

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.594/93

Thursday, this the 27th day of January, 1994.

CORAM:

SHRI N DHARMADAN, MEMBER(J)

P Krishnankutty Nair,
S/o KK Krishnan Nair,
Sreenilayam, Nallanthanni.P.O.
Nilambur(via) (UDC, O/o the
Assistant Director of Income Tax,
Calicut.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs.

1. Union of India, represented by
Secretary to Government,
Ministry of Finance,
New Delhi.
2. Central Board of Direct Taxes,
represented by its Secretary,
New Delhi.
3. Commissioner of Income Tax,
Calicut. - Respondents

By Advocate Mr S Krishnamoorthy, ACGSC

O R D E R

According to the applicant, this case is covered by the judgement of this Tribunal in OA-3/89, OA-15/89 and OA-510/90.

2. There is no dispute regarding the facts. Applicant retired from Army on 21.4.1978 while working as Subedar Clerk. He was getting Rs.495/- as his pay while working in the Military and drawing a monthly pension of Rs.235/- after his retirement before attaining the post of commissioned officer. He was re-employed as Lower Division Clerk in the Income Tax Department in the scale of Rs.260-400. His pay in the re-employed post was fixed at the minimum of the scale that is Rs.260/- On the basis of the orders issued by the Government of India, entire pension and relief on pension are to be ignored while fixing the pay in the re-employed post. This method was not followed in the case of the applicant. He also submitted that he is entitled to get increments

based on his prior service in the Military. According to the applicant, he has completed 24 years of service in the Army before his retirement. Hence under the above circumstances, the applicant submitted that his pay has to be fixed afresh in the re-employed post in accordance with law. He filed representation Annexure-III dated 1.3.1993. It has not been considered. Hence he filed this application with the following prayers:

"(i) Declare that applicant is entitled to get his pay fixed at the maximum of the scale of 260-400 at least with effect from 8.2.1983 granting him advance increments for each completed year of his military service and direct the respondents to re-fix his pay accordingly and to grant him all consequential benefits including arrears of pay."

3. The learned counsel for the respondents is not in a position to deny and dispute the facts of the case. He has also not attempted to persuade me to take a different view than the one taken by the Full Bench in the above case.

4. Accordingly, I follow the Full Bench decision in OA-3/89.

The operative portion of the judgement is extracted below:

"(i) We declare that the applicant is entitled to be granted one advance increment for each completed year of his military service in equivalent grade in fixing his pay in the post of Postal Assistant with effect from 29.11.1983 if the minimum of Rs.260/- in the pay scale of Postal Assistant together with unignorable part of his pension does not exceed the last pay drawn by him in the Armed Force. The ignorable part of his pension as indicated in the instructions in 1964, 1978 and 1983(Annexures-V, V-A and VI respectively) has to be excluded to reckon whether any 'undue hardship' is caused to the applicant by fixing his re-employment pay at the minimum of the pay scale of the post of Postal Assistant as contemplated in the sub-para (b) of the first para of the Office Memorandum of Ministry of Finance dated 25th November 1958. The impugned orders at Annexures-A2 dated 8.9.1986, A-7 dated 30.12.1988, A-11 dated 5th July 1988 and also the clarificatory U.O.notes of the Department of Personnel and Training, No.1627-Estt.(Pay-II)/85 dated 17.9.1985 and 21.7.1986 are set aside to the extent they are contrary to the aforesaid declaration.

(ii) We direct that the pay of the applicant should be refixed on the above basis within a period of three months from the date of communication of this order."

5. Following the Full Bench decision, I allow the application and direct the second respondent to dispose of Annexure-III representation bearing in mind the principles laid down by this Tribunal in OA-3/89,

OA-15/89 and OA-193/90 for a proper fixation of his pay in the reemployed post. Above directions shall be complied with within a period of three months from the date of receipt of a copy of this order.

6. The OA is allowed as above. No costs.

N. Dharmadan
27.1.94.
(N DHARMADAN)
MEMBER(J)

TRS