

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 510 of 91 ~~199~~

DATE OF DECISION 21.2.1992

P N SUKUMARAN Applicant (s)

MR. M.R. RAJENDRAN NAIR Advocate for the Applicant (s)

Versus

UNION OF INDIA AND FIVE OTHERS Respondent (s)

MR. K.A. CHERIAN, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.V. KRISHNAN MEMBER (ADMINISTRATIVE)

The Hon'ble Mr. N. DHARMADAN MEMBER (JUDICIAL)

1. Whether Reporters of local papers may be allowed to see the Judgement? <sup>Yes</sup>
2. To be referred to the Reporter or not? <sup>No</sup>
3. Whether their Lordships wish to see the fair copy of the Judgement? <sup>No</sup>
4. To be circulated to all Benches of the Tribunal? <sup>No</sup>

JUDGEMENT

N. Dharmadan, M(J)

The applicant who is a re-employed ex-service man filed this application dated 1-4-91 under section 19 of the Administrative Tribunals Act 1985 to set aside Annexure-I order by which recovery of Rs.4389/- has been ordered from his pay being the excess pay and allowance paid to the applicant and seeks for a declaration that he is entitled to have his pay fixed without loss of increments and granting 15 advance increments towards his military service and subsequent pay fixation. He further seeks for a direction to the respondents to grant relief on pension and disbursement of arrears thereof;

...../

2. Brief facts of the case are as follows: The applicant having served 15 years, 2 months and 16 days in Indian Army, retired as Havildar and was re-employed as L.D. Clerk in the Income Tax Department with effect from 4-2-81 in the scale of pay of Rs.260-400. He was granted a pension of Rs.135/- and Rs.19.78 towards Pension Equivalent to Gratuity. At the time of retirement he was drawing a salary of Rs.372.50. His pay in the re-employed post was fixed at Rs.325/- after ignoring Rs.125/- from the pension and granting weightage of 15 years of his Army service. Annexures II and III are his pay fixation statements as on 4-2-81 and 25-11-83 respectively. As a policy of liberalisation, the Govt. by order dated 8-2-83 decided to ignore full pension in the case of non-commissioned officers at the time of fixation of pay in the re-employed post who are re-employed on or after 25-1-83. For those who are re-employed prior to this cut off date an opportunity to exercise their option if they wanted the benefit of the order and in such case their pay was to be fixed as if they were fresh entrants, forfeiting their increments for the past service. The applicant exercised his option and his pay was fixed at the minimum of scale viz. Rs.260/-, allowing him to draw pension separately. Aggrieved by this order he moved the Commissioner of Income Tax, Kochi to get his pay

fixed after grating one increment each for every completed year of service as combatant clerk in the Army. He also cited the case of one Shri C.M. Madhavan , L.D.C. who was given the benefit of higher stage fixation in identical circumstances. The applicant sent further representations and reminders requesting for immediate action. Annexures V and VI are such representations. The pay of the applicant was accordingly fixed at Rs.260/- by order dated 25-8-89, Annexure-VII. The applicant filed Annexure-VIII requesting to re-fix the pay correctly and again submitted Annexure-IX representation 24-1-90 requesting to fix his pay notionally from 1981 to 83 and on actual pay thereafter. Consequent on the pay revision, the applicant's pay has been re-fixed at Rs.1050/- in place of Rs.290/- At this stage the Assistant Commissioner of Income Tax, issued the impugned order at Annexure-I directing recovery of excess amount drawn by him. The applicant's Annexure-XI representation, on being aggrieved by Annexure-I, has not been disposed of so far. The applicant also cites identical case of one Shri C.R. Prabhakaran, L.D.C. in Trivandrum Office whose pay was fixed at Rs.366/- on the basis of his option to come under 1983 orders, allowing him arrears of pay and his pension separately.

5/

.../

3. The applicant challenges the order of recovery as illegal and further contents that the fixation of his pay in the re-employed post at the minimum without granting any advance increment commensurate with his service in the Army in the equivalent post, was erroneous. According to the applicant fixation of pay of re-employed ex-servicemen are governed by the order dated 25-11-58 which provides for fixation of pay at the minimum but in case of any hardship is caused by such fixation, the pay has to be fixed by granting an increment each for every completed year of military service. However, it further provides that pay thus fixed plus pension and PEG shall not exceed the last pay drawn by him at the time of retirement. Accordingly his pay in the re-employed post was fixed correctly earlier which was reversed by the impugned order. He also relied on the decision of this Tribunal in TAK 404/87, OA 3/89 and 15/89 and prayed for extension of same benefit to the applicant also.

4. Reply statement was filed on behalf of the respondents 5 and 6, ~~who are material respondents~~<sup>h</sup>. The respondents, while opposing<sup>h</sup> the grant of relief on pension, ~~they~~<sup>h</sup> offer no comments on the fixation of pay in the re-employed post. As regards the relief they

content that pension and relief on pension<sup>are</sup> separate elements and <sup>produced by</sup> ~~relied on~~ the Ministry of Finance order <sup>by</sup> ~~produced~~ at Annexure R5(b) which directed the Pension disbursing officers to suspend the payment on relief on getting information about the re-employment of pensioners. They further relied on Writ Petition filed before the Delhi High Court and invited our attention to SLP filed by the Department <sup>against by</sup> ~~on~~ the decision of Larger Bench <sup>by</sup> ~~decision~~ of the Tribunal granting relief on pension.

5. We have heard the arguments and gone through the records produced before us. Both issues viz. issue of pay fixation of re-employed ex-servicemen and the issue of relief on pension <sup>by</sup> ~~have~~ been <sup>by</sup> ~~well~~ decided by this Tribunal by a Larger Bench as averred by the applicant. Larger Bench consisting of Hon'ble Shri B.C. Mathur, Vice Chairman (as he then was), Hon'ble Shri P.K. Kartha, Vice Chairman and Hon'ble Shri N. Dharmadan, Member(Judicial) decided the issue of re-fixation of pay of ex-servicemen who <sup>obtain by</sup> ~~obtain~~ re-employment in Government service in OA 3/89, OA 15/89, OAK 288/88 and OAK 289/88 and observed as follows:

6  
"....We hold that for the purpose of granting advance increments over and above the minimum of pay-scale of the re-employed post in accordance with the 1958 instructions (Annexures IV in OA 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, 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...."

Since the same question of law raised before the Larger Bench comes up before us in this case, we are required to follow the dictum laid down in OA 3/89 in this case also. As regards the grant of relief on pension also a Larger Bench of this Tribunal in TAK 732/87 decided identical issue and observed as follows:

"...Where pension is ignored in part or in its entirety from 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 the 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.... (TAK 732/87 P.G. Lakshmana Panicker and Others V. Secretary, Ministry of Finance and others)

6. In view of the settled legal propositions both in the case of fixation of pay of ex-servicemen in the re-employed post and grant of relief on pension, we follow the decisions rendered by this Tribunal in OA 3/89 and TAK 732/87 and quash Annexure-I order and direct the respondents to re-fix the pay of the applicant in accordance with law. We also direct the respondents to grant the relief on pension with all arrears as per law laid down by this Tribunal.

7. The Original Application is accordingly  
allowed. But in the circumstances, we make no order  
as to costs.

*N. Dharmadan*

(N. Dharmadan)  
Member (Judicial)

*21.2.92*

*N.V. Krishnan*

(N.V. Krishnan)  
Member (Administrative)

*21.2.92*

ganga