

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 547/89
~~XXAxxX~~

199

DATE OF DECISION 6-7-1990

B.K.Balan Applicant (s)

Mr.MGK Menon Advocate for the Applicant (s)

Versus

The Director General, Respondent (s)
Telecommunications, Deptt. of Telecoms.,
Min. of Commns., Govt. of India, N.Delhi & 2 Ors.
Mr.K.Prabhakaran, 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? *Y*
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

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

Mr.B.K.Balan, aged 41 years retired from military service earning a pension. He was re-employed in the Telecom. Department on 11.10.1983. 4 other ex-servicemen K.Madhavan, KP Prabhakaran, E.Bhaskaran Nair & Glancy John belonging to the same category as applicant were also re-employed in the same department on the same date.

The fixation of pay of the re-employed military personnel is governed by GIMF OM No.8(34)Est.III/57 dt.25.11.1958 read with OM No.2(1)83/D(Civ-I) dt.8.2.1983. In terms of these OMs, the entire military pension of ex-servicemen below the rank of Commissioned Officers is to be ignored

...2/-

in fixing their re-employment pay in Civil posts. In the case of the other 4 ex-servicemen, fixation of pay was made accordingly. The applicant on 31.3.1987 submitted a petition to the first respondent requesting the fixation of his pay in the same lines as in the case of other ex-servicemen. But the second respondent has on 13.1.1988 by the impugned order at Annexure-A7 fixed the applicant's initial pay w.e.f. 11.10.1983 at Rs.260/- without granting him advance increment as in the case of other ex-servicemen and against the guidelines contained in the Government instructions in this regard. The applicant has therefore, filed this application praying that the impugned order at Annexure-A7 may be set aside and the respondents may be directed to fix his pay in accordance with the instructions contained in the relevant OM.

2. The respondents in their reply statement have contended that as the pay of the applicant at the minimum of the scale Rs.260-480 namely, Rs.260/- and his military pension of Rs.191/- exceeded his pre-retirement pay of Rs.395/-, there was no hardship in his case, and that, therefore, fixation of his pay as per Annexure-A7 is perfectly in order and in conformity with the letter of Director General, Telecom. No.45-29/86 PAT dt. 10.8.1987. It is further averred that, steps have been taken for re-fixation of pay ^{in the} ~~cases~~ of the other 4 re-employed ex-servicemen erroneously fixed earlier. Hence, according to the respondents, the claim of the applicant is not sustainable.

3. We have heard the arguments of the learned counsel on either side and have also gone through the documents produced.

4. 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 and 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:

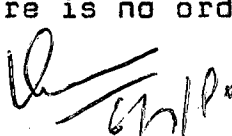
"The provisions of the Civil Service regulations are statutory in nature and the instructions of 1964, 1978 and 1983 have been issued by the Government under the said Regulations and supplement the provisions of the said regulations. The clarifications issued by

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 and whole military pension is to be reckoned and that advance increment is to be given only if the sum total of this 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 provisions 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 OM Nos.8(34)Est.III/57 dt.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 2 months from the date of receipt of this order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

6-7-90

(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER

6-7-1990

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

D. A. No. 547/89
~~X A X No.~~

189

DATE OF DECISION 6-7-1990

B.K.Balan Applicant (s)

Mr.MGK Menon Advocate for the Applicant (s)

Versus

The Director General, Respondent (s)
Telecommunications, Deptt. of Telecoms.,
Min. of Commns., Govt. of India, N.Delhi & 2 Ors.

Mr.K.Prabhakaran, 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? Y
2. To be referred to the Reporter or not? N
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

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

Mr.B.K.Balan, aged 41 years retired from military service earning a pension. He was re-employed in the Telecom. Department on 11.10.1983. 4 other ex-servicemen K.Madhavan, KP Prabhakaran, E.Bhaskaran Nair & Glancy John belonging to the same category as applicant were also re-employed in the same department on the same date.

The fixation of pay of the re-employed military personnel is governed by GIMF OM No.8(34)Est.III/57 dt.25.11.1958 read with OM No.2(1)83/D(Civ-I) dt.8.2.1983. In terms of these OMs, the entire military pension of ex-servicemen below the rank of Commissioned Officers is to be ignored

...2/-

in fixing their re-employment pay in Civil posts. In the case of the other 4 ex-servicemen, fixation of pay was made accordingly. The applicant on 31.3.1987 submitted a petition to the first respondent requesting the fixation of his pay in the same lines as in the case of other ex-servicemen. But the second respondent has on 13.1.1988 by the impugned order at Annexure-A7 fixed the applicant's initial pay w.e.f. 11.10.1983 at Rs.260/- without granting him advance increment as in the case of other ex-servicemen and against the guidelines contained in the Government instructions in this regard. The applicant has therefore, filed this application praying that the impugned order at Annexure-A7 may be set aside and the respondents may be directed to fix his pay in accordance with the instructions contained in the relevant OM.

2. The respondents in their reply statement have contended that as the pay of the applicant at the minimum of the scale Rs.260-480 namely, Rs.260/- and his military pension of Rs.191/- exceeded his pre-retirement pay of Rs.395/-, there was no hardship in his case, and that, therefore, fixation of his pay as per Annexure-A7 is perfectly in order and in conformity with the letter of Director General, Telecom. No.45-29/86 PAF dt. 10.8.1987. It is further averred that, steps have been taken for refixation of pay ^{in the} ~~cases~~ of the other 4 re-employed ex-servicemen erroneously fixed earlier. Hence, according to the respondents, the claim of the applicant is not sustainable.

3. We have heard the arguments of the learned counsel on either side and have also gone through the documents produced.

4. 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 and 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 and whole military pension is to be reckoned and that advance increment is to be given only if the sum total of this 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 provisions 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 OM Nos. 8(34)Est.III/57 dt.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 2 months from the date of receipt of this order. There is no order as to costs.

(A.V.HARIDASAN)
JUDICIAL MEMBER

6 - 1 ✓
(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

CC P-5/91
OA-547/89

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.

[Signature]
15-1-91

NVK & AVH.

Mr MGK Menon for petitioner
Mr. K. Prabhakaram for respondents proxy

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 regard. Call on 27.2.91.

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

[Signature]
30/1/91

[Handwritten notes in left margin:]
A 15/1/91
Note by the Registry placed below
30/1/91
29/1/91

(17)

[Handwritten notes in bottom left margin:]
A 30/1/91
27-2-91
bureau's judgment dt 6-7-90 in OA-547/90 has been stayed by the Supreme Court with its order dt 28-1-90 in SLP 4850/90. (order of Sept in App of OA-547/90)

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. MSE
17/2/91

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 547/89 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).

Fig A {

29/1

So-3-11

29/1/91

DR (J)

29/1/91

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

Contempt Petition(Civil) No.96/97 in O.A.547/89

Tuesday, this the 2nd day of March, 1999.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR R.K.AHOOJA, ADMINISTRATIVE MEMBER

B.K.Balan,
T.T.A., Telephone Exchange,
Quailandy. - Petitioner

By Advocate Mr N Govindan Nair

Vs

1. S.Krishnan,
The Chief General Manager,
Telecommunications,
Kerala Circle,
Trivandrum-33.
2. C.K.Brahmadattan,
Telecom District Manager,
now designated as General Manager,
Telecommunications,
Calicut-673 001. - Respondents

By Advocate Mr Govindh K Bharathan, SCGSC

The petition having been heard on 2.3.99, the
Tribunal on the same day delivered the following:


O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

Learned counsel for the respondents stated that the respondents have fully complied with the directions of the Tribunal in O.A.547/97 by making a payment of Rs.46,460/- to the petitioner. Noting the above submission the petition is closed.

Dated, the 2nd of March, 1999.


(R.K.AHOOJA)
ADMINISTRATIVE MEMBER


(A.V.HARIDASAN)
VICE CHAIRMAN

MA 45 / 1998
C.P.C.NO. 96 of 1997

O.A.NO. 547 of 1989

S. Krishnan & another

B.K. Balan

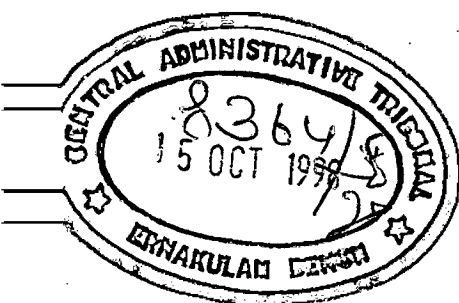
S1.No.	Description of documents	Page Nos.

1. Miscellaneous Application 1 to 3
2. Annexure-~~MA~~[✓] photo copy of the common order in C.P.C.96/97 & CPC.95/97 dated 31.7.1998 by the Hon'ble Tribunal, ~~Ernakulam~~, ~~Baneh~~ 4 - 5
3. Annexure-~~MA~~[✓]~~II~~ photo copy of the Memo No.AP/90/1090/87 dated 6.8.1998. 6

X-X

Dated this the 13th day of October, 1998.

~~S~~UVINDH.K.BHARATHAN
SR.CENTRAL GOVT.STANDING COUNSEL



BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

MA 1998
C.P.(C) NO. 96 of 1997

in

O.A.NO. 547 of 1989

MISCELLANEOUS APPLICANTS: (Respondents in CPC)

1. S. Krishnan, The Chief General Manager,
Telecommunications, Kerala Circle,
Trivandrum-33.
2. Brahmaddattan, General Manager,
Telecommunications,
Calicut- 673 001.

RESPONDENT: (Petitioner in CPC)

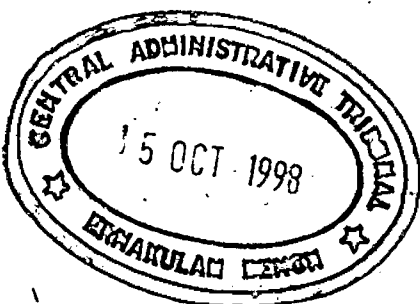
B.K. Balan,
T.T.A. Telephone Exchange,
Quilandy.

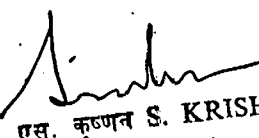
MISCELLANEOUS APPLICATION FILED UNDER RULE 12(5) OF
THE CENTRAL ADMINISTRATIVE TRIBUNAL (PROCEDURE) RULES

BRIEF FACTS LEADING TO THE APPLICATION:

1. In common order in C.P.C.96/97 & C.P.C.95/97,
this Honourable Tribunal had directed the applicants
herein to report full compliance of the directions
contained in the order after getting relevant details
from the Defence Ministry within two months from
31..7..1998. The cases were directed to be listed
on 5.10.98. A photo copy of the order of this Hon'ble
Tribunal is produced herewith and marked for reference

AXRE-MAI as Annexure-MAI




एस. कृष्णन S. KRISHNAN
मुख्य महाप्रबन्धक Chief General Manager
केरल दूरसंचार परिमंडल Kerala Telecon Circle
दूरसंचार भवन Deorancha Bha
तिरुवनन्तपुरम Trivandrum-695 001

2. The initial pay of the applicant in O.A.547/89 was provisionally fixed at Rs.350/- in the scale of pay of Rs.260-480 in the pre-revised scale by granting 11 advance increments (with effect from 11.10.83 with D.N.I. on 1.10.84 to Rs.360/- taking into account his 11 years equivalent service in the Air Force. The sanction was provisional subject to change if required on receipt of appendix-B from CDA(AF). The fixation was done as per orders of this Honourable Tribunal O.A.547/89 dated 24.2.98. A photo copy of this order is produced herewith and marked for reference as Annexure-MA-II

AXRE-MA-II

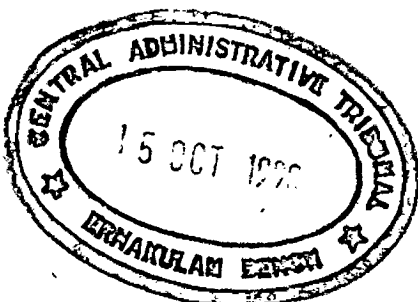
RELIEFS SOUGHT:

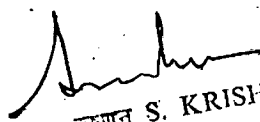
It is submitted that Annexure^{mb} ~~X~~II be received on file and compliance recorded and the above C.P.C. be closed.

V E R I F I C A T I O N

I, S.Krishnan, aged 57 years, S/o G.S.Subramanian, working as the Chief General Manager, Telecommunications, Kerala Circle, Trivandrum-33, do hereby verify that the statements contained in the paragraphs 1 and 2 above are true and correct to the best of my knowledge, information and belief, and I have not suppressed any material facts in connection with the above case.

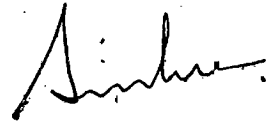
contd..3




एस. कृष्णन S. KRISHNAN
मुख्य महाप्रबन्धक Chief General Manager
केरल दूरसंचार परिषद Kerala Telecom
दूरसंचार भवन Doornanchai Bhavan
तिरुवनन्तपुरम Trivandrum-695 033

I am filing this Miscellaneous Application for and on behalf of all the Miscellaneous Applicants as I am duly authorised for the same.

Dated this the 13th day of October, 1998.



MISCELLANEOUS APPLICANT

एस. कृष्णन S. KRISHNAN

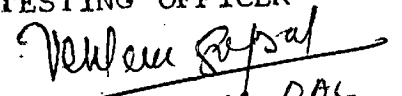
मुख्य महाप्रबन्धक Chief General Manager
केरल दूरसंचार परिमंडल Kerala Telecom Circle

दूरसंचार भवन Doonanchar Bhavan
तिरुवनन्तपुरम Trivandrum-695 033

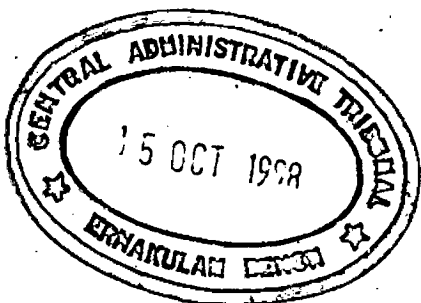
ATTESTATION

Solemnly affirmed and signed before me by the first Miscellaneous Applicant, who is personally known to me on this the 13th day of October, 1998 in my office at Trivandrum.

ATTESTING OFFICER


V. A. VENUGOPAL

मंडल इंजीनियर (विधि)
Divisional Engineer (Legal)
मुख्य महाप्रबन्धक कार्यालय
Office of Chief General Manager
केरल दूरसंचार Kerala Telecommunication
तिरुवनन्तपुरम Trivandrum-695033



-4-
CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM Bench

Annexure A MA-T

FRIDAY, THE 31ST DAY OF JULY, 1998

P R E S E N T

Hon'ble Mr. A.V. Haridasan ... Vice Chairman

and

Hon'ble Mr. P.V. Venkatakrisnan ... Administrative Member

CPC 96/97 in ORIGINAL APPLICATION NO. 547/89

B.K. Balan : Applicant (s)

Versus

S. Krishnan, Chief GM, Telecommunications, : Respondent (s)
Kerala Circle, Trivandrum and another

Mr. N Govindan Nair (rep) : Counsel for applicant (s)

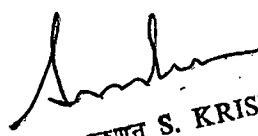
Mr. Govindh K Bherethan, SCGSC : Counsel for respondent (s)

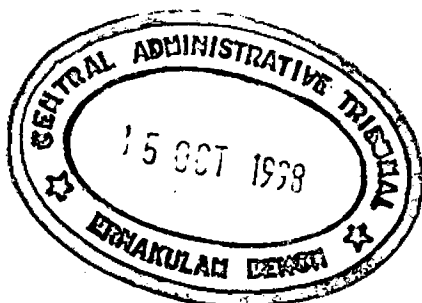
O R D E R

Contempt order in CPC 96/97 & CPC 95/97

These Contempt Petitioners have been filed by the petitioners because the orders of the Tribunal in O.A. 546/98 & O.A. 547/98 which has now been confirmed by the Hon'ble Supreme Court dismissing the S.L.P., have not been complied with by the respondents. The petitioners have alleged that by not implementing the directions in the orders of the Tribunal the respondents are liable for action under the

contd..... 2/-


एस. कृष्णन S. KRISHNAN
मुख्य महाप्रबन्धक Chief General Manager
दूरसंचार परिमंडल Kerala Telecom Circle
दूरसंचार भवन Doorsanchar Bhavan
तिरुवनन्तपुरम Trivandrum-695 033



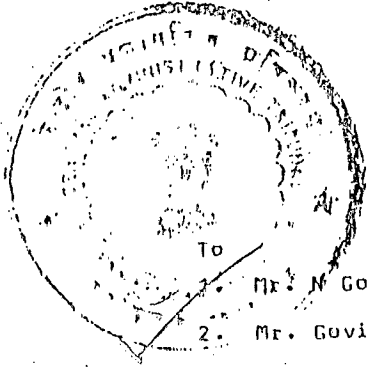
Contempt of Courts Act. A statement filed by the first respondent on behalf of the respondents stated that though a decision has been taken to implement the directions of the Tribunal, full implementation could not be done because necessary particulars from the Defence Department despite earnest ^{efforts} have not been received. As the Union of India was a party to the Original Application and the Defence Ministry being another Ministry of the same Government, we are of the considered view that it should not be impossible for the respondents to get the relevant details from the Ministry of Defence or from any lower formation under it for the purpose of proper implementation of the directions contained in the order of the Tribunal.

With a view to facilitate the implementation of the orders without any further delay, we direct the respondents to report full compliance of the directions contained in the order getting relevant details from the Defence Ministry. The respondents shall report full compliance of the directions in the order within two months from today. We expect the Defence Department to furnish necessary details to the respondents to enable them to implement the orders.

List on 5.10.98.

Sd/-
PV Venkatakrishnan
Administrative Member

Sd/-
AV Haridasan
Vice Chairman



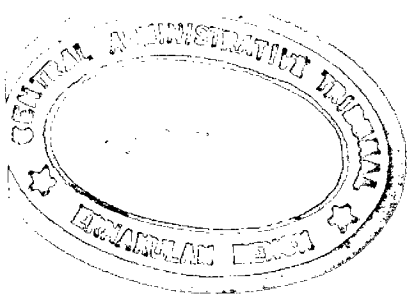
CERTIFIED TRUE COPY
Date 3.8.98

[Signature]
Deputy Registrar

- To 1. Mr. N Govindan Nair, Advocate, Kuchi (For petitioner)
- 2. Mr. Govindh K Bherathan, SCSC (For respondents)

This Annexure MA(2) is the true copy of the original document.

[Signature]
PV. VENKATAKRISHNAN
Administrative Member
Central Administrative Tribunal
Madras Bench
Room No. 101
Telephone No. 433 033



6

Annexure MA-7

GOVERNMENT OF INDIA
Department of Telecommunications
Office of the Chief General Manager Telecommunications,
Kerala Circle, Trivandrum 695 033

Memo No. AP/90-1090/87

Dated at Trivandrum, the 6th August 1998.

Sanction of the Chief General Manager, Telecommunications, Trivandrum is hereby conveyed fixing the initial pay of Shri B.K. Balan an ex-serviceman re-employed in the Department as Technician, at Rs.350/- provisionally in the scale of pay of Rs.260-480 in the pre-revised scale by granting 11 advance increments, w.e.f. 11-10-83 with DNI on 1-10-84 to Rs. 360/- taking into account his 11 years equivalent service in the Air Force.

This sanction is provisional subject to change if required on receipt of Appendix "B" from CDA (AF)

This fixation is done as per the Dte. orders contained in their letter No. 45-22/90-PAT dated 24-2-98 and in compliance with the judgement of CAT Ernakulam in O.A. No.547/89.

This is in supersession of this office pay fixation of even number dated 13-1-88.

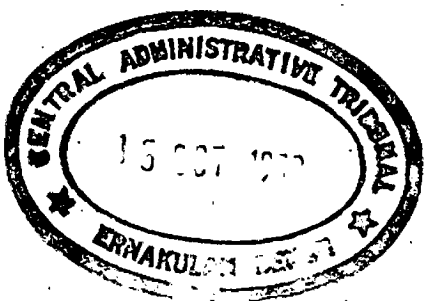
H. Shenbagaraman
Asst. Chief Accounts Officer (Cash)
for Chief General Manager, Telecommunications
Kerala Circle, Trivandrum 695 033

A copy of this memo is issued to:-

1. The General manager, Telecom District, Calicut for information and necessary action w.r.t. his No. EEN/6552/65 dated 31-7-1993. He is requested to ensure that the relief on pension received by the official from the date of appointment to till date should be adjusted/ recovered from the arrears arising due to fixation of salary. Further he is requested to obtain App. B statement from CDA (AF) for reconsidering the pay fixation. This may be treated as urgent.
2. The official thro' GMTD CT
3. The DOT (PA) New Delhi 110 001 w.r.t. their No. 45-22/90 dated 24-2-1998.
4. Spare.

This Annexure is the true copy of the Original document.

एस. कृष्णन S. KRISHNAN
मुख्य महाप्रबन्धक Chief General Manager
संचार परिमंडल Kerala Telecom Circle
दूरसंचार भवन Door:anchar Bhavan
निहवनन्तपुरम Trivandrum-695 033



BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL AT
ERNAKULAM BENCH

C.P.C.NO. 96 /1997
in
O.A.No. 546 /1989

B.K. BALAN

: PETITIONER

VS

S.KRISHNAN & another

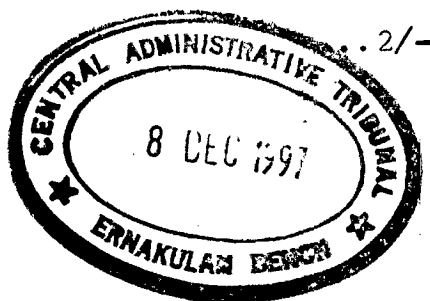
: RESPONDENTS

A F F I D A V I T

I, B.K. Balan, S/o. P.K.K.Nair, aged 49, T.T.A,
Telephone Exchange, Quilandy, residing at Bapoomakandi House,
Edakulam P.O., Quilandy do solemnly affirm and state
as follows:-

1. I am the petitioner herein and the applicant
in O.A.No.547 of 1989. By Annexure AI judgment, the
respondents were directed to fix my initial pay with
effect from 11-10-1983 ignoring my entire military
pension and granting ~~one~~ advance increments in terms of
the directions contained in O.Ms. NO.8(34)Esst III/57
dated 25.11.1985 and No.2(1)/83/D(CIU-I)dated 8.2.1983.
The fixation was to be done with in 2 months from the
date of communication of the judgment.

2. The fixation was not done as per Annexure AI
judgment. I filed C.P.C.No.5/90 in O.A.547/89 for
taking contempt proceedings. However, the petition was
closed since an appeal had been filed by the Department
before the Supreme Court against the judgment in
O.A.No.547/89 and other connected cases.



B.K. Balan

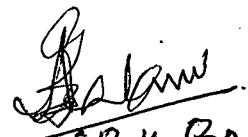
: 2 :

3. The appeal before the Supreme Court was dismissed by judgment dated 8.11.1996. I had sent representation to the respondent along with a copy of the judgment of the Supreme Court. However, the respondents have not paid the amounts due to me as per the directions of this Honourable Tribunal even after the lapse of more than an year from the date of judgment of the Supreme Court.

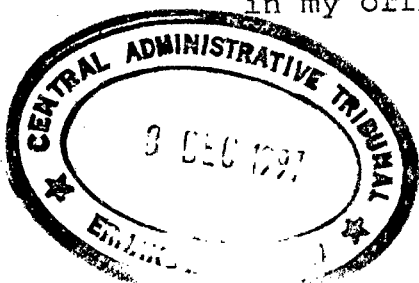
4. The respondents are wilfully refusing to comply with the directions in O.A.No.547 of 1989 and the said refusal which is continuing amounts to contempt of this Honourable Tribunal. Therefore it is necessary that appropriate proceedings may be initiated against the respondent under the Contempt of Courts Act.


Contents of paragraphs 1 to 4 are with in my personal knowledge and are true to my information and belief.

. Dated this the 5th day of December, 1997.


B-K. BALAN
DEPONENT

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 5th day of December, 1997 in my office at Ernakulam.




N. GOVINDAN NAIR
ADVOCATE

2
7

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM

C.P.C.NO. 96 /1997

in
O.A.NO. 547 /1989

PETITIONER - APPLICANT IN O.A.NO. 547/1989.

B.K.Balan, T.T.A, Telephone Exchange ,
Quailandy.

Address for service of the petitioner is the
address of his Counsel, N.Govindan Nair, Advocate, Ernakulam.

RESPONDENTS: RESPONDENTS 2 & 3 IN O.A.No. 547 /1989

1, S.Krishnan, The Chief General Manager,
Telecommunications, Kerala Circle,
Trivandrum-33.

2, ~~C.K.~~ Brahmadattan, *Telecom District Manager, now designated as*
General Manager,
Telecommunications,
Calicut-673001.

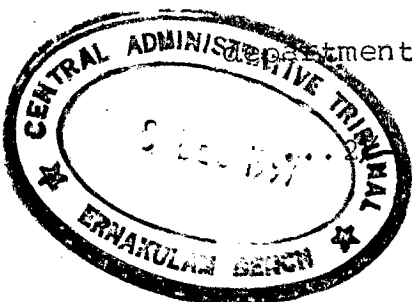
Address for service of the respondents are as
shown above.

CONTEMPT PETITION FILED UNDER SECTION 3 OF THE CONTEMPT
OF COURT ACT, READ WITH SECTION 17 OF THE ADMINISTRATIVE
TRIBUNAL'S ACT, 1985.

BRIEF FACTS LEADING TO THE APPLICATION

1. The petitioner was the applicant in O.A.
No.547 of 1989. He is an Ex-serviceman and was recei-
ving military pension. He got re-employment in the
with effect from 11-10-1983. On re-employment as
Technician in the Telecom Department in the scale of
Rs.260-480, he pay was fixed at the minimum of
Rs.260/- without giving him advance increments taking
into account his military service.

2. Four other Ex-serviceman who joined telecom
Department were given advance increments. This was



Balan
(B.K.BALAN)

: 17 -:

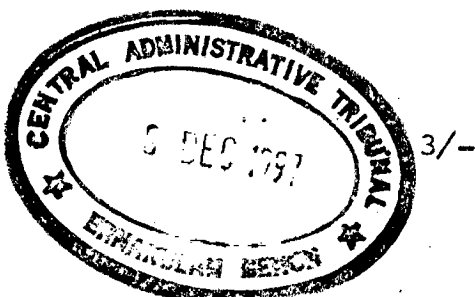
not done in the case of the petitioner. His pay was fixed taking into account his military pension contrary to government orders.

3. Petitioner filed O.A.No.547 of 1989 before this Hon'ble Tribunal the minimum and in not giving advance the application was allowed. Respondents ~~XXXXXXXXXX~~ ~~XXXXXXXXXX~~ were directed to give him advance increments refixing his pay and also pay arrears with in two months. True copy of the judgment is produced herewith and marked as Annexure A1.

4. The petitioner was constrained to file Contempt of Court petition C.P.C.No.5/90 in O.A.547/89 before this Hon'ble Tribunal since the respondents did not comply with the directions in the judgment. However, the petition was closed on the submission of the respondents that appeal has been filed before the Supreme Court.

5. The appeal filed against the order in favour of the petitioner and other appeals were dismissed by the Supreme Court by judgment dated 8.4.96 confirming the judgment of this Honourable Tribunal.

5. However, even after a lapse of more than are year the respondents have not complied with the directions in the judgment of this Honourable Tribunal in O.A.547 of 1989. Petitioner had sent a representation to the second respondent along with a copy of this judgment of the Supreme Court on 4.2.1997. True copy of the representation is produced herewith and marked as Annexure A2. True copy of the judgment of the Supreme Court is produced herewith and marked as Annexure A3.



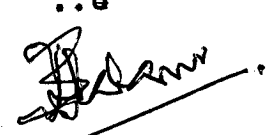
Healans

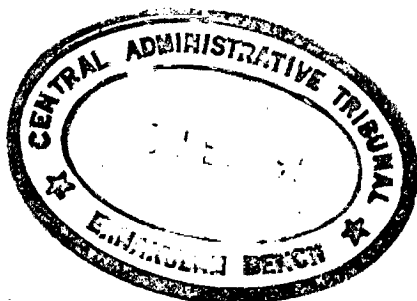
7. The respondents have not taken any action to pay the amounts due to the petitioner pursuant to the eviction in Annexure I judgment which has been confirmed by the judgment of the Supreme Court, Annexure A-III. More than a year has elapsed from the date of the judgment of the Supreme Court. The action of the respondent in wilfully refusing to comply with the directions of this Honourable Tribunal amounts to contempt and the respondents are liable to be punished under section 12 of the Contempt of Courts Act.

RELIEFS OR PAYER

For reasons stated above and other reasons that may be submitted at the time of hearing it is prayed that this Honourable Tribunal may be pleased to:

Initiate Suo motu proceedings against the respondents under Section 12 of the Contempt of Court Act.

..6

(B.K. BALAN)



: 6 :

V E R I F I C A T I O N

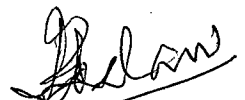
I, B.K. Balan, Son of P.K.K. Nair, aged 53,
T.T.A, Telephone Exchange, Quilandy, residing at
Bappoonakandi House, Edakulam P.O, Quilandy do
hereby verify that contents of paragraphs 1 to 6
above, are true to the best of my knowledge and
belief and that I have not suppressed any material
facts.

Place: Ernakulam.

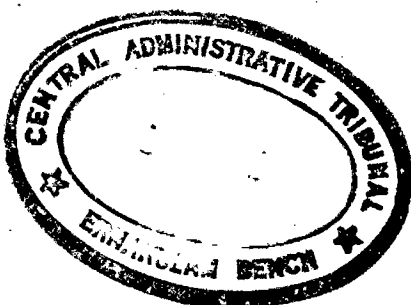
Date: 5..12.1997.



N.GOVINDAN NAIR
ADVOCATE


B.K. BALAN

P E T I T I O N E R



: 7 :

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL AT
ERNAKULAM BENCH

C.P.C.NO. _____/1997

in
O.A.No. 547 /1989

B.K. BALAN

: PETITIONER

VS


S.KRISHNAN & Another

: RESPONDENTS

MEMO OF DRAFT CHARGES

That you, S.Krishnan, The Chief General Manager, Telecommunications, Kerala Circle, Trivandrum. 33 by and you. Brahmaddattan, General Manager, Telecommunications, Calicut-673001, by not taking any action to pay the amounts due to the petitioner, B.K. Balan, as directed by Annexure AI judgment and wilfully refusing to do the above act has committed contempt of this Tribunal punishable under section 12 of the Contempt of Courts Act.

Dated this the 5th day of December, 1997.



N. GOVINDAN NAIR
ADVOCATE



8

Annexure A1 P(1)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT ERNAKULAM

O.A.NO. 547 /1989

B.K. Balan

.. Applicant(s)

Mr.MGK Menon

.. Advocate for the Applicant(s)

Versus

The Director General
Telecommunications, Deptt. of
Telecoms. Min. of Commns. Government
of India, New Delhi & 2 others.

.. Respondent(s)

Mr.K.Prabhakaran, ACTSC .. Advocate for the respondent(s)

CORAM:

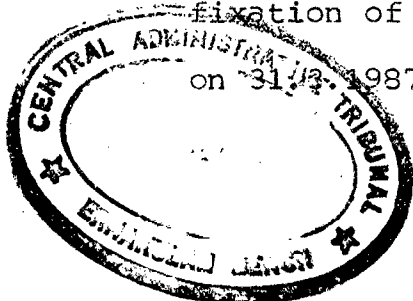
The Honourable Mr.N.V.Krishnan .. Administrative Member
The Honourable Mr.A.V.Haridasan & .. Judicial Member

JUDGMENT

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

Mr.B.K.Balan, aged 41 years retired from military service earning a pension. He was re-employed in the Telecom.Department on 11.10.1983. 4 other ex-servicemen K.Madhavan, KP.Prabhakaran, E.Bhaskaran Nair & Glancy John belonging to the same category as applicant were also re-employed in the same department on the same date. The fixation in the same department on the same date. The fixation of pay of the re-employed military personnel is governed by GIMF OM No.B(34)Est.III/57 date 25.11.58 read with OM No.2(1)83/D(Civ-I) date 8.2.1983. In terms of these OMs, the entire military pension of ex-servicemen below the rank of Commissioned Officers is to be ignored in fixing their re-employment pay in Civil posts. In the case of the other 4 ex-servicemen, fixation of pay was made accordingly. The applicant on 31.12.1987 submitted a petition to the first

...2



9

Annexure A1 P(2)

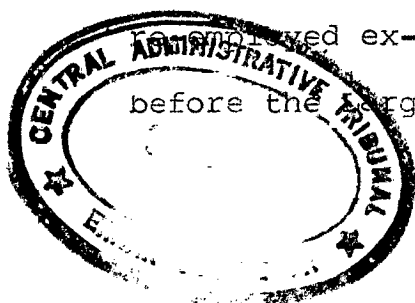
respondent requesting the fixation of his pay in the same lines as in the case of other ex-servicemen. But the second respondent has on 13.1.1988 by the impugned order at Annexure A.7 fixed the applicant's initial pay w.e.f. 11.10.83 at Rs.260/- without granting him advance increment as in the case of other ex-servicemen and against the guidelines contained in the Government instructions in this regard. The applicant has therefore, filed this application praying that the impugned order at Annexure-A7 may be set aside and the respondents be directed to fix his pay in accordance with the instructions contained in the relevant OM.

2. The respondents in their reply statement have contended that as the pay of the applicant at the minimum of the scale Rs.260-480 namely, Rs.260/- and his military pension of Rs.191/- exceeded his pre-reitirement pay of Rs.395/-, there was no hardship in his case, and that, therefore, fixation of his pay as per Annexure -A7 is perfectly in order and in conformity with the letter of Director General, Telecom.No.45-29/-86 PAT dt. 10.8.87. It is further averred that, steps have been taken for refixation of pay in the cases of the other 4 re-employed ex-servicemen erroneously fixed earlier. Hence, according to the respondents, the claim of the applicant is not sustainable.

3. We have heard the arguments of the learned counsel on either side and have also gone through the documents produced.

4. 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 and 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 (Annexure V, V-a, and VI respectively), cannot be taken into reckon whether the minimum of the pay-scale of the re-employed post plus pension is more or ~~the re-employed~~ 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 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 and whole military pension is to be reckoned and that advance increment is to be given only if the sum total of this falls below the last pay drawn in the military service cannot stand. Hence, the Annexure A7 order of the provisions of the OM Nos. dated 25.11.1958 and 8.2.1982 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. 11.10.83 ignoring his entire military pension and granting him advance increments in terms of the directions contained in OM Nos. 8/(34)Est. III/57 dt. 25.11.1958 and Nos. (1)/83/D(Eiv.I) dt. 8.2.83. This should be done and the arrears, if any, should be paid to the applicant within 2 months from the date of receipt of this order. There is no order as to costs.

Sd/-
(A.V. HARIDASAN)
JUDICIAL MEMBER

Sd/-
(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER
/true copy/

Sd/-Deputy Registrar

~~This is document marked as Annexure A1.~~

is true copy of Original Document
[Signature]
advocate



B.K. BALAN
T.T.A, Telephone Exchange
Quilandy. dated 4th Feb.1997

To

The General Manager,
Department of Telecommunication,
Calicut-673 001.

(Through Proper Channel)

Sir,

Sub:- Fixation of initial pay Ex-servicemen

Kindly Refer: (1) My personel representation
dated 25.7.1991 your reply
DGM/GGC/111/7 dated 25.7.91
&EEC/8200/76 dtd 5.8.91.

(2) My personel representation dated
15.10.92 your reply DGM/DGC/111/10
dated 16.10.92 and EEM/6552/52
dated 30.10.92.

(3) OA No.547/89 filed by me in CAT
EKM and its judgment order dated
6.7.90.

(4) Petition for SLP for exparty stay
No.14851/90 at the Supreme Court
of India and it CA No:10487/95
filed by the department.

In the above said matter I beg to invite your kind
attention towards the combined judgment of the Supreme
Court vide CA Nos.4077-78 of 1992(A copy is hereby
attached).

As per the judgment the Honourable Supreme Court
up held the decision of the CAT in the above said OA
547/89 and order dated 6.7.1990 and other connected
cases.

..2



Therefore I humbly request you sir, to take necessary action to fix my initial pay with effect from 11.10.83 (para 7 of CAT order as per the directions contained in OM No.8(34) ESC 111/57 date 25.11.58 and No.s (1) /83/D (Civ-I) date 8.2.83) and the arrears may please be paid without any further delay. I like to bring to your notice sir, the initial pay of other four ex-servicemen recruited with me in the same Cadre date and place had fixed wef 11.10.83.

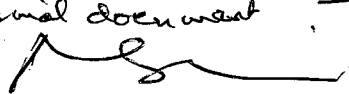
Finally I hope and pray the justice delayed will not be ignored in any case.

Thanking you,

Yours faithfully,

Enclosures: A copy of the judgment
of the Supreme Court
CA No.4077-78 of 1992.

~~This is document marked as Annexure A2~~ in
the true copy of original document


advocate
N.GOVINDAN NAIR



IN THE SUPREME COURT OF INDIA, CIVIL APPELLATE JURISDICTION.

CIVIL APPEAL NOS. 4077-78 /1992

Director General of Posts & Ors. .. Appellants
Versus

B. Ravindran & Anr. .. Respondents

(With CA Nos. 4079, 4080, 4042/92, SLP(C) Nos. 10747/92, 2422/93, 1227/93, 14027/93, 16075/93, 17609/93, 21462/93, 7717/94, C.A. Nos. 4710/94, 3136/95, 7832/95, 2872/93, SLP(C) 17023/92, C.A. Nos. 3864/93, 3865/93, 6226/90, 9384/95, 9416/95, 65/92, 2429/94, 15/91, 7367/93, 4369/90, 75/95, SLPC(C), 1607/93, C.A. No. 4485/96, SLP(C) Nos. 10472/95, 1170/96, 11949/96, 3706/92, ~~xxx~~ 7187/95, 14102/95, 5344/94, 11469/94, 12383/94, 12871/94, C.A. Nos. 11376/96, 10486/96, 10487/95 & 10488/95) (Civil Appeal Nos. 14493-14512/96 against SLPs 10747/92, 2422/93 etc etc. respectively mentioned above)

JUDGMENT

NANAVATI, J.

Leave granted.

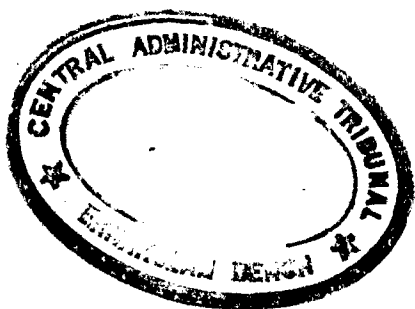
The point which arises for consideration, in this batch of appeals, is whether an ex-serviceman, who after his retirement before attaining the age of 55 is re-employed in civil service, while getting his pay fixed, is entitled to an advance increment only if his pay plus pension plus pension equivalent of gratuity is less than the last pay drawn at the time of retirement. of the

This question arises in the context/following facts and circumstances. It is unnecessary to refer to the facts of all these appeals and, therefore, we refer to the facts of Civil Appeal No. 4077 of 1992 only. Ravindran, Applicant in O.A. No. 3 of 1989, out of which this appeal arises, after his retirement from AIR Force, was re-employed as a Postal Assistant on 29.11.83. He had served in the Air Force from 4.11.65 to 30.11.80. His last pay in the air Force was Rs. 400/- per month and his pension on the basis of the said service was fixed at Rs. 187/- per month. The pension equivalent of gratuity was Rs. 20.17. On his re-employment as a



as a Postal Assistant in the scale of Rs.260-8-340-10-360-12-480 his pay was fixed at Rs.260/- being the minimum of the pay scale. According to him while fixing his pay and determining hardship the whole of military pension which he was getting was required to be ignored and he ought to have been granted one advance increment for each completed year of military service in view of the Government of India, Ministry of Finance O.M. dated 25.11.1958 read with Government of India, Ministry of Defence O.M. dated 8.2.1983, as he was getting Rs.140/- less than what he was getting at the time of retirement from military service. As he had put in 11 years' service in equivalent or higher grade in the Air Force his pay at the time of Rs.350/- per month. He was denied this benefit and his initial pay was pegged down to the minimum of the pay scale at Rs.260/- on the ground that his case cannot be regarded as a case of hardship in view of the clarification made by the Department of Personnel and Training after consulting the Ministry of Finance and which is contained in the circular letter dated 30.12.85 issued by the Director General, P&T. The applicant, therefore, approached the Central Administrative Tribunal and challenged the said clarification and the letter dated 30.12.85 as arbitrary and against the provisions of pay fixation of re-employed pensioners. The respondents in other appeals were also denied the benefit of advance increments for the same reason and, therefore, the said clarification and the letter dated 30.12.85.

The contention of the applicants before the Tribunal was that if an ex-serviceman on being re-employed in civil service does not get by way of pay plus pension plus pension equivalent of gratuity less than the last pay drawn by him at the time of retirement then it cannot be said that fixation of his initial



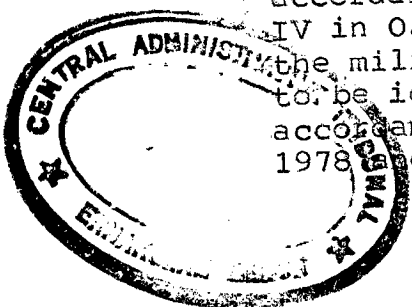
pay at the minimum of the prescribed pay scale has caused undue hardship to him and, therefore, his pay was not required to be fixed at a higher stage by allowing one increment for each year of a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is re-employed. This was the policy of the Government right from 1958 and what was implied was made clear by the Department of Personnel and Training after consulting the Ministry of Finance. Therefore, the said clarification cannot be regarded as arbitrary or contrary to any statutory provision of a provision having force of law.

When O.A.No.3 of 1989 along with O.A.No.15 of 1989 came up for hearing before the Division Bench of the Tribunal at Ernakulam it noticed that a single Member Bench of the Tribunal had upheld this contention in an earlier matter. As it was inclined to take a different view it raised the following two issues and referred them to a larger Bench:

- "(a) Whether for the purpose of granting advance increments over and above the minimum of the pay scale of re-employment post in accordance with the O.M. of 25.11.1958, the whole or part of the military pension of the ex-servicemen which is to be ignored for the purpose of pay fixation, can be taken into account to reckon that the minimum of the pay scale of the re-employment post plus pension, drawn by the re-employed ex-serviceman for the grant of advance increments on re-employment;
- (b) If 'Yes', i.e., if it is decided that the ignorable pension also has to be reckoned for the purpose of admissibility or advance increments, whether the orders issued to this effect in 1985 or 1987 can be given retrospective effect so as to adversely affect ~~in so as to~~ the initial pay of ex-serviceman who were re-employed prior to the issue of these instructions".

A Full Bench of the Tribunal answered those questions as follows:-

- "(a) We hold that for the purpose of granting advance increments over and above the post in accordance with the 1958 instructions (Annexures IV in O.A.No.3 of 1989), 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".

Following the decision of the Full Bench, O.A. No.3 of 1978 and O.A.No.15 of 1989 were disposed of by the Division Bench by declaring that the applicants were entitled to be granted one advance increment for each completed year of their military service in equivalent grade in fixing their pay in the post of Post Assistant with effect from the date from which they were appointed if the minimum of Rs.260/- in the pay scale of Postal Assistant together with unignorable part of their pension did not exceed last pay drawn by them in the Armed Force. The Tribunal also directed the respondents in those applications to exclude the ignorable part of their pension while deciding whether any undue hardship was caused to the applicants by fixing their re-employment pay at the minimum of the pay scale of postal Assistant. The Tribunal set aside the impugned orders and also the clarifixation to the extent they were contrary to the said declaration. Aggrieved by the orders passed by the Tribunal in those two applications and similar orders passed in other applications the appellants have filed these appeals after obtaining special leave of this court.



The learned counsel for the appellants submitted that the concept of hardship was introduced by the Government in O.M. dated 25.11.1958 to ensure that there was no drop in the total package of pay and pension on re-employment. It was never the intention of the Government to allow advance increments after comparing the minimum pay to the pre-retirement pay as that would have entitled the ex -serviceman to double and unintended benefit. Thus the O.M. dated 30.12.1985 was clarificatory in nature as it made explicit what was implicit in O.M. dated 25.11.1958. The learned counsel further submitted that the tribunal having rightly found that the instructions issued in 1964, 1978 and 1983 did not deal with the concept of hardship committed an error in holding that the O.M. dated 30.12.1985 was not clarificatory in nature and was ~~20.12.1985~~ inconsistent with the statutory provision contained in the Civil Service Regulations and the instructions issued thereunder which also have equally binding force. As the O.M. dated 30.12.85 was clarificatory in nature the question of giving it retrospective effect did not arise at all. It was submitted that the view taken by the Tribunal is therefore wholly misconceived. As against these submissions made on behalf of the appellants. the learned counsel appearing for the respondents have submitted that the tribunal has correctly interpreted the O.Ms. of 1958, 1964, 1978, 1983 and 1985 and



the effect of making a corresponding amendment in the Civil Service Regulations which are admittedly statutory in nature.

On 25.11.1958 the Government of India took a policy decision in the matter of the procedure to be adopted in fixing the pay of pensioners re-employed in Central Civil Departments. It is applicable to all such pensioners. The relevant part of the said policy decision is as follows:-

- "(a) Re-employed pensioners should be allowed only the prescribed scales of pay, that is, no protected time scales such as those available to pre-1931 entrants should be extended to them.
- (b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

- (c) In addition to (b) above, the Government servant may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he is eligible e.g., Government's contribution to a Contributory Provident Fund, gratuity, commuted value of pension, etc. provided that the total amount of initial pay as at (b) above, plus the gross amount of other forms of retirement benefit does not exceed :-

- i) the pay he drew before his retirement (pre-retirement pay); or
- ii) Rs. 3,000/-, whichever is less.

Note 1:

In all cases where either of these limits is

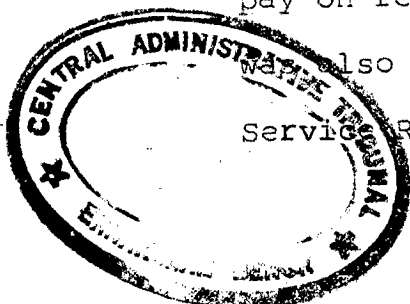


Annexure A-III P(7)

is exceeded, the pension and other retirement benefits may be paid in full and the necessary adjustments made in the pay so as to ensure that the total of pay and pensionary benefits is within the prescribed limits.

Whethere, after the pay is fixed at the minimum or any higher stage, it is reduced below the minimum as a result of the said adjustments, increase in pay may be allowed after each year of service at the rates of increments admissible, as if the pay had been fixed at the minimum or the higher stage as the case may be".

The Government of India felt that the capacity usefulness of a person could not be greater than what it was at the time of retirement but this consideration became irrelevant when applied to persons who retired much earlier than the normal age of retirement of 58 years. Moreover, some of the lower ranks in the Defence Services, e.g., sepoy who retired at a very early age qualified themselves for various trades and professions after undergoing some training. It therefore thought that a distinction between officers who retired at the normal age of 58 and those who retired at an early age was desirable. Taking into account the difficulties of low paid pensioners who retire at an early age. It decided that in case of persons retiring before attaining the age of 55 years, a part of the pension may be ignored in computing pay on re-employment. Accordingly an O.M. was issued directing Civil pensions upto Rs.10 p.m. and Military pension upto Rs.15 p.m. should be ignored in fixing pay on re-employment. An amendment to that effect also made in Articles 521 and 526 of the Civil Service Regulations. As declared by the O.M. dated



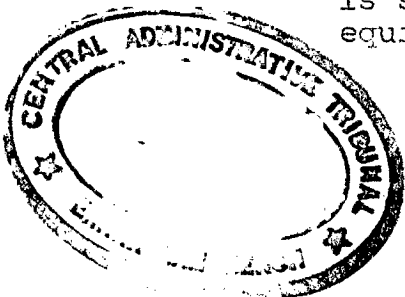
16.1.1964 the Government again raised the limit in the following terms:

- (i) in the case of pensions not exceeding Rs.50/- per mensem the actual pension,
- (ii) in other cases, the first Rs.50/- of the pension.

A corresponding amendment in the civil Service Regulation was also made. This limit was further raised from Rs.50/- to Rs. 125/- by Ministry of Finance O.M. dated 19.7.1978. By its O.M. dated 8.2.1983 Ministry of Defence issued an order by raising the limit of pension to be ignored in fixing of pay from Rs.125/- to Rs.250/- in the case of service officers and declaring that the entire pension should be ignored in the case of personnel below Commissioned Officer's rank. All these orders were made effective from the dates on which they were issued. We have referred to only those orders which are relevant for the purpose of these appeals.

It appears that the effect of making the entire pension ignorable in certain cases ~~of making~~ was examined by the Department of Personnel and Training in consultation with the Ministry of Finance. It was decided to issue the following clarification with respect to the mode of pay fixation of re-employed pensioner :-

"When a re-employed pensioner asks for refixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments arises only if there is any hardship. Hardship is seen from the point whether pay plus pension equivalent of gratuity (whether ignorable or not)

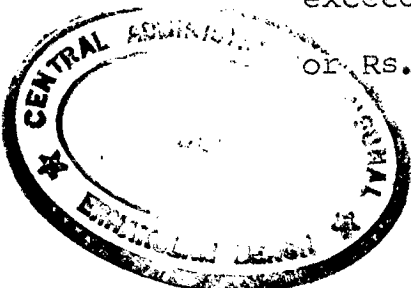


is less than the last pay drawn at the time of retirement. If there is no hardship no advance increments can be granted".

The said clarification was brought to the notice of all the concerned authorities of the postal Department by the Assistant Director General of Posts by Circular dated 30.12.1985 and they were directed to review all such previous cases in which the pay of the re-employed pensioners/ex-serviceman were otherwise fixed under the Ministry of Defence order dated 8.2.1983. As stated earlier this circular and the consequent action were the subject matter of the applications filed by the respondents before the tribunal.

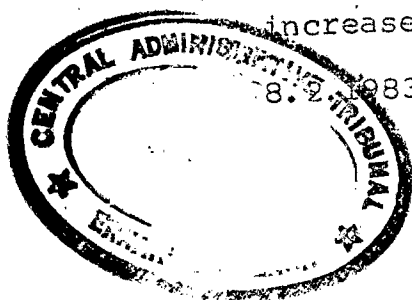
The effect of the order dated 8.2.1983 and the circular dated 30.12.1985 was that in case of a pensioner who was re-employed on or after 8.2.1983 his pay was to be re-fixed in terms of the said order and the clarification. In respect of those ex-servicemen who opted to come under those orders their pay was also to be fixed in the same manner.

It is not in dispute that the original order for fixation of pay of re-employed pensioners was contained in O.M. dated 25.11.1958. In the matter of fixation of pay of such re-employed pensioners the first step required to be taken was to fix his initial pay at the minimum stage of scale of pay prescribed for the post on which he was re-employed. The next step to be taken was to find out whether his pay thus fixed plus pension (including other pensionary benefits) exceeded the pay which he drew before his retirement or Rs.3000/-. If it exceeded either of those limits



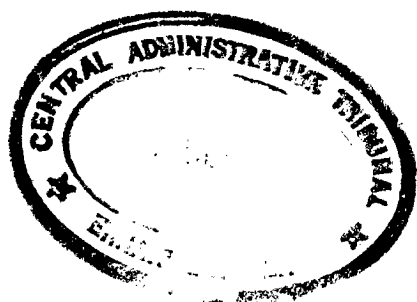
Annexure A-III P(10)

then necessary adjustment was to be made in the pay by reducing it below the minimum stage so as to ensure that the total pay including pension was within the prescribed limits. If the initial pay plus the pension was found to be less, then it was to be regarded as a case of undue hardship and his pay was required to be fixed at higher stage by allowing one increment for each year of service which the officer rendered before retirement in a post not lower than in which he was re-employed. However, when it was noticed that this formula was not fair and just in cases of pensioners who retired at an early age that is before 55 years, the Government in relaxation of the ~~xxx~~ policy contained in the 1958 order decided to grant some benefits to such re-employed pensioners and issued an order directing that civil pension upto Rs.10/- per month and military pension upto Rs.15/- per month should be ignored in fixing pay on re-employment. Thus while totalling up the initial pay and the pension for the purpose of finding out whether the pensioner on re-employment was likely to get more or less than what he was getting earlier Rs.10/- in case of civil pensioners and Rs.15/- in case of military pensioners were to be ignored. In other words the amount of pension to be added to the initial pay was to be reduced to that extent. Thereafter his pay was to be adjusted depending upon whether the pensioner would thus get more or less on his re-employment. This relaxation was obviously in the nature of modification of the earlier policy. As narrated above the said limits to be ignored were increased from time to time and by the O.M. dated 18.2.1983 in case of ex-serviceman, the limit was

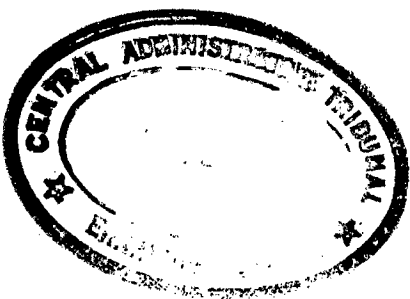


raised to Rs.250/- in case of service officers and in case of personnel belonging to Commissioned Officer ranks the entire pensionary benefits were to be ignored. Though in the beginning, according to the original policy contained in the 1958 order, the entire pension was to be added to the initial pay to find out whether it gave unintended advantage or caused undue hardship to the re-employed pensioner, the position did not remain the same after the passing of the orders in 1963 and 1964 and thereafter. The modifications thus made by the 1963 and 1964 orders were given legal status by amending Articles 521 and 526 of the Civil Service Regulations accordingly.

However, it was submitted by the learned counsel for the appellants that the orders which were issued in 1963, 1964, 1978 and 1983 did not deal with the aspect of hardship and were not intended to replace or change the basic policy contained in the 1958 instructions. They were intended as relaxations and, therefore, they cannot be said to have the effect of altering or modifying the 1958 policy. When the entire pension was made ignorable in the case of personnel below Commissioned Officer's rank the position substantially changed and therefore, the Government was obliged to clarify that as contemplated by the 1958 instructions hardship is to be seen from the point whether pay plus pension plus pension equivalent of gratuity (whether ignorable or not) was less than the last pay drawn at the time of retirement. What the Government thereby did was to reiterate



that if there was no hardship no advance increment should be granted. What is overlooked by the learned counsel is that the intention behind the orders issued in 1963, 1964, 1978 and 1983 was to give some more benefit to the re-employed pensioners/ex-servicemen. The effect of the benefit was to be given at a stage prior to the consideration of hardship. The ignorable part of the pension was to be ignored while totalling up the initial pay plus the pension in order to find out whether the retired pensioner thereby was likely to get more or less than what he was getting at the time of his retirement. To that extent the 1958 policy stood, altered or modified. Though the said four orders did not directly deal with the aspect of hardship they did by widening the gap between the initial pay plus the non-ignorable part of the pension and the pay he drew before his retirement and thereby further necessitated giving of advance increments to alleviate hardship. It is, therefore, not correct to say that those orders had no concern with the aspect of hardship. What the contention raised on behalf of the appellants further overlooks is that pursuant to the orders issued in 1963⁸ ~~1963~~ and 1964 corresponding amendments were made in Articles 521 and 526 of the Civil Service Regulations. The said Regulations were made some time prior to 1914 and had acquired statutory authority



Annexure A III P(13)

under section 96-B(4) of the Govt. of India Act, 1919 and have been continued in force by virtue of Art. 313 of the Constitution. They are, therefore, statutory in nature. After its amendment in 1964 it read as under:

"526(a)

(b)

(c) In case of service personnel who retire from the Forces before attaining the age of 55 and are re-employed in civil posts on or after 16th Jan. 1964 the pension shown below shall be ignored in fixing their pay on re-employment.

(i) In the case of pensions not exceeding Rs. 50 per mensem the actual pension.

The subsequent orders issued in 1978 and 1983 were supplementary in nature and did have binding force. Under these circumstances, the Govt. could not have, under the guise of a clarificatory order, taken away the right which had accrued to such ~~xxxxxx~~ re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only in consistent with the relevant provisions of the civil service regulations and the 1978 and 1983 orders but its effect was to supersede the said provision and the orders. The Tribunal was, therefore, right in holding the said instructions in so far as it directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law. These appeals are, therefore, dismissed with no order as to costs.

sd/-SC. Agrawal)

sd/-CT Nanavarti

New Delhi
November 8, 1996.

This is document marked as Annexure A III is
the true copy of original document

advocate



CAT

2+2 copies

Defects

- 1) Application is not within the limit
- 2, 2nd contention in the CPC is not the correct respondent on the basis of records in OA.
- 3) Each page of the CPC is not signed by the applicant/counsel
- 4) Absolution of annexures are not as per CAT Rules of procedure
- 5) Deponent's name is not written below signature
- 6) Brief description of annexure A-1 in index is incomplete
- 7) No objection certificate of the Counsel who filed the 'vakalat' for the applicant in OA has not been produced

Return after curing the defects by 16/12/97

R
9/12

R
9/12
S.C.

1. Contempt ^{in this case} to a contemner as there is no lis in fact (S. 472 Cr.P.C.)

Defects cured. Represented.

16.12.97
Advocate

R
16/12

PRESENTED ON: 8/12/97

BEFORE THE HON'BLE CENTRAL
ADMINISTRATIVE TRIBUNAL AT
ERNAKULAM BENCH

C.P.C.NO. 96 /1997

in
O.A.NO. 547 /1989

B.K. BALAN : PETITIONER
VS

S. KRISHNAN & ANOTHER: RESPONDENTS

PETITION TO TAKE ACTION UNDER
CONTENT OF COURT ACT.

N. GOVINDAN NAIR
ADVOCATE

R
9/12
S.C.

R
9/12

8/12

27

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH

C.P.(C) No. 96 of 1997

in

O.A.No. 547 of 1997

B.K.Balan.

.....Petitioner

Vs.

S.Krishnan & another.

.....Respondents


I N D E X

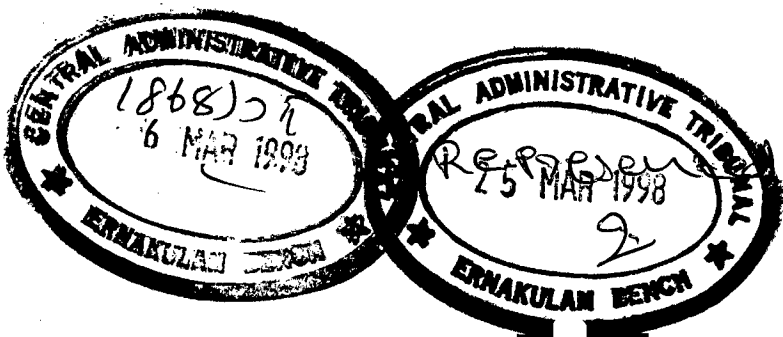
CONTENTS:

PAGE NOS:

- | | |
|--|---------|
| (1) Affidavit. | 1 and 2 |
| (2) Reply Statement filed by the Respondents. | 3 to 5 |
| (3) <u>ANNEXURE.R 1(A)</u> True copy of the Order No.45-22/90-PAT dated 24.2.1998 of the Ministry of Communications, Department of Telecommunication, New Delhi. | 6 |

Dated this the 5th day of March, 1998.


T.P.M.IBRAHIM KHAN
Senior Central Govt.Standing Counsel



BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

C.P.C. NO. 96/97

IN

O.A. NO. 547/89

B.K. Balan : Petitioner

vs.

S. Krishnan & another : Respondents

AFFIDAVIT

I, S. Krishnan, aged 57 years, son of Shri G.S. Subramanian, working as Chief General Manager, Telecommunications, Kerala Circle, Thiruvananthapuram - 33 do hereby solemnly affirm and state as follows:-

1. I am the 1st respondent in above the contempt Petition (Civil) and I am fully conversant with the facts of the case, as disclosed by the relevant files. I swear this affidavit on behalf of the 2nd respondent also.

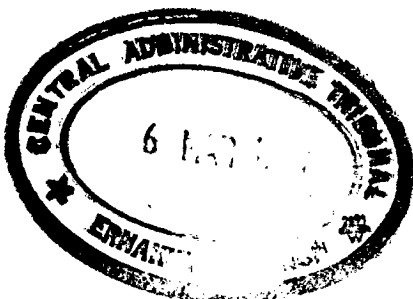
2. The above contempt petition (civil) was filed by the Applicant/Petitioner alleging the wilful refusal to comply with the direction contained in Annexure A1 judgement. I deny the said averment and allegation contained in the petition since there is no wilful negligence on our part in obeying the order of this Honourable Tribunal.


S. Krishnan

Contd...2...

एस. कृष्णन S. KRISHNAN

मुख्य महाप्रबन्धक Chief General Manager
केरल दूरसंचार परिमंडल Kerala Telecom Circle
दूरसंचार भवन Doornancha Bhavan
तिरुवनन्तपुरम Trivandrum-695 033

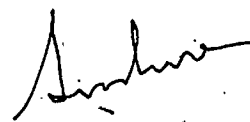


- 2 -

3. More details regarding the above had been explained in accompanying reply statement. The same may be read and treated as part of this affidavit.

Contents of the above paragraphs are within my personal knowledge and are true to my information and belief.

Dated this the 2nd day of March, 1998.



DEPONENT
एस. कृष्णन S. KRISHNAN

मुख्य प्रबंधक Chief General Manager
केरल तार परिमंडल Kerala Tel.com Circle
दुधनगर भवन Doofanchar Bhavan
तिरुवनन्तपुरम Trivandrum-695 033

ATTESTATION

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 2nd day of March, 1998 in my office at Thiruvananthapuram.

ATTESTING OFFICER

सी. टी. चोती C. T. Chothi

उप प्रबंधक (टी एस)

Deputy General Manager (T. S.)

मुख्य मा प्रबंधक कार्यालय

Office of Chief General Manager

केरल तार परिमंडल Kerala Telecommunications

तिरुवनन्तपुरम Trivandrum-695 033



37

BEFORE THE HONOURABLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

C.P.C. NO. 96/97

IN

O.A. NO. 547/89


B.K. Balan : Petitioner
vs.
S. Krishnan & another : Respondents

REPLY STATEMENT FILED BY THE RESPONDENT

I, S. Krishnan, aged 57 years, son of Shri G.S. Subramanian, working as the Chief General Manager, Telecommunications, Kerala Circle, Thiruvananthapuram - 33 do hereby solemnly affirm and state as follows:-

2. I am the 1st respondent in the above contempt Petition (Civil) and I am fully conversant with the facts of the case, as disclosed by the relevant files. I am filing this reply statement for and on behalf of the 2nd respondent also as I am duly authorised for the same.

3. Department of Telecommunication New Delhi vide order no. 45-22/90-PAT dated 24.2.1998 has decided to implement the


S. Krishnan

Contd..2..

एस. कृष्णन S. KRISHNAN
मुख्य महाप्रबन्धक Chief General Manager
दूरतंत्र विभाग परिमंडल Kerala Telecom Circle
दूरतंत्र भवन Doornam
तिरुवनन्तपुरम Trivandrum-02



- 2 -

judgement dated 6.7.90 of this Honourable Tribunal in Original application No. 546/89 filed by the petitioner. Copy of the said order is marked and produced as Annexure R-1(A).

4. As per the order of the Hon'ble Tribunal the pay of the petitioner is to be refixed on the basis of the original documents issued by the Defence Authorities which are to be obtained from the Defence Authorities. Besides, the drawal of arrears from 1983 onwards is also a time consuming process, for which various records are to be traced out and the actual statements pertaining to fourteen years are to be prepared. This process may take 3 more months for its completion. In the absence of no wilful disobedience of the orders of this Hon'ble Tribunal in the light of Annexure R-1(A), this contempt petition is liable to be dismissed with costs.

VERIFICATION

I, S. Krishnan, aged 57 years, s/o Shri G.S. Subramanian, working as the Chief General Manager Telecommunications, Kerala Circle, Trivandrum-33 do hereby verify



S. Krishnan

Contd...3...

श्री. कृष्ण S. KRISHNAN
मुख्य प्रशासक (Chief General Manager)
दूरसंचार विभाग (Telecommunications Circle)
दूरसंचार विभाग (Telecommunications Circle)
त्रिभुवन (Trivandrum)

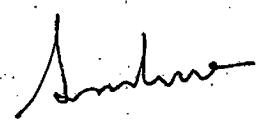


32

- 3 -

that the contents in the above paragraphs are true and correct and I have not suppressed any relevant materials relating to the above case.

Dated this the 2nd day of March, 1998.



DEPONENT

एस. कृष्णन S. KRISHNAN

मुख्य महाप्रबन्धक Chief General Manager

द्वार परिमंडल Kerala Telecom Circle

दूरसंचार भवन Doorsanchar Bhavan

तिरुवनन्तपुरम Trivandrum-695 033

ATTESTATION

Solemnly affirmed and signed before me by the deponent who is personally known to me on this the 2nd day of March, 1998 in my office at Thiruvananthapuram.



ATTESTING OFFICER

सी. टी. चोथी C. T. Chothi

उप महाप्रबन्धक (टी एस)

Deputy General Manager (T. S.)

मुख्य महाप्रबन्धक कार्यालय

Office of Chief General Manager

केरल दूरसंचार Kerala Telecommunications

तिरुवनन्तपुरम Trivandrum-695 033



NO. 45-22/98-PAT
 Government of India
 Ministry of Communications
 Department of Telecommunications
 Sanchar Bhawan, Ashoka Road, New Delhi - 1.

Date: 24/2/1998

To

The Chief General Manager
 Kerala Telecom Circle,
 Thiruvananthapuram.

Sub: Implementation of CAT order in OA No. 547/89 filed by
 Shri B.K. Balan in CAT, Ernakulam bench.

....

Sir,

I am directed to say that it has been decided to
 implement the CAT judgement dated 6.7.98 in above mentioned OA
 filed by Shri B.K. Balan in respect of the petitioner(s) only.

This issues with the concurrence of Telecom. Finance
 vide their U.O. No. 495/FA.I/98 dated 23.2.1998.

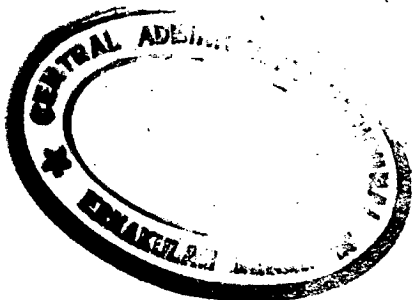
Yours faithfully,

Sd/-
 (R.C. Malhotra)
 ADG (PAT)

*This annexure R-1 is for issue only by
 signed document*

[Signature]
 DR. P. S. KRISHNAN
 Chief General Manager
 Kerala Telecom Circle
 Door No. 111, Ashoka Road,
 Thiruvananthapuram - 695 033

This annexure R-1 is for issue only by



Central Administrative Tribunal
Ernakulam Bench
(Judicial Section)

Defects

- ① Copy not served on applicant.
- ② Reply is filed after the expiry of time granted by the Court.

Returned to cure defects by 15.3.98.

By

16/3

Defects cured and resubmitted on 15/3/98

Am
5/4/98

28/3

Presented on :

BEFORE THE HONOURABLE CENTRAL
ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

MAR 30 1998 in

C.P.(C) No. 96 of 1997

in

O.A.No. 547 of 1989

B.K.Balan.

....Petitioner

Vs.

S.Krishnan &
another.

....Respondents

REPLY STATEMENT FILED BY THE

RESPONDENTS

*copy submitted
for consideration and
16/3/98*

Sri.T.P.M.IBRAHIM KHAN,

Senior Central Govt.Standing
Counsel.

16/3
Mr. P. V. R.