

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 568 of 1993

DATE OF DECISION 29-4-1993

Dommen George and others Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Union of India rep. by Secretary,
Ministry of Communications, Respondent (s)
New-Delhi and others.

Mr Mathew G Vadakkel, AGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member

and

The Hon'ble Mr. R Rangarajan, Administrative 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

Shri AV Haridasan, J.M

All the applicants are re-employed Ex-servicemen.

Applicants 1 to 3 are re-employed after 25.1.83. The 4th applicant was re-employed in the year 1979. At the time of retirement from Defence Service, all the applicants were holding posts below the rank of Commissioned Officers and they retired before attaining the age of 55 years.

2. The grievance of the applicants is that the respondents are denying them relief on their military pension on the ground that they are re-employed and getting pay and D.A. in the re-employed posts. Finding that this Tribunal in TAK 404/87 have declared that the re-employed Ex-servicemen are entitled to get relief on the ignorable part of their

pension during the currency of re-employment, all the applicants submitted representations requesting that the relief on the ignorable part of their pension may not be withdrawn. Finding no response to their representations, the applicants have filed this application under Section 19 of the Administrative Tribunals Act of 1985 for a declaration that they are entitled to get relief on military pension which is ignored for the purpose of fixation of pay and that they are entitled to get full pension and relief thereon.

3 When the application came up for hearing, learned counsel for the respondents submitted that he may be allowed to advance arguments which was addressed in other cases without filing a reply statement. Accordingly, we allowed the counsel to address his arguments in tune with the arguments advanced in similar cases.

4 In a number of rulings, for example, TAK 732/87, TAK 404/87 and such other cases this Tribunal consistently held that if pension is ignored wholly or in part, the relief on pension which is an adjunct ~~part~~ of that pension should also be ignored for all purposes and that the re-employed ex-servicemen are entitled to receive the relief on the ignorable part of their military pension during re-employment.

5 Learned counsel for the respondents argued that the Government has filed an SLP in the Supreme Court.

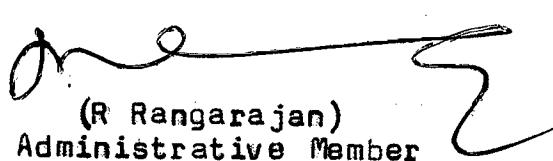
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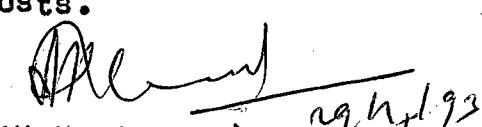
against the Full Bench judgment of this Tribunal.

We are not impressed in this argument. The mere fact that an SLP has been filed before the Supreme Court, or even the operation of the judgment in some other cases have been stayed, that itself is not a reason for not following the dictum laid down by the Full Bench. However, since the Hon'ble Supreme Court has not reversed or set aside the Full Bench judgment, we follow the same.

6 In view of what is stated above, we allow the application and declare that the applicants who are re-employed ex-servicemen are entitled to receive the entire relief on the ignorable part of their pension during the currency of their re-employment. Accordingly, we direct the respondents to pay to the applicants the relief on the ignorable part of their pension and also to refund whatever relief so far recovered, within a period of three months from the date of communication of this order.

7 There will be no order as to costs.


(R. Rangarajan)
Administrative Member


29/4/93
(AV Haridasan)
Judicial Member