

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Date of decision : 30-11-1990

Present

Hon. Shri N.V. Krishnan, Administrative Member  
and

Hon. Shri N. Dharmadan, Judicial Member

Original Application : 521/90

S.K. NARAYANAN

..the applicant

V.

UNION OF INDIA rep. BY SECRETARY,  
MINISTRY OF DEFENCE, NEW DELHI & 2 OTHERS

..the respondents

AND

Original Application No. 586/90

CHENGAT MADATHIL MADHAVAN

..the applicant

V.

UNION OF INDIA rep. by SECRETARY  
MINISTRY OF DEFENCE, NEW DELHI & 2 others

..the respondents.

Shri E.V. Nayanar, Advocate appeared for applicants  
Shri NN Sugunapalan, SCGSC, appeared for respondents

JUDGMENT

N. Dharmadan, Judicial Member

Since the questions of law, facts and reliefs are identical in these two cases, they are being heard and disposed of by a common judgment on the consent of the parties.

2. The applicants in both the cases are re-employed ex-servicemen. The applicant in OA 521/90 after the service in Indian Air Force, was re-employed as Telephone

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Operator in the Telephone Bhavan, Cannanore under the Telecom District Manager, Cannanore. Similarly the applicant in OA 586/90 was originally in the Indian Army. He was re-employed in the office of Assistant Commissioner of Income Tax as Lower Division Clerk at Cannanore. Their complaint in the applications is that they are not given the benefit of their full pension due to them on account of their earlier defence service including the D.A. and ad hoc relief <sup>which are</sup> /to be ignored when fixing their pay in the re-employed posts. The respondents refused to fix their pay in the light of judgments of the Tribunal. Accordingly they submitted representations which they were not ~~xxx~~ considered and disposed of. Hence, they have approached this Tribunal with the identical reliefs. The relief claimed in OA 521/90 reads as follows:

"

- (i) to issue a writ in the nature of mandamus or such other appropriate writ order or direction directing the respondents to restore the D.A. and relief portion of the applicant's service pension and to pay the applicant his full service pension including D.A. relief, ad hoc relief etc. admissible to him;
- (ii) issue a writ in the nature of mandamus or such other writ order of direction directing the respondents to refund to the applicant D.A. and relief portion of service pension so far withheld by the respondents immediately;....."

3. (When the case was taken up for hearing, the learned counsel for the applicant submitted that these

cases are covered by the Full Bench judgment of this Tribunal in TAK 371/87 and TAK 400/87. According to him these cases can be disposed of following the Full Bench decision. This <sup>statement</sup> is not disputed by the learned counsel for the respondents. But in the counter affidavit filed in OA 521/90 the respondents stated that they have filed SLP in the Supreme Court against the judgment of the Tribunal in the above cases and the Supreme Court has stayed the operation of above judgment as per order in SLP (Civil) No.117 of 1990 dated 31-8-89. We have disposed of number of similar cases following the above Full Bench judgment. The stay operates only against the parties in that case and we are bound by the Full Bench decision till it is reversed or over ruled, by another pronouncement by a competent forum.

4. We are of the view that since these cases are covered by the Full Bench decision we can follow the same and dispose of these cases. The Full Bench considered the issue "whether it is permissible to stop payment of relief (including ad hoc relief) on that portion (part or full) of pension of re-employed ex-servicemen during the period of re-employment, which portion (part or full) is ignored for the purpose of fixation of pay or re-employed persons." After considering this question in the light of the relevant orders and principles in detail the

majority decided the issue and held as follows:

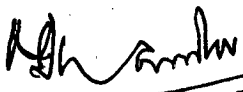
".....Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed ex-servicemen who retired from military service before attaining the age of 55 years, the relief including ad hoc relief, relatable to the ignorable part of the pension cannot be suspended, withheld 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. The impugned orders viz. OM No.F.22(87) EV(A)/75 dated 13.2.76, OM No.F.10(26)-B(TR)76 dated 29.12.76, OM No.13(8)-EV(A)/76 dated 11-2-77 and OM No.M23013/152/79/MF/CCA/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 remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation by one of us(Shri S.P. Mukerji, Vice Chairman)....."

5. Following the Full Bench decision we are of the view that these applications should be allowed. We hold that the applicants are entitled to relief including ad hoc relief relatable to ignorable portion of military pension. Accordingly we direct the respondents not to suspend, withhold or recover during the period of re-employment the relief including ad hoc relief relatable to the ignorable portion of the military pension. If there

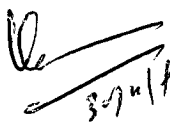
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has been any recovery, the respondents should refund the recovered amount to the applicant within a period <sup>of</sup> ~~three~~ months from the date of receipt of this order.

6. In the result, we allow both the applications as indicated above. There will be no order as to costs. A copy of this order be kept in both case files.

  
(N.DHARMADAN)  
Judicial Member

30.11/90.

  
(N.V. KRISHNAN)  
Administrative Member

30th November 1990

Index : Yes/~~No~~

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