

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
XXXXXX

523 of 1990.

DATE OF DECISION 10.6.1991

C.H. Namadevan \_\_\_\_\_ Applicant (s)

M/s E.V. Nayanar & JMH \_\_\_\_\_ Advocate for the Applicant (s)  
John David

Versus

Union of India rep. by Secy. \_\_\_\_\_ Respondent (s)  
Ministry of Defence and others

Mr. NN Sugunapalan, SCGSC \_\_\_\_\_ Advocate for the Respondent (s)  
for R.1&2.

CORAM: Mr. George Thomas, Mathew K. Varghese  
and Simla TC. ..For R.3

The Hon'ble Mr. S.P. MUKERJI - VICE CHAIRMAN

AND

The Hon'ble Mr. A.V. HARIDASAN - JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 24.6.90 filed under Section 19 of the Administrative Tribunal's Act the applicant who is an Ex-serviceman reemployed as Telecom Office Assistant in the office of Telecom District Manager, Cannanore has prayed that the D.A. and relief on the applicant's military pension should be restored and he should be paid full <sup>military</sup> service pension including DA, relief and adhoc relief as admissible to him. He has also prayed that the respondents be directed to refund to the applicant DA and relief portion of military pension so far withheld.

2. The brief facts of the case are as follows.

The applicant retired from the Air Force on 30.6.75

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after completing 20 years of service before completing 55 years of age. He was appointed as Temporary T.S. Clerk by the Divisional Engineer, Telegraphs, Cannanore in December, 1977. He was later confirmed in that post. His grievance is that on his reemployment in the Department, payment of relief portion of the military pension was stopped, which was restored for some time consequent upon some Court orders but again with effect from 1.5.88 the respondents have stopped <sup>the</sup> relief portion of his service pension on the ground of his reemployment in the P&T Department. He has urged that since he retired as a Non-Commissioned Officer and his military pension was to be ignored for the purpose of <sup>fixation of</sup> reemployment pay to the extent of Rs. 50 upto 19.7.78, to the extent of Rs.125/- upto 25.1.83 and his total military pension is to be ignored on or after 25.1.83, <sup>in</sup> accordance with the various decisions of this Tribunal, DA, relief and adhoc relief on his military pension cannot be withheld during his reemployment. His representations have not evoked any response.

3. The respondent-3 in the counter affidavit <sup>has</sup> not disputed the factual contents of the application but has stated that the military pension and relief on military pension are being disbursed by the Chief Controller of Defence Accounts over whom he has no control. The third respondent has acted only in terms of the directive issued by the Chief Controller of Defence Accounts.

4. The respondents 1&2 in their counter affidavit have stated that the decision of the Tribunal regarding grant of relief on pension during the period of reemployment

has been appealed against before the Hon'ble Supreme Court and the SLPs are pending. The Hon'ble Supreme Court has stayed the operation of the order of the Tribunal in T.A.K.732/87 and similar other cases. Accordingly they have argued that the consideration of this O.A. be postponed till a decision of the Hon'ble Supreme Court is available. They have also referred to some decisions of the <sup>Kerala and Delhi</sup> High Courts and the decision of the Madras High Court in which a contrary decisions disallowing the relief on military pension during re-employment have been taken.

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question of admissibility of relief and adhoc relief on that portion of the military pension which is to be ignored for the purpose of pay fixation on reemployment was considered by a Full Bench of this Tribunal presided over by the Hon'ble Chairman himself in T.A.K.732/87 and other cases and decided on 20.7.89. By a majority decision, the Full Bench decided 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 adhoc 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. O.M.No.F. 22(87-EV(A)/75 dated 13.2.1976, O.M.No.F.10(26)-B(TR)/76 dated 29.12.76, O.M.No.F.13(8)-EV(A)/76 dated 11.2.77 and O.M.No.M.23013/152/79/MF/CGA/VI(Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P. Mukerji, Vice Chairman)."

6. This Bench of the Tribunal is bound by the aforesaid decision of the Full Bench of the Tribunal, in spite of contrary decisions by the High Courts or a Division Bench of the Madras High Court.

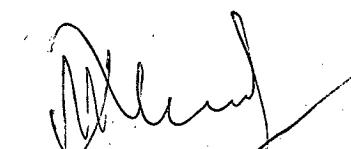
7. As regards the contention of the respondents that an appeal has been filed against the aforesaid judgment of the Full Bench of the Tribunal in T.A.K.732/87 and a stay order has been issued, we find that pendency of an SLP and even stay of the order in the SLP cannot stand in the way of our relying on the Judgment and that the ratio of that judgment will continue to be applicable to other cases also until that judgment is set aside by the Hon'ble Supreme Court. In Roshan Jagdish Lal Duggal and others Vs. Punjab State Electricity Board, Patiala and others, 1984(2) SLR 731, the High Court of Punjab and Haryana observed that pendency of an appeal before the Supreme Court does not render an order of the High Court 'non est' even where the High Court's order in appeal had been stayed by the Supreme Court. The order of the High Court was still to be treated as a binding precedent. The Delhi High Court also in Jagmohan v. State, 1980 Criminal Law Journal 742 observed that mere pendency of appeal before the Hon'ble Supreme Court does not take away the binding nature of the High Court's decision unless and until it is set aside by the Hon'ble Supreme Court. In Alpana v. Mehta vs. Maharashtra State Board of Secondary Education and another, AIR 1984 SC 1827 the Supreme Court upheld the contention of the appellant that the Bombay High Court was not justified in dismissing her writ petition on the sole ground that operation of the earlier judgment of that High Court on the basis of which the writ petition had been filed, had been stayed by the Supreme Court. The above view has been upheld by the Full Bench of the

Principal Bench of the Tribunal in its judgment dated 13th February, 1991 in O.A.184/90 (Shri Ganga Ram & Another, v.Union of India) and 3 other O.As. In those cases the issue before the Full Bench was whether the judgment delivered by another Full Bench in Rasila Ram's case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an S.L.P. filed by the Government, remains valid as a binding precedent or whether the interim order <sup>stay</sup> passed by the Supreme Court nullified the judgment of the Full Bench or its effect was to be confined only in respect of the judgment pronounced in the case of Rasila Ram. The Full Bench observed that the interim order passed by the Supreme Court, in the SLP in Raila Ram's case not being a speaking order does not make any declaration of law and "consequently, it is not a binding order under Article 141 of the Constitution." The Full Bench further observed that until the decision of the Full Bench in Rasila Ram's case is set aside, reversed or modified by the Supreme Court it remains effective. In view of <sup>the</sup> unambiguous finding of the Full Bench of the Tribunal, we have no hesitation in following the dicta of our judgments in this case also so long as those judgments have not been set aside, modified or reversed by the Hon'ble Supreme Court.

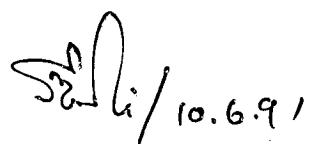
8. In the facts and circumstances we allow the application and direct the respondents that relief on military pension and adhoc relief thereon on the ignorable part of the military pension which was Rs. 50/- upto 19.7.78, Rs.125/- upto 25.1.83 and the total military pension after 25.1.83, should be continued to be allowed to the applicant even during the period of his reemployment

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and any amount of such relief including adhoc relief, on the ignorable part of the military pension if suspended, withheld or recovered from the applicant during the period of his reemployment on the ground of his re-employment, should be refunded to him within a period of three months from the date of communication of this order. There will be no order as to costs.



(A.V. Haridasan)  
Judicial Member

  
10.6.91

(S.P. Mukerji)  
Vice Chairman

10th June, 1991

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