rajan

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant after his retirement on 31.8.1987 from the Employees State Insurance Corporation filed this application mainly for getting the benefit of revised fixation of pay in the post of UDC and Manager Grade-II by applying the Fundamental Rules 22-C as indicated in Annexure-E judgment of this Tribunal dated 25.1.1989.

2. Before his retirement he filed O.P. 7603/82 before the High Court of Kerala for similar relief. This was transferred to the Madras Bench of the Tribunal and numbered as T.A. 126/87 and disposed of with the following observation:

"In the result it is hereby directed that as far as the applicant is concerned as a result of the orders refixing his pay issued on 16.8.83 (Ext. P 7 to P-9) no amount shall be recovered from

the emoluments already paid to him. As the applicant is likely to be retired very shortly, the benefits of increment etc. which he may be entitled to shall be settled as expeditiously as possible."

2. Thereafter, the first respondent passed Annexure-D order dated 18.10.87 fixing the pay of the applicant at the rate of Rs. 575/- per month w.e.f. 1.6.1981 on his promotion as Insurance Inspector and Manager Grade-II in the scale of pay of Rs. 550--900. According to the applicant this is contrary to the undertaking by the respondents before the Tribunal while disposing the earlier case as per Annexure-C judgment. Hence, he filed Review Application for re-opening judgment and reconsidering ^{up} of the/Annexure-C order dated 31.7.1989 in the light of the subsequent judgment of this Tribunal rendered in TAK 703/87 dated 25.1.1989 (Annexure-E). But the Tribunal dismissed the Review Application and the applicant took the matter before the Supreme Court. But it was also dismissed confirming the decision of the Tribunal. Thereafter, the applicant filed Annexure-F representarion before the respondents requesting relief on the basis of Annexure-E judgment of this Tribunal passed ~~xx~~ considering identical claim raised by one Shri P. Ravindran. The first respondent rejected this request by Annexure-G order dated 3.4.1990 taking the view that the decision of the Tribunal in TAK 703/87 is only applicable to the applicant therein.

3. The case of the applicant is that his claim for fixation of his pay in the post of UDC-in charge had not been decided while disposing his earlier case as per Annexure-C order in view of the statement made by the respondents that no recovery will be made from the emoluments which he had already drawn as a result of the re-fixation. But the question has been discussed and decided in a subsequent judgment when Shri P. Ravindran raised the issue before the Tribunal in T.A. K. 703/87. The law has been laid down in that judgment and the respondents are bound to implement

the same by granting the benefits to the applicant also.

4. This contention is strongly opposed by the respondents on the ground that the applicant raised this issue in TAK 126/87. He did not press for a decision on the issue but he was satisfied with the disposal of the matter with a direction that no amount shall be recovered from the emoluments already paid to him. Thereafter when Annexure-C order was passed, his attempt to re-open the judgment and consider the validity of the fixation of pay effected by the respondents as per Annexure-D failed before this Tribunal and it cannot be re-agitated in the circumstances mentioned above. There is some force in this argument.

5. It is an admitted fact that after the adverse order Annexure-C the applicant challenged it by filing a Review Application. His attempt to get it corrected by filing an appeal before the Supreme Court also failed. Under these circumstances his claim for re-fixation of his pay as claimed by him in the light of the subsequent pronouncement in Annexure-E judgment is concluded and cannot be re-opened by filing a separate application.

6. In the circumstances having considered the matter in detail we are of the view that there is no merit in the application and it is only to be dismissed. Accordingly, we dismiss the same. There will be no order as to costs.

N. Dharmadan
27.3.91

(N. DHARMADAN)
JUDICIAL MEMBER

S. P. Mukerji
27.3.91

(S. P. MUKERJI)
VICE CHAIRMAN

spare

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 447
T. A. No.

1990

DATE OF DECISION 27.3.91

K. R. Menon _____ Applicant (s)

Mr. K. Ramakumar _____ Advocate for the Applicant (s)

Versus

Dy. Regional Director, ESI Respondent (s)
Corporation, Trichur and others

Mr. N N Sugunapalan, SCGSC — Advocate for the Respondent (s) 1-3

Mr. C. S. Rajan

CORAM:

The Hon'ble Mr. S. P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant after his retirement on 31.8.1987 from the Employees State Insurance Corporation filed this application mainly for getting the benefit of revised fixation of pay in the post of UDC and Manager Grade-II by applying the Fundamental Rules 22-C as indicated in Annexure-E judgment of this Tribunal dated 25.1.1989.

2. Before his retirement he filed O.P. 7603/82 before the High Court of Kerala for similar relief. This was transferred to the Madras Bench of the Tribunal and numbered as T.A. 126/87 and disposed of with the following observation:

"In the result it is hereby directed that as far as the applicant is concerned as a result of the orders refixing his pay issued on 16.8.83 (Ext. P 7 to P-9) no amount shall be recovered from

the emoluments already paid to him. As the applicant is likely to be retired very shortly, the benefits of increment etc. which he may be entitled to shall be settled as expeditiously as possible."

2. Thereafter, the first respondent passed Annexure-D order dated 18.10.87 fixing the pay of the applicant at the rate of Rs. 575/- per month w.e.f. 1.6.1981 on his promotion as Insurance Inspector and Manager Grade-II in the scale of pay of Rs. 550--900. According to the applicant this is contrary to the undertaking by the respondents before the Tribunal while disposing the earlier case as per Annexure-C judgment. Hence, he filed Review Application for re-opening judgment and reconsidering ^{up} of the/Annexure-C order dated 31.7.1989 in the light of the subsequent judgment of this Tribunal rendered in TAK 703/87 dated 25.1.1989 (Annexure-E). But the Tribunal dismissed the Review Application and the applicant took ^{up} the matter before the Supreme Court. But it was also dismissed confirming the decision of the Tribunal. Thereafter, the applicant filed Annexure-F representarion before the respondents requesting relief on the basis of Annexure-E judgment of this Tribunal passed xx considering identical claim raised by one Shri P. Ravindran. The first respondent rejected this request by Annexure-G order dated 3.4.1990 taking the view that the decision of the Tribunal in TAK 703/87 is only applicable to the applicant therein.

3. The case of the applicant is that his claim for fixation of his pay in the post of UDC-in charge had not been decided while disposing his earlier case as per Annexure-C order in view of the statement made by the respondents that no recovery will be made from the emoluments which he had already drawn as a result of the re-fixation. But the question has been discussed and decided in a subsequent judgment when Shri P. Ravindran raised the issue before the Tribunal in T.A. K. 703/87. The law has been laid down in that judgment and the respondents are bound to implement

the same by granting the benefits to the applicant also.

4. This contention is strongly opposed by the respondents on the ground that the applicant raised this issue in TAK 126/87. He did not press for a decision on the issue but he was satisfied with the disposal of the matter with a direction that no amount shall be recovered from the emoluments already paid to him. Thereafter when Annexure-C order was passed, his attempt to re-open the judgment and consider the validity of the fixation of pay effected by the respondents as per Annexure-D failed before this Tribunal and it cannot be re-agitated in the circumstances mentioned above. There is some force in this argument.

5. It is an admitted fact that after the adverse order Annexure-C the applicant challenged it by filing a Review Application. His attempt to get it corrected by filing an appeal before the Supreme Court also failed. Under these circumstances his claim for re-fixation of his pay as claimed by him in the light of the subsequent pronouncement in Annexure-E judgment is concluded and cannot be re-opened by filing a separate application.

6. In the circumstances having considered the matter in detail we are of the view that there is no merit in the application and it is only to be dismissed. Accordingly, we dismiss the same. There will be no order as to costs.

Sdr
(N. DHARMADAN)
JUDICIAL MEMBER

KMN

Sdr
(S. P. MUKERJI)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL COPY
Date 31-5-91
Deputy Registrar

[Signature]
Deputy Registrar



315