

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 533/92
XXX

XXX

DATE OF DECISION 29.9.92.

Shri C.K. Rappai

Applicant (s)

Mr P Santhosh Kumar

Advocate for the Applicant (s)

Versus

Union of India (Secy., Min. of Finance) and 3 others.

Respondent (s)

Mr V Krishnakumar, ACGSC

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. PS Habeeb Mohamed - Administrative Member
&

The Hon'ble Mr. AV 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 ? *W*
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ? *W*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The applicant is an ex-serviceman re-employed as a Telephone Operator under the 2nd respondent, the Chief General Manager, Telecommunications Department, Thiruvananthapuram. On re-employment, his pay was fixed applying the principles contained in FR 22 as also the instructions contained in the Office Memoranda of the Ministry of Finance dated 10.7.1978 (Annexure-I) and 24.10.83 in regard to fixing of pay of ex-servicemen ignoring part of the defence pension. The applicants pay was ~~fixed~~ ignoring the pension. On such fixation, the applicant was receiving

pay and allowances as also the pension and relief on pension. His grievance is that without any notice, the relief on pension received by the applicant from the date of his initial appointment was recovered by the 2nd respondent from his salary. Though he made representations, he did not get any response. Coming to know that similarly placed persons like the applicant have approached this Tribunal challenging such recovery and for setting aside the orders issued for recovery of the relief on pension, the applicant has filed this application under Section 19 of the Administrative Tribunals Act for a declaration that he is entitled to receive relief including adhoc relief related to the ignorable part of his pension & that the recovery of the relief including adhoc relief related to the ignorable part of the pension is illegal and for a direction to the respondents to disburse to him the amounts already recovered.

2. In the reply statement, the respondents have sought to justify the impugned recovery of the relief on pension paid to him on the basis of the OM of the Ministry of Finance No.23013/152/79/MF/CGA VI (pt)/1118 dated 26.3.84 (Annexure R1) wherein it was directed that whenever a military pensioner is re-employed, the relief on pension should be suspended during the course of such re-employment.

3. We have heard the counsel on either side and have also carefully perused the pleadings and documents.

4. In fixing the pay of the applicant, the ignorable part of his pension or the relief thereon was not taken into consideration. When fixing the pay of a re-employed military pensioner without taking into consideration, the ignorable part of the pension, the dearness allowance should also be fixed without reference to that portion of pension. Therefore, to deny the relief on ignorable part of the pension on the ground of re-employment is highly arbitrary and it amounts to deprivation of property. A Full Bench of this Tribunal in Laxmana Panikar and others v. Secretary to Government of India and others, reported in (1990) 12 ATC 514, had 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."

We are in respectful agreement with the above ruling of the Full Bench. Following the above dictum, we find that the recovery of relief on pension already paid to the applicant, is arbitrary and illegal.

5. We, therefore, allow this application with the following declarations and directions:-

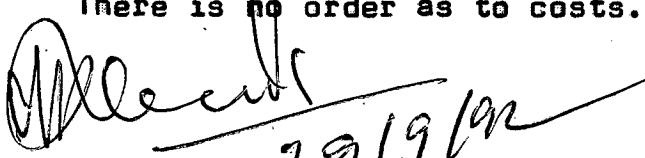
(a) The applicant is entitled for the relief, including ad hoc relief, relatable to the ignorable part of his military pension;

(b) the recovery of the relief, including ad hoc relief, related to the ignorable part of the pension, is illegal and unjustified;

(c) the respondents are directed to refund to the applicant the amounts of relief on pension recovered from him and to continue to pay him relief on pension in full and

(d) the refund of amounts recovered from the applicant should be made within a period of three months from the date of receipt of a copy of this order.

6. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

29.9.1992.

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