

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 477
T. A. No.

1991

DATE OF DECISION 3.10.91

S. Dhanapalan Applicant (s)

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

Versus
Union of India represented by
Secretary, Ministry of Respondent (s)
Communications, New Delhi and others

Mr. K. A. Cherian, ACGSC Advocate for the Respondent (s) 1-3
Mr. N. Balakrishna Pillai for R-4

CORAM:

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

The Hon'ble Mr.

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 is aggrieved by the refusal of the respondents to re-fix his pay in accordance with Government orders provided for fixation of the pay of the re-employed ex-serviceman as interpreted by the Full Bench of this Tribunal in O.A. 3/89 and connected cases.

2. The applicant who retired from Army on 31.8.83 after rendering 20 years of service as Havildar was re-employed as a Group-D employee in the Mavelikara Sub Division of the Telecommunication Department w.e.f. 2.3.1987. The applicant

was drawing Rs. 810/- (pre-revised scale) as his pay at the time of retirement from Army. His monthly pension was fixed at Rs. 547/-. On re-appointment in the Group-D post the pay of the applicant was fixed at Rs. 750/- which according to the applicant is the minimum of the scale and is contrary to the orders issued by the Government and considered in O.A. 3/89 and connected cases decided by the Full Bench. Since his pay has not been fixed in accordance with the principle laid down by the Full Bench of this Tribunal, the applicant submitted a representation dated 28.2.1991 before the second respondent for a proper fixation of his pay. This has not been done. Hence the applicant filed this application with the following reliefs:

- " i) To declare that applicant is entitled to get fixation of pay as Group 'D' after granting 20 increment i.e. 1 increment each for his completed year of service in military and to pay the arrears thereof with effect from the date of his re-employment.
- ii) Direct the respondent to grant relief on pension to applicant and to pay the arrears thereof w.e.f. the date of his re-employment
- iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant.
- iv) Grant the cost of this Original Application."

3. The respondents 1 to 3 filed a detailed counter affidavit in which they have admitted that the decision in

O.A. 3/89 applies to the facts of this case but an S.L.P. has been filed before the Supreme Court and a stay obtained with regard to the operation of the judgment. The learned counsel for the respondents are not able to distinguish the facts of this case from that of the facts in O.A.3/89.

4. Having considered the matter I am of the view that the claim of the applicant for re-fixation of his pay is squarely covered by the decision of the Full Bench of this Tribunal in O.A. 3/89 and connected cases. The relevant portion of the judgment is extracted below for reference:

"(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 VII) 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."

5. In the light of these principles, the first relief is to be allowed.

6. As regards the second relief viz. relief on pension cannot be denied to him during the period of re-employment, it is admitted by both parties that it is also covered by decision of the Larger Bench of the Tribunal in TAK 732/87 and other connected cases. By


majority judgment dated 20.7.89 the Larger Bench of the Tribunal 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 ad hoc 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 O.M.No. F.22/87-EV(A)/75 dated 13.2.76, 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 26.3.84 for suspension and recovery of relief and ad hoc relief on pension will stand modified and interpreted on the above lines...."

In the light of these principles, this relief is also to be allowed.

7. Accordingly, I allow the application and direct the Respondents 2 & 3 to re-fix the pay of the applicant in the re-employed post of Group-D employee following the principles laid down by the Full Bench of the Tribunal in O.A. 3/89 and connected cases. I further direct the respondents to pay relief on pension to the applicant as per judgment in TAK 732/87 and disburse ^{on both this trials is} arrears thereof ^{for} a period of three years prior to the date of claim of the applicant.

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


(N. DHARMADAN)
JUDICIAL MEMBER
3.10.91

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

~~G.A. No.~~ R.A 59/92
~~in OA 477/91~~

DATE OF DECISION 28-5-92

Union of India . Review Applicant (s)/Respondent in OA

Shri K.A. Cherian, ACGSC Advocate for the Applicant (s)

Versus

S. Dhanapalan and another Respondent (s)/applicants in OA

Shri M.R.R. Nair, Advocate Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Member(Judicial)

~~The Hon'ble Mr.~~

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, M(J)

The respondents in the Original Application has
filed this Review Application.

2. The main ground for review is that this Tribunal did not advert to the fact that the fixation of pay of the applicant in the re-employed post has to be made after 1-7-86 and hence the applicant is only entitled to get fixation of his pay at the minimum of the scale of the new post in which he is re-employed. Nothing is said about this aspect in the judgment. Hence it is ^{wh} to be reviewed.

3. The question raised in this case is squarely covered by the full bench judgment of this Tribunal and I had only followed the same while disposing of the application. There is no error apparent on the face of the record in this case warranting a review and rehearing of the case as contended by the respondents. As regards the re-employment of the applicant in the O.A. after 1-7-86, it goes without saying that there is no difference between cases which arose before or after 1-7-86. We have considered this issue in OA 884/91 and that ⁴ held/even after the subsequent orders relating to the issue which came into force after 1-7-86, the re-employed pensioner is entitled to dearness allowance and relief on ignorable portion of his pension as held in the Full Bench judgment. There is nothing in the orders which takes a different turn or a position contrary to the principle laid down by the Full Bench of the Tribunal in respect of same issue. Hence there is no merit in this review application and it is only to be rejected. Accordingly, I do so.


(N. Dharmadan)
Member (Judicial)

28.5.92.

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