

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 546/89 199
XXXXXXN9

DATE OF DECISION 6-7-1990

KP Balan Nair Applicant (s)

Mr. MGK Menon Advocate for the Applicant (s)

Versus

The Director General, Respondent (s)

Telecommunications, D/o Telecom.,
M/o Commns., Govt. of India, N.Delhi & 2 others

Mr. R. Sreekumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. Krishnan - Administrative Member
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

(Mr. A. V. Haridasan, Judicial Member)

sought
The relief/in this application filed under Section

19 of the Administrative Tribunals Act is to set aside the
order of the second respondent dated 13.1.1988, Annexure-
A7, fixing the re-employment pay of the applicant as
Technician at Rs.260/- in the pay scale Rs.260-480 w.e.f.
11.10.1983 and for a direction to the respondents to fix
his initial pay ignoring his entire military pension and
granting him advance increment as in the case of other
re-employed ex-servicemen named in the application.

The facts of the case averred in the application can be
briefly stated as follows.

2. The applicant, Shri A.P.Balan Nair, aged 47 years is an ex-serviceman who had earned a military pension. He was re-employed in the Telecom. Department w.e.f. 11.10.83. On the very same date 4 other persons by name K.Madhavan, K.P.Prabhakaran, E.Bhaskaran Nair and Glancy John similarly placed ex-servicemen were also re-employed in the same department. The fixation of the pay of re-employed ex-servicemen who were retired from defence service before attaining the age of 55 years is governed by GIMF OM No. 8(34) Est III/57 dated 25.11.58 read with Ministry of Defence, OM No.2(1)/83/D(Civ.1) dated 8.2.83. In terms of these OM the entire military pension of ex-servicemen below the Commissioned Rank is to be ignored in fixing their pay on re-employment. The respondents fixed the pay of the other 4 ex-servicemen at higher stage granting them additional increment. But in the case of the applicant the second respondent on 13.1.1988 issued the impugned order at Annexure-A7, fixing his initial pay at Rs.260/- in the scale of Rs.260-480. The applicant's ~~base~~ pay on the date of his retirement was Rs.440/- plus GCB Rs.15/-. As the applicant got re-employed on 11.10.1983 in terms of the OM dated 25.11.58 and 8.2.1983, his entire military pension should have been ignored in considering whether there is hardship in fixing the pay at the lowest stage in the pay scale and he should have been given advance increments as was done in the case of the other 4 re-employed

ex-servicemen. The action of the second respondent in discriminating the applicant and fixing his pay at Rs.260/- is against the guide lines contained in the OM's mentioned above is illegal and unsustainable. Hence the applicant prays that the impugned order at Annexure-A7 may be set aside and the respondents ~~max~~ be directed to fix the initial pay of the applicant ignoring his entire military pension.

3. The respondents in the reply statement agree that the initial pay of the applicant was to be fixed in terms of the OM dated 8.2.1983. But it is contended that in terms of Department of Telecom. Memo No.45-29/86 PAT dt. 10.8.1987, it was permissible to ignore the military pension of the re-employed ex-servicemen only incase it is found that the fixation in the lower stage of the scale would cause hardship to him, and that since the pension of the applicant and the pay at the minimum of Rs.260/- amounted to Rs.584/- which is more than the retirement pay of Rs.445/-, it was not necessary to give additional increment to the applicant, and that the fixation made in the impugned order, Annexure-A7 is as per rules. It has been further contended that the pay in the case of the other 4 re-employed ex-servicemen mentioned in the application which were erroneously fixed would be revised and refixed.

4. The applicant has filed a rejoinder in which he has stated that, in order to decide whether there is hardship

in fixing the initial pay in terms of OM, the entire military pension has to be ignored, and that the executive orders subsequently issued cannot over-ride the earlier orders governing the situation.

5. We have heard the argument of the learned counsel on either side and have also carefully gone through the documents produced.

6. The identical question of fixation of pay of re-employed ex-servicemen came up for consideration before the Larger Bench of the Tribunal in OA 3/89, 15/89, K-288/88 & OA K 289/88. The Larger Bench has observed as follows:

"(a) We hold that for the purpose of granting advance increments over and above the minimum of the 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 (Annexures V, V-a, and VI respectively), 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.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions.

The Full Bench has also observed:

"The provisions of the Civil Service regulations are statutory in nature and the instructions of 1964, 1978 and 1983 have been issued by the Government under the said Regulations and supplement the provisions of the said Regulations. The clarifications issued by the respondents on 30.12.1985 and subsequent dates, cannot over-ride the earlier instructions issued in 1964, 1978 and 1983 retrospectively. The purported modification of the earlier instructions on the subject will have only prospective operation."

In view of the above ruling of the Full Bench on the point, the case of the respondents that in order to see whether there is hardship in fixing the pay at the minimum of the scale the whole military pension is to be reckoned and that advance increment is to be given only if the sum total of the pay at the minimum of the scale and the whole of the military pension falls below the last pay drawn in the military service cannot stand. Hence, the Annexure-A7 order of the fixation of pay of the applicant being contrary to the provision of the OM Nos. dated 25.11.1958 and 8.2.1983 has to be set aside.

7. In view of what is stated above, we allow the application, set aside the impugned order, Annexure-A7

and direct the respondents to fix the initial pay of the applicant w.e.f. 11.10.1983 ignoring his entire military pension and granting him advance increments in terms of the directions contained in OMsNo.8(34)Est.III/57 dated 25.11.1958 and No.2(1)/83/D(Civ-I) dt.8.2.1983. This should be done and the arrears, if any, should be paid to the applicant within two months from the date of communication of this order. There is no order as to costs.


(A.V.HARIDASAN) 6/7/90
JUDICIAL MEMBER


(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

6-7-1990

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The Full Bench has also observed:

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(A.V.HARIDASAN)
JUDICIAL MEMBER

(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

6-7-1990

15-1-91

NVK & AVH

Mr MGK Menon for petitioner
Mr Santhoshkumar for respondents(proxy)

The respondents are directed to check up whether the decision of the Larger Bench of the Tribunal referred to in para 4 of the original order dated 6.7.1990 has been stayed by the Hon'ble Supreme Court and any direction has also been given that any CCP arising out of that decision shall also be remain stayed.

The Registry may also examine this matter and put up a note to us on the next date of hearing. In case no such stay exist, the respondents are directed to make a statement in this case on that day.

Call on 30.1.91.

15-1-91

NVK & AVH

MGK menon for petitioner
Mr R Prabha Kumar Achre for respondent

It is submitted on behalf of the respondents that the SLP was to come up again before the Supreme Court on 28.1.91. In this view of the matter, the respondents seek some more time to make statement in this behalf. Call on 27.2.91.

In the meanwhile the respondents are directed to find out what direction is passed by the Supreme Court on the SLP.

30.1.91

for 27.2.91
for the judgment
dt 6-7-90 in OA
546/89 in view
stayed by the Supreme
Court in the SLP. 14351/90
Order kept in A
(part of main file)
at 28.1.91 in SLP. 14351/90

A
28/1/91

27-2-91

SPM & AVH

Mr MGK Menon for petitioner
Mr Santhoshkumar for respondents(proxy)
ORDER

The learned counsel for the respondents has produced a copy of the Hon'ble Supreme Court's order dated 28.1.91 in accordance with which the order of this Tribunal in this case has been stayed.

Accordingly, the CCP is closed and notice of contempt discharged.



(AV HARIDASAN)
JUDICIAL MEMBER



(SP MUKERJI)
VICE CHAIRMAN

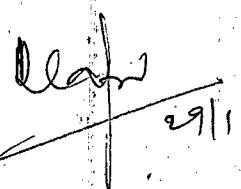
Mr. M. S.
P.T. 91

27-2-1991

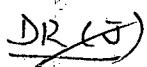
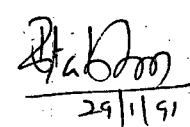
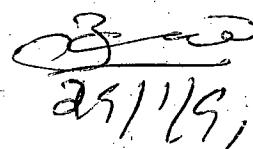
Note by the Registry

The Registry has no intimation whether the Larger Bench judgement (dated 13.3.90) in OA 3/89 & OA 15/89 which is quoted in para 4 of the judgement dated 6.7.90 in OA 546/89 has been stayed. However as per order dated 19.12.90 in SLP 15081-82, the Hon'ble Supreme Court has stayed the operation of the Division Bench judgement dated 30.3.90 in OA 3/89 and OA 15/89 (The Division Bench judgement dated 30.3.90 was based on the Larger Bench judgement dated 13-3-90).

Flag A


29/11/91

SO/JS-1


DR (S)
29/11/91
29/11/91