

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 487/90 ~~1990~~
~~XXXXXX~~

DATE OF DECISION 31.12.1990

V.V. Rajan Applicant (s)

M/s E.V.Nayanar & T.G.
Kaladharan Advocate for the Applicant (s)
Versus

Union of India rep. by Secy.
Ministry of Defence and others Respondent (s)

Mr.C.Kochunni Nair-for R.1&2
Mr. George Thomas -for R.3 Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

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

In this application dated 17.6.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman reemployed as Office Assistant in the Office of the Postal Superintendent, Cannanore has prayed that the respondents be directed to restore the Dearness Allowance and relief ~~portion~~ on the applicant's military pension during the period of his reemployment and to refund Dearness Allowance relief and adhoc relief so far withheld during the period of his reemployment.

2. The applicant after 15 years of service in the Air Force retired on 31.3.76 before completing the age of

55 years. A copy of the particulars of his military service is at Annexure-I. He was reemployed in the Post and Telegraph Department as temporary clerk vide the order dated 11.4.78 (Annexure-III) and ^s now working _r as Office Assistant. Before his reemployment he was in receipt of the full military pension along with D.A. and relief admissible on his military pension. His grievance is that during the period of his reemployment payment of relief portion of the pension was stopped. His argument is that in accordance with the instructions issued by the Government of India, military pension of reemployed ex-serviceman like him was to be ignored upto Rs. 50/- till 19.7.78 and upto Rs.125/- till 25.1.83 and then to be totally ignored for purposes of fixation of pay on reemployment. Accordingly he was entitled to receive the relief on pension which was to be ignored for pay fixation. His representations for getting relief on military pension to be ignored have not been replied to. He has referred to the Judgment of this Tribunal in T.A.K.732/87, according to which reemployment ex-serviceman are entitled to receive the relief including adhoc relief on ignorable part of the military pension and the same cannot be suspended, withheld or recovered during the period of reemployment of such ex-serviceman who had retired before attaining the age of 55 years.

Copies of this judgments have been placed at Anneuxure-VI and VII.

3. The respondents have referred to the various orders issued by the Government of India to say that during the period of reemployment the relief on pension is not admissible, because D.A. is paid on the reemployment pay to cover the higher cost of living. If in addition to the D.A. on reemployment pay, pension relief is given that will be tantamount to giving the dearness relief twice over. They have also referred to the Judgments of the Kerala and Delhi High Courts denying pension relief and have stated that the judgment of the Ernakulam Bench of the Tribunal allowing pension relief during the period of reemployment has been stayed by the Hon'ble Supreme Court.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A Full Bench of this Tribunal presided over by Mr. Justice Amitav Banerji, Hon'ble Chairman, by majority judgment dated 20.7.89 in T.A.K. 732/87 and other connected cases(Annexure-VI) decided as follows:

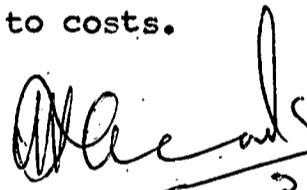
"Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed ex-servicemen who retired from military service before attaining the age of 55 years, the relief including adhoc relief relatable to the ignorable part of the pension cannot be suspended, withheld or recovered, so long as the

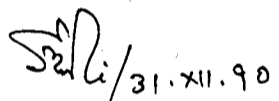
" the dearness allowance received by such re-employed pensioner has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. The impugned orders viz. O.M.No.F.22(87-EV(A)/75 dated 13.2.76, O.M.No.F.10(26)-B(TR)/76 dated 29.12.76, O.M.No.F.13(8)-EV(A)/76 dated 11.2.77 and O.M.23012/152/79/MF/CGA/VI(Pt)1118 dt.26-3-84 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).

The above judgment was pronounced in the open court on behalf of the Larger Bench by us."

5. Even though an S.L.P. has been filed and the aforesaid judgment has been stayed, since the same has not yet been set aside by the Hon'ble Supreme Court, We are continue to be bound by that judgment. In Roshan Jagdish Lal Duggal and others Vs. The Punjab State Electricity Board, Patiala and others, 1984(2)SLR 731 it has been held by the Punjab and Haryana High Court that even though a ruling has been stayed the same remains still binding. ^{The} Delhi High Court also in Jagmohan Vs. State, 1980 Cr. Law.Journal, 742 held that mere ^{in appeal} pendency before the Supreme Court does not take away the binding nature of the decision of the High Court unless and until it is set aside by the Hon'ble Supreme Court.
6. In view of the above, we have to follow the decision of the aforesaid judgment of the Full Bench ^{to} which one of us (Shri S.P.Mukerji) was a party.
7. Accordingly we allow this application with the

direction to the respondents that the relief including adhoc relief on that part of military pension of the applicant which was to be ignored for the purpose of pay fixation in accordance with the extant relevant orders shall not be withheld, suspended or recovered during the period of his reemployment so long as D.A. received by the applicant has been determined on the basis of pay which has been reckoned without considering the ignorable part of pension. Any amount of pension relief including adhoc relief on pension if suspended, withheld or recovered should be restored/or refunded to the applicant within a period of three months from the date of communication of this order. There will be no order as to costs.


31/12/90
(A.V. HARIDASAN)
JUDICIAL MEMBER


31.XII.90
(S.P. MUKERJI)
VICE CHAIRMAN

31-12-1990

Ks.