

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 469/1991
F. A. No.

199

DATE OF DECISION 19.3.1992

M. Ramankutty Applicant (s)

Mr. M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

The Senior Divisional Personnel Officer,
Southern Railway, Respondent (s)

Divisional Office (Personnel Branch)

Palghat and 3 others.

M/s. M. C. Cherian & T. A. Rajan

Mr. George Joseph, ACGSC Advocate for the Respondent (s)

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

(Hon'ble Shri S. P. Mukerji, Vice Chairman)

In this application dated 23.3.91 the applicant an ex-serviceman reemployed as Carriage and Wagon Khalasi in the Southern Railway has prayed that he may be declared to be entitled to get his pay on re-employment ^{fixed} by grant of one increment for every completed year of service in equivalent or higher category ^{or post} in the Armed Force and the respondents be directed to fix his pay accordingly. He has also prayed that the respondents be directed to pay relief on military pension with arrears during the period of his re-employment. The brief facts of the case are as follows.

2. The applicant was employed in the Army between October 1965 and October 1980. At the time of his retirement from the Army he was having a basic pay of Rs. 235/- which along with the allowances came to Rs. 415/- per month. He was re-employed as a

Khalasi in the scale of Rs.196-232/- in the quota reserved for ex-servicemen in August 1985. His pay was fixed at the minimum of the pay scale without making any deduction on account of military pension. He represented for the first time on 1.10.1988 seeking protection of the last pay drawn by him in the Army (Ext.R2). His particulars of Army service were called from the Army Record Office at Bangalore(Ext.R3). According to the applicant in accordance with the Government of India's letter dated 8.2.83, the entire military pension of Non-Commissioned Officers is to be ignored and accordingly his entire military pension is to be ignored in fixing his initial pay. Since the maximum of the pay scale in which he was re-employed, i.e, Rs.232/- is less than the last pay (Rs.235/-) drawn in the Army, his pay is liable to be fixed by granting one additional increment for every completed year of service subject to a maximum of Rs.232/-. This will be in addition to the full military pension and relief on pension. He has referred to the decisions of this Tribunal in which similar reliefs have been granted. His representation brought the response at Annexure -II from the respondents ^{stating} that the total emoluments on re-employment ^{were} ~~is~~ more than ₂ the last pay drawn at the time of retirement from Armed Services and therefore he was not eligible for refixation of his pay at higher stage.

3. Respondent 3 in the counter affidavit has referred to the various orders of the Government of India and the rulings of the various High Courts disallowing relief on pension during the period of re-employment of ex-servicemen. However, they have conceded that a Larger Bench of this Tribunal headed by the then Chairman allowed the relief

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on pension during the period of re-employment, but the same has been stayed by the Supreme Court.

4. Respondents 1 and 2 in their counter affidavit have reiterated that since the total emoluments granted to the applicant on re-employment were more than the last ^{military} pay drawn at the time of retirement, he is not eligible for re-fixation of his initial pay with increments. They have, further stated that since the Military authorities have not furnished the particulars of the pay drawn by the applicant from the date of enrolment to the date of discharge, the applicant's averment about particulars of his military pay etc. could not be verified.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As has been indicated by respondent 3, a Full Bench of this Tribunal headed by the then Chairman of the Tribunal in TAK 732/87 and other Cases by a majority judgment dated 20th July, 1989, to which one of us (Shri S.P.Mukerji) was a party, decided 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 adhoc relief, relatable 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 orders viz. O.M No.F.22(87-EV(A)/75 dated 13.2.1976, O.M No. F.10(26)-B(TR)/76 dated 29.12.76, O.M No. F.13(8)-EV(A)/76 dated 11.2.77 and O.M No.M.23013/152/79/MF/CGA/VI(Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and adhoc 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 details in accordance with law and taking into account the aforesaid interpretation given by one of us. (Shri S.P.Mukerji, Vice Chairman). "

6. Since the applicant before us was engaged in 1985, in accordance with the O.M of 8.2.83 his entire military pension is to be ignored and accordingly the relief including ad-hoc relief, if any, on his ^{entire} military pension will also have to be ignored during the period of his re-employment and the applicant will be entitled to draw the relief including adhoc relief on his military pension during the period of his re-employment with the Railways.

7. As regards drawal of advance increments in fixation of initial pay of re-employed ex-servicemen, a Full Bench of this Tribunal in their judgment dated 13.3.1990 in O.A. 3/89 etc. decided as follows:-

" 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-servicemen. "

From the above it is clear that if the last military pay drawn by the applicant was more than the minimum of the pay scale in which the applicant has been re-employed, the applicant will be entitled to advance increments at the rate of one increment for each year of service in equivalent or higher grade in the Army in accordance with the O.M of 25.11.1958, the relevant portion of which reads as follows:-

- "(b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In case where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay-scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than in which he is re-employed.

- (c) In addition to (b) above, the Government servant may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he is eligible, e.g., Government contribution to a Contributory Provident Fund, gratuity, commuted value of pension, etc., provided that the total amount of initial pay as at (b) above, plus the gross amount of pension and/or the pension equivalent of other forms of retirement benefit, does not exceed:-

- (i) the pay he drew before his retirement (pre-retirement pay), or

- (ii) Rs.3,000/-, whichever is less."

This has to be read with the clarification given by the Department of Personnel and Training after consulting the Ministry of Finance, as quoted in the aforesaid judgment dated 13.3.1990 which reads as follows:-

" When a re-employed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments arises only if there is any hardship. Hardship is seen from the point whether pay plus pension plus equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no hardship, no advance increment can be granted."

In view of the ruling of the Full Bench of the Tribunal, the ignorable part of the military pension is to be ignored

in assessing the hardship and since in the case of the applicant before us, his entire military pension is to be ignored and since the minimum of the pay scale at which his re-employment pay has been fixed, i.e, Rs.196/- is less than the last military pay drawn by him of Rs.235/- without taking into account his ignorable military pension, he is entitled to get one increment in the scale of Rs.196-232/- for each year of his military service, equivalent or higher than the grade of C&W Khalasi.

8. The contention of the respondents that both the decisions of the Larger Bench of the Tribunal have been stayed by the Hon'ble Supreme Court, should not make any difference so long as those decisions have not been set aside. In Roshan Jagdish Lal Duggal and others vs. Punjab State Electricity Board, Patiala and others, 1984(2) SLR 731, the High Court of Punjab and Haryana observed that pendency of an appeal before the Supreme Court does not render an order of the High Court 'non est' even where the High Court's order in appeal had been stayed by the Supreme Court. The order of the High Court was still to be treated as a binding precedent. The Delhi High Court also in Jagmohan vs. State, 1980 Criminal Law Journal 742 observed that mere pendency of an appeal before the Hon'ble Supreme Court does not take away the binding nature of the High Court's decision unless and until it is set aside by the Hon'ble Supreme Court. In Alpana V.Mehta vs. Maharashtra State Board of Secondary Education and another , AIR 1984 SC 1827 the Supreme Court upheld the contention of the appellant that the Bombay High Court was not justified in dismissing her writ petition on the sole ground that operation of the earlier judgment of that High Court on the basis of which the writ petition had been

filed, had been stayed by the Supreme Court. The above view has been upheld by the Full Bench of the Principal Bench of the Tribunal in its judgment dated 13th February, 1991 in O.A 194/1990 (Shri Ganga Ram and another vs. Union of India) and 3 other O.As. In those cases the issue before the Full Bench was whether the judgment delivered by another Full Bench in Rasila Ram's case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an S.L.P filed by the Government, remains valid as a binding precedent or whether the interim order passed by the Supreme Court nullified the judgment of the Full Bench or its effect was to be confined only in respect of the judgment pronounced in the case of Rasilaram. The Full Bench observed that the interim order passed by the Supreme Court in the S.L.P in Rasilaram's case not being a speaking order does not make any declaration of law and "consequently, it is not a binding order under Article 141 of the Constitution". The Full Bench further observed that until the decision of the Full Bench in Rasilaram's case is set aside, reversed or modified by the Supreme Court it remains effective. In view of the unambiguous finding of the Full Bench of the Tribunal, we have no hesitation in following the dicta of ^{Tribunal's} ~~our~~ judgments in this case also so long as those judgments have not been set aside, modified or reversed by the Hon'ble Supreme Court.

9. In the conspectus of facts and circumstances we allow the application with the following directions:-

- a) The respondents shall pay to the applicant relief including ad-hoc relief on his military

pension during the period of his re-employment.

- b) Respondent 3 shall give to Respondent 1 the full particulars of the posts, pay scale, pay and the periods during which the posts were held during the entire period of military service of the applicant between 1965 and 1980. This shall be done within a period of two months from the date of communication of this order.
- c) Respondents 1 and 2 shall re-fix the initial pay of the applicant in the scale of Rs.196-232 by granting him one increment for each year of military service during which the applicant held posts equivalent or higher than that of Khalasi subject to the overall limit prescribed in the O.M of 25.11.1958 as adopted by the Railways.
- d) Arrears of pay and allowances and of relief and ad-hoc relief on military pension should be paid to the applicant by the concerned respondent within a period of four months from the date of communication of this order. But the arrears will be paid from the date of commencement of 3 years prior to the date of claim or the date of reemployment whichever is later.
10. There will be no order as to costs.

(N.Dharmadan)
Judicial Member

N.Dharmadan
19.3.92

(S.P.Mukerji)
Vice Chairman

S.P.Mukerji
19.3.92

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CLC 80/93 in

SA 469/91

AD JRR

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Mr MRR Nair

Mr McChenai

Mr George Joseph

At the request of learned counsel

for respondents post on 17.6.93

(RR)
10/6

(ND)
10/6

17-6-93
(33)

Mr MRR Nair

Mr. TA Razain

At the request of the learned
Counsel for the respondents, list
on 15.7.93

(RR)

(ND)

17-6-93

(23) Mr MR Rajendran Nair
Mr MC Cherian for R 1 & 2
Mr George Joseph for R-3

Petitioner complains of wilful disobedience of the orders of this Tribunal in DA 469/91.

Learned counsel for respondents submitted that pay of the applicant has been refixed by order dated 29.6.93. He also submitted that amounts remained ^{ing} to be paid, will be paid within two weeks from to-day.

We record the submission and we consider it unnecessary to go into merits of the Contempt application. It is dismissed as not pressed.

R Rangarajan
A.M.

Chettur Sankaran Nair (J)
V.C.

19.7.93

Received
22/7/93

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