

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.508/95

Tuesday, this the 7th day of January, 1997

C O R A M

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

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TG Gopi, Peon,
Accounts Branch,
Employees State Insurance Corporation,
Regional Office, Thrissur--20.

....Applicant

By Advocate Shri M Rajagopalan (represented)

vs

vs

1. Regional Director,
Employees State Insurance Corporation,
Regional Office, NS Round,
Thrissur--20.
2. Director General,
Employees State Insurance Corporation,
Kotia Road, New Delhi.
3. Officer Commanding,
Artillery Records,
Nasik Road Camp, Maharashtra.

....Respondents

By Advocate Shri KS Bahuleyan for SCGSC

The application having been heard on 7.1.1997, the
Tribunal on the same day delivered the following:

O R D E R

PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant, who is a Peon in the Employees State Insurance Corporation, submits that he is an Army pensioner. His last pay drawn in the Army was Rs.260/- per month. He was re-employed as Peon in the pay scale of Rs.196-232. According to the orders dated 8.2.83, applicant submits that his entire pension has to be ignored while fixing his pay on re-employment. However, applicant

contd.

has a grievance that refixation of his pay on re-employment was not done in accordance with the directions of this Tribunal in OA No.3/89.

2. Respondents submit that the decision of the Tribunal in OA 3/89 has been challenged before the Supreme Court and that the relief prayed for cannot be granted.

3. In OA 3/89 (B Ravindran vs Director General of Posts, New Delhi and Others, (1991) 15 ATC 195), the Tribunal noticed:

"It was only the 1958 instructions that laid down the principle of hardship and the subsequent instructions where quantum of ignorable pension had been enhanced from time to time, did not touch on hardship. In the 1958 instructions, the concept of hardship was to ensure that there was no drop in the total packet of pay and pension on re-employment with reference to pre-retirement pay of a pensioner. With the issuance of the 1983 instructions, the entire pension being ignored in almost all the cases, the total of the gross pension together with the minimum far exceeded pre-retirement pay. In such cases, they were of the view that there was no hardship. To have allowed advance increments by comparing only minimum to the pre-retirement pay, would have entailed double and unintended benefit. Hence, a conscious decision was taken that only where pay at the minimum plus the gross pension fell short of pre-retirement pay, it could be considered a case of hardship and grant of advance increment could be considered.

16. It is true that the instructions issued in 1964, 1978 and 1983 did not touch on hardship. To our mind, under the 1964 instructions, pension to the extent of Rs.50 was ignorable to judge hardship in fixation of pay of ex-servicemen on re-employment. The enhancement of the ignorable portion of pension

was by way of liberalisation having regard to the increase in the cost of living and it cannot be contended that the government was not conscious of the factor of hardship while issuing the said instructions. The learned counsel for the respondents had no explanation to offer in this regard. The respondents have also not produced before us the relevant files containing the policy decision taken by them in 1985 pursuant to which the impugned orders have been passed contrary to the provisions of the 1983 instructions.

.....

19. In the light of the foregoing, we hold that the fixation of pay of ex-servicemen on their re-employment in government service, will have to be on the basis of the instructions in force at the relevant time before the clarifications were issued by the Department of Personnel and Training in 1985. We further hold that the clarifications issued by the Department of Personnel will have no retrospective operation so as to prejudicially affect the pay already fixed in respect of ex-servicemen who were re-employed before the issue of such clarifications.

....

21.....(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 OA No.3 of 1989), 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.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions."

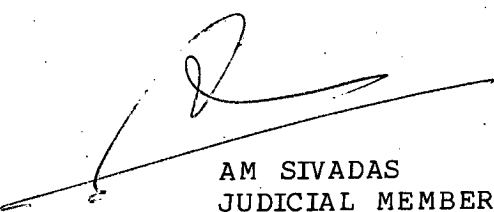
4. The decision of the Full Bench in OA 3/89 has been upheld by the Supreme Court in Director General of Posts & Ors v B Ravindran & Anr (CA No.4077-78 of 1992 etc) decided on 8.11.96. The Supreme Court also stated in CA No.14492 of 1996 decided on 8.11.96 that the directions given by the Tribunal in regard to ignoring a part of pension for the purpose of fixation of pay on re-employment must be upheld. Accordingly, the contention of respondents that this relief cannot be granted in view of the pendency of the appeal in OA 3/89, cannot be accepted.

5. Learned counsel for applicant produced an order of this Tribunal in OA No.690/95. In that order, the Tribunal had noticed that the instructions of the Government of India require that the initial pay on re-employment of ex-servicemen should be fixed at the minimum stage of the scale of pay and if this causes undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service rendered before retirement from the Army. In the case of applicant, the last pay drawn was Rs.260/- per month and the pay of applicant has to be fixed ignoring the pension drawn by him at the maximum of the scale in which he has been appointed since that is below the pay last drawn.


6. We accordingly direct the first respondent to refix the pay of the applicant at Rs.232/- per month on re-employment. This will be done within a period of four months from today.

7. Application is allowed as aforesaid. No costs.

Dated the 7th January, 1997.



AM SIVADAS
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER