

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 522 of 1992.

DATE OF DECISION 2-3-1993

Mr N Prabhakaran Thambi & Applicant (s)  
Mr R Vasudevan

Mr VK Isac Advocate for the Applicant (s)

Versus

Secretary, M/o Finance, Respondent (s)  
New Delhi & 3 others

Mr Mathews J Nedumpara, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

~~Examination~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
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

The applicants who are re-employed ex-Servicemen have filed this application for a declaration that the relief on the Military ignorable part of their pension is not liable to be withheld during the period of their re-employment and for a direction to the respondents to pay to them the relief on their Military pension and also to refund them the relief on pension which has already been recovered.

2. That both the applicants while serving as officials below the rank of commissioned officers in the Indian Airforce were discharged before attaining the age of 55 years is not in dispute.

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The first applicant got re-employed on 20.12.1978 and the second applicant was re-employed on 10.3.1981. The Military pension and pension equivalent of DCRG in the case of the first applicant was Rs.124.45 and that of the second applicant was Rs.125/-. At the time when both the applicants got re-employed an amount of Rs.125/- was to be ignored while fixing the pay of the re-employed ex-Servicemen in accordance with the Government Orders on the subject. After re-employment in the year 1984 the Divisional Engineer Telegraphs, Quilon gave instruction to the Pension Disbursing agents to stop payment of the relief on the Military Pension of the applicants. He also directed that the amount of relief on pension paid to the applicants from the date of their re-employment may be recovered. Pursuant to the above instruction the amount of pension relief paid to the applicants were recovered and the relief on their Military Pension was not ~~paid~~ ~~to be~~ paid to them. Aggrieved by the above action though the applicants made representations, it was without any result. It is <sup>in</sup> these circumstances that the applicants have filed this application.

3. The respondents seek to justify the ~~action~~ <sup>action</sup> impugned on the ground that the payment of relief on the Military Pension and D.A. on the re-employment pay would amount to double benefit which is not intended and that therefore the applicants have no legitimate grievance.

4. In fixing the pay of the applicants the entire Military pension which was below Rs.125/- <sup>to be</sup> was ignored. The relief on

pension is an adjunct to that pension and cannot be seen separately. If pension is ignored the relief thereon also is to be ignored for all purposes. Viewed in that light there is absolutely no connection between the relief on the ignorable portion of the Military Pension of the applicants and the pay and the D.A. which they received on their re-employment. Therefore there is absolutely no justification for withholding the relief on the ignored Military Pension for the reason that the applicants are getting D.A. on their re-employment pay. A full Bench of this Tribunal in TAK-732/87 has declared that when pension is ignored either whole or in part, the relief on the ingorable part of the pension cannot be suspended or withheld during the course of re-employment. The fact that the Government of India has filed SLP before the Hon'ble Supreme against the decision and that a stay has been ordered by the Supreme Court is not a reason not to follow the dictum of the ruling, since the dictum has not been reversed or modified by the Hon'ble Supreme Court.

5. In the conspectus of facts and circumstances, I am of the view that the applicants are entitled to the relief claimed by them and therefore the application is allowed. It is declared that the applicants are entitled to receive Military Pension during the period of their re-employment and that the relief on the ignorable part of their pension is not liable to be suspended or withheld. I therefore direct the respondents to pay to the applicants the relief on the ignorable part of their pension and also to refund to them the entire amount of relief on the

ignorable part of their pension so far recovered or withheld within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

A handwritten signature in black ink, appearing to be 'AV Haridasan', written over a horizontal line.

( AV HARIDASAN )  
JUDICIAL MEMBER  
2-3-1993

trs