

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 491/90 199
~~XXXX~~ No.

DATE OF DECISION 19.4.91

C.K.Radhakrishnan Applicant (s)

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

Versus

The Union of India, Rep. by Respondent (s)
the Secretary, Govt. of India,
Ministry of Defence, New Delhi. & 2 others

Mr. George Joseph, ACGSC(R1-2) Advocate for the Respondent (s)
Mr. George Thomas (for R3)

CORAM:

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

The Hon'ble Mr. A.V.HARIDASAN, 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? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

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

In this application dated 17.6.90 filed under Section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman re-employed as Postal Assistant in the Cannanore Head Post Office has prayed that the respondents be directed to restore the Dearness Allowance and relief including adhoc relief portion of the applicant's military pension and to refund to the applicant the Dearness Allowance and relief portion of his service pension so far withheld.

2. The applicant retired from the Indian Air Force on 31.7.1981 after 15 years of service, but before completing the age of 55 years. In accordance with the order dated 14.2.83(Annexure-II) he was re-employed as Postal Assistant in the Cannanore Head Post Office and is now working as Office Assistant there. He was receiving his military pension along with the admissible Dearness Allowance and relief originally from the District

Treasury, Cannanore and later from the State Bank of India there. However, on his re-employment in the Posts & Telegraphs Department, the relief portion of his pension was stopped. His contention is that in accordance with the order dated 25.1.83 the entire military pension of re-employed ex-servicemen who were discharged from the Army before attaining the age of 55 years was to be ignored for the purposes of fixation of their re-employment pay. Accordingly he was entitled to receive the relief portion of the ignorable pension even during the period of his re-employment. His representations for payment of D.A. and relief on military pension remain unresponded. Hence this application. The 3rd respondent, the Branch Manager, State Bank of India indicated that the military pension was being disbursed on the authority of the Chief Controller of Defence Accounts (Pension), Allahabad and in accordance with the circular from the 2nd respondent, i.e., the Controller of Defence Accounts (Pension), Allahabad. Relief on pension to re-employed military pensioners during the period of their re-employment was stopped. He had, therefore, to stop the relief on pension as a disbursing agent. The 2nd respondent on behalf of all the three respondents has referred to a number of orders issued by the Ministry of Defence (Annexure-R1), Ministry of Finance (Annexures R2 and R3) to indicate the basis of the stoppage of relief on pension of re-employed pensioners. It has also been mentioned that the High Courts of Kerala, Tamilnadu and Andhra Pradesh had stayed the operation of the Government Order dated 26.3.84 (Annexure-R3) by which the relief was stopped. The Delhi High Court has decided that relief will be paid to the re-employed pensioners, and pending final decision the recovery was withheld and the amount recovered was to be refunded. Reference has been made to four judgments of this Bench of the Tribunal in which it was decided that the relief should be paid on the portion of pension which has to be ignored for fixation of pay on re-employment. However a Special Leave Petition on those judgments have been filed by the Ministry of Defence before the Supreme Court of India and that Court had stayed the operation of those judgments.

3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. A Larger Bench of the Central Administrative Tribunal presided over by the Hon'ble Chairman Mr. Justice Amitav Banerji in TAK 732/87 and 5 similar cases, by a majority

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(to which one of us was a party) ²
judgement / dated 20.7.1989 while considering the question of payment of relief including ⁸ad hoc relief on ignorable part of the military pension, 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, 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 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 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 details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P. Mukerji, Vice Chairman)."

Since in the present case the applicant was re-employed vide the order dated 14.2.83 when the ignorable part of the military pension was Rs.125/- and the entire military pension was to be ignored after 24th October, 1983, in accordance with the aforesaid decision of the Larger Bench of the Tribunal he is entitled to proportionate D.A., relief and ad hoc relief on Rs.125/- of his military pension from the date of his re-employment till 24th October, 1983 and thereafter on his full military pension.

4. As regards the contention of the respondents that the judgment of this Tribunal has been stayed by the Hon'ble Supreme Court, we find that pendency of an S.L.P. and even stay of the order in the S.L.P. cannot stand in the way of our relying on the judgment and that the ratio of those judgments will continue to be applicable to other cases also until those judgments are set aside by the Hon'ble Supreme Court. 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 v. 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

22


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 184/1990(Shri Ganga Ram and Another v. 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 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.

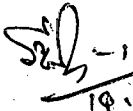
5. In the facts and circumstances we allow the application with the direction that proportionate D.A, relief including adhoc relief on the ignorable part of the applicant's military pension which was Rs.125/- till 24th October, 1983 and thereafter full D.A.,relief including adhoc relief on his total ignorable military pension should be disbursed to the applicant from the date

23

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of his reemployment and any amount of D.A., relief and adhoc relief withheld, suspended or recovered should be refunded to the applicant. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


19.4.91
(A.V. Haridasan)
Judicial Member


19.4.91
(S.P. Mukerji)
Vice Chairman

n.j.j