

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 505/92
XXXXXX

199

DATE OF DECISION 9.10.92

KR Krishnan Nair Applicant (s)

Mr. M Rajagopalan Advocate for the Applicant (s)

Versus

Principal, Model Industrial Training Institute, Beypore, Calicut-15 & another Respondent (s)

Mr. George CP Tharakkan, SCGSC Advocate for the Respondent (s)
(for R.1-2)

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? Y
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

SHRI N DHARMADAN, JUDICIAL MEMBER

The applicant is a re-employed Ex-serviceman. He is aggrieved by the refusal of the respondents to fix his pay in the re-employed post, in accordance with the Departmental instructions as explained by the Full Bench of this Tribunal in OA-3/89.

2. According to the applicant, after his discharge from the military service he was re-employed by the 1st respondent on 20.6.83. He has in his credit 28 years service in the Indian Army. His last pay in the Army was Rs.1000/- p.m. He was re-employed as Vocational Instructor under the 1st

respondent in the scale of Rs.440-20-500-EB-25-700-EB-25-750. The applicant is claiming for the protection of his last pay ignoring his entire retirement benefits as per Annexure A-I OM dated 8.2.83. He has forwarded a true copy of Appendix 'B' (Annexure-A II) showing all the details about his Army service. He has also produced Annexure A III Last Pay Certificate, but the Ist respondent has not refixed his pay taking into consideration the principles contained in Annexure I or the statements in the representation submitted by him. The order passed in this behalf is Annexure A.IV. It reads as follows:

" The representation submitted by Shri KR Krishnan Nair, Vocational Instructor was examined with due consideration in accordance with the regulations applicable in respect of re-employment prior to 1.7.86 and the undersigned has come to the conclusion that his pay fixation at the minimum in the pay scale of Rs.440-750 is in order as per decision 1(b), 1(c) read with note (2) and decision 12 of Department of Personnel and Training. "

3. The applicant filed this application challenging the order Anne. A-4 under Section 19 of the Administrative Tribunals' Act with the following reliefs:

- "a) To Quash Annexure A-4 order.
- b) To direct the respondents to re-fix the pay of the applicant, protecting his last pay, ignoring his pension.
- c) To declare that the applicant is entitled to get his pay fixed protecting his last pay and ignoring his retirement benefits.
- d) To direct the respondent to re-fix applicant's pay w.e.f. 20.6.1983 and to give him all consequential benefits including the arrears from 20.6.1983."

4. The respondents in the reply statement admitted the basic facts, but submitted that "the applicant was

holding a post below the Commissioned Officer's rank at the time of retirement from the military service. Hence, the entire pension has to be ignored." They have also stated that the applicant's full pension is Rs.541/- and the minimum pay in the re-employed post is Rs.440/- and the pension equivalent of gratuity could not be known to the office of the respondents. However, the applicant's pay was estimated by the respondents as Rs.1031/- and according to the respondents this amount is more than his pre-retirement pay of Rs.1000/- and hence according to them the applicant does not come within criterion of hardship for grant of advance increment, as per the provision in Annexure I Government order. They further stated that the decision relied on by the applicant in OA-3/89 is pending in appeal in SLP before the Supreme Court and the Supreme Court has granted a stay in that case.

5. I have heard the counsel on both sides. Admittedly the applicant while re-employed prior to July, 1986 and was holding a post below the Commissioned Officer's rank at the time of his retirement with his last basic pay at Rs.1000/-. In the case of persons below the Commissioned Officer's rank the entire pension/pension equivalent to gratuity and other forms of retirement benefits have to be ignored for the purpose of pay fixation in the re-employed post. This had not been done in the case of the applicant. Hence, having regard the facts and circumstances of the

case, the entire pension of the applicant has to be ignored. The respondents, in fact, refused to follow the law laid down by this Tribunal in OA- 3/89 and fixed his salary in the re-employed post on the ground that the Supreme Court has stayed the Full Bench judgment of this Tribunal in OA-3/89.

6. The Full Bench of this Tribunal considered the question of hardship and claim of re-fixation of salary in re-employed posts ~~xxx&xxix&xxx~~ in OA-3/89. The relevant portion of the judgment is extracted below:

" We declare that the applicant is entitled to be granted one advance increment for each completed year of his military service in equivalent grade in fixing his pay in the post of Postal Assistant with effect from 29.11.1983 if the minimum of Rs.260/- in the pay scale of postal Assistant together with unignorable part of his pension does not exceed the last pay drawn by him in the Armed Force. The ignorable part of his pension as indicated in the instructions in 1964, 1978 and 1983 (Annexure V, V-A, and VI respectively) has to be excluded to reckon whether any 'undue hardship' is caused to the applicant by fixing his re-employment pay at the minimum of the pay scale of the post of Postal Assistant as contemplated in the sub-para (b) of the First para of the Office Memorandum of Ministry of Finance dated 25th November, 1958. The impugned orders at Annexures A-2 dated 8.9.1986, A-7 dated 30.12.1988, A-11 dated 5th July, 1988 and also the clarificatory U.O. notes of the Department of Personnel and Training, No. 1627-Estt.(Pay-II)/85 dated 17.9.1985 and 21.7.1986 are set aside to the extent they are contrary to the aforesaid declaration.

(ii) We direct that the pay of the applicant should be refixed on the above basis within a period of three months from the date of communication of this order."

The applicant is eligible for the benefit of the law laid down by the Full Bench of the Tribunal in the above case.

7. The contention of the respondents, that since Supreme Court has stayed the judgment in OA-3/89, it should not be followed, cannot be accepted in view of the fact

that the stay issued by the Supreme Court applies only to that case. Until law laid down by the decision of the Full Bench is re-considered and set aside or modified this Tribunal is bound by the same. Respondents OA-4 have no case that the decision in OA-3/89 has either been modified or set aside by the Supreme Court so far. So much so I am bound by the decision of Full Bench in OA-3/89. Accordingly I follow the same and allow the application.

8. In the light of the law laid down by the Full Bench of this Tribunal in OA-3/89 the claim of the applicant for re-fixation of the salary ignoring the entire pension deserves fresh consideration and I allowes the application and quashing the Annexure A IV with the direction to the respondents to refix his pay, protecting his last pay ignoring his pension on the basis of the law laid down by this Tribunal in OA-3/89. This shall be done within a period of 3 months from the date of receipt of the copy of that judgment. In case the applicant is entitled to the arrears as provided under the law, the respondents shall disburse the same without any delay. There will be no order as to costs.


9. 10. 92
(N DHARMADAN)
JUDICIAL MEMBER

9.10.92.