

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 46
~~XXXXXX~~

1990

DATE OF DECISION 30-11-1990

Sasidharan S & another Applicant (s)

Shri M. Rajagopalan Advocate for the Applicant (s)

Versus

Divisional Manager, Southern Respondent (s)
Railway, Trivandrum and 3 others

Smt. Sumathi Dandapani (R-1) Advocate for the Respondent (s)
Shri NN Suganapalan, SCGSC for R-2 to 4

CORAM:

The Hon'ble Mr. N.V. Krishnan, Administrative Member

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

N.Dharmadan, Judicial Member

The applicants in this case are re-employed ex-servicemen. The first applicant after his service in Indian Air Force, was re-employed as Commercial Clerk in the Office of Divisional Manager, Southern Railway, Trivandrum, Trivandrum. Similarly the second applicant was originally in the Indian Air Force and was re-employed as Commercial Clerk Gr. III under the Divisional Manager, Southern Railway, Trivandrum. Their complaint in this application is that they are not given the benefit of their

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full pension due to them on account of their earlier defence service including the D.A. and ad hoc relief which are to be ignored when fixing their pay in the re-employed posts. The respondents refused to fix their pay in the light of judgments of the Tribunal. Accordingly they submitted representations which ^{by} ~~they~~ were not considered and disposed of. Hence, they have approached this Tribunal with the relief as follows:

" A. direct the respondents to pay the pension relief of the applicants during the period of their re-employment.

B. Declare that the pension relief of the applicant can not be suspended during the period of re-employment.

C. to pay back the entire pension relief already recovered from the applicants, immediately.

D. to set aside the order OM No. M-23013/152/79/MF/CGA/VI-Pt/1118 dated 26-3-1984 of the third respondent.

3. When the case was taken up for hearing the learned counsel for the applicant submitted that this case is covered by the Full Bench of the Tribunal in TAK 371/87 and TAK 400/87. According to him, this case can be disposed of following the Full Bench decision of the Tribunal. This statement is not disputed by the learned counsel for the respondent. But the counsel for the respondents submitted that they have filed SLP in the

against the judgment of the Tribunal in the above case and the Supreme Court has stayed the operation of the above judgment as per order in SLP(Civil)No.117 of 1990 dated 31-8-89. We have disposed of number of similar cases following the above Full Bench judgment. The stay operates only against the parties in the case and we are bound by the Full Bench decision till it is reversed or over ruled, by another pronouncement by a competent forum.


4. We are of the view that since this case ^{is} covered by the Full Bench decision we can follow the same and dispose of this case. The Full Bench considered the issue "whether it is permissible to stop payment of relief (including ad hoc relief) on that portion (part or full) of pension of re-employed ex-servicemen during the period of re-employment, which portion (part or full) is ignored for the purpose of fixation of pay of re-employed persons". After considering this question in the light of the relevant orders and principles in detail the majority decided the issue and held as follows:

".....Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed ex-servicemen who retired from military service before attaining the age of 55 years, the relief including the ad hoc relief, relating to the ignorable part of the pension cannot be suspended, withheld or recovered, so long as the dearness allowance received by such re-employed pensioner has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. The impugned order Viz OM No.F22(87)EV(A)/75 dated 13.2.76 OM No.F.10(26)-8 (TR)76 dated 29-12-76, OM No.13(8)-EV(A)/76 dated 11-2-77 and OM No.M 23013/152/79/MF/CCA/VI(Pt.)/1118 dated 26-3-1984 for suspension and recovery of

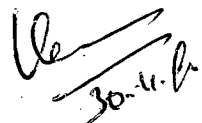
relief and ad hoc relief on pension will stand modified and interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in detail in accordance with law and taking into account the aforesaid interpretation by one of us (Shri S.P. Mukerji, Vice Chairman)....."

5. Following the Full Bench decision we are of the view that this case should be allowed. We hold that the applicants are entitled to relief including ad hoc relief relatable to ignorable portion of military pension. Accordingly, we direct the respondents not to suspend, withhold or recover during the period of re-employment the relief including the ad hoc relief relatable to the ignorable portion of the military pension. If there has been any recovery, the respondents should refund the recovered amount to the applicant within a period three months from the date of receipt of this order.

In the result, we allow the application as indicated above. There will be no order as to costs.


(N. Dharmadam)
Judicial Member

30.11.90


(N.V. Krishnan)
Administrative Member

30th November 1990

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