

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 596/89 199
~~XXXXXX~~

DATE OF DECISION 29.6.1990

N.B.Pankajakshan Nair Applicant (s)

M/sVG Govindan Nair & Advocate for the Applicant (s)
VS Bhasurendran Nair
Versus

Union of India rep. by the Respondent (s)
Chairman, Telecom. Commission,
Deptt. of Telecomns., Dak Tar Bhavan, N.Delhi & 2 others
Mr.P.Santhosh Kumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. M.Y.Priyolkar - 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? *h*
2. To be referred to the Reporter or not? *h*
3. Whether their Lordships wish to see the fair copy of the Judgement? *h*
4. To be circulated to all Benches of the Tribunal? *h*

JUDGEMENT

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


In this application filed under Section 19 of the Administrative Tribunals Act, the applicant, an Ex-serviceman in Telecommunications department, prays that the Memo dated 2.8.89, Annexure-A1 of the Chief General Manager, Kerala Telecom. Circle, Trivandrum cancelling the pay fixation order dated 10.6.85 and refixing his initial pay w.e.f. 17.6.1983 at Rs.196/- in the scale of Rs.196-232, and the order dated 18.9.1989, Annexure-A2 of the Superintendent, Central Telegraph Office, Trivandrum, directing the applicant to remit a sum of Rs.9,327/- within 7 days from the date of receipt of the letter may be quashed. The facts of the

...2/-

case as mentioned in the application can be briefly stated as follows.

2. The applicant served in the Army for 18 years from 7.5.1964 to 31.5.1982, and was discharged on 1.6.1982 when he was only 40 years of age. At the time of retirement he was drawing a pay of Rs.255/- as a Craftman in EME Unit in the scale of pay of Rs.200-5-260. He was granted a basic pension of Rs.156/- w.e.f. 1.6.1982 and including the pension equivalent of DGRG Rs.21.60, his total pension amounted to Rs.177.60/- per month. He was reemployed in the Telecommunications Department w.e.f. 17.6.1983 as a Telegraphman in the pay scale of Rs.196-232. He was confirmed in the Group 'D' cadre w.e.f. 1.3.1986. Being an Ex-serviceman reemployed prior to 1.7.1986 in the Central Government Department before attaining the age of 55 years, the applicant is governed by the Government of India, Ministry of Finance Office Memorandum No.8(34)Est.III/57 dt.25.11.1958 and OM No.2(1)83/D(Civ-I) dated 8th February, 1983, in regard to the mode of fixation of his initial pay during re-employment. His pay was accordingly fixed at Rs.232/- by letter No.45-100/85 PA^T dt. 10.6.1985 of the Department of Telecommunication, Dak Tar Bhavan, New Delhi. He was granted a personal pay of Rs.3/- w.e.f. 1.6.1985 since he had been stagnating at the maximum of the pay scale at Rs.196-232/-. While the applicant was receiving the pay and allowances according to the above said fixation, he was served with the impugned

...3/-



order dated 2.8.1989, at Annexure-A1, stating that the sanction issued by the Directorate for fixation of initial pay at Rs.232/- dated 10.6.1985 has been cancelled, and that his initial pay is fixed with retrospective effect from 17.6.1983 at Rs.196/- at the minimum of the scale.

Immediately thereafter, he was served with the Annexure-A2 order dated 18.9.1989 directing him to remit the whole amount of Rs.9327/- alleged to be the excess payment made during the past seven years, within a period of seven days. The case of the applicant is that, his initial pay was fixed at Rs.232/- in terms of the Government of India OM No.8(34)Est.III/57 dt.25.11.1958 and OM No.2(1)83/D (Civ-I) dt.8th Feb.1983 ignoring the entire pension as mentioned in the OM dated 8.2.1983, and that, therefore, as his initial fixation of pay was perfectly in order and as per rules, the impugned orders refixing his pay at the minimum of the scale and directing him to pay the alleged overpayment within a period of seven days without even giving him a notice before such refixation is unsustainable in law opposed to the principles of natural justice, and therefore null and void. The applicant therefore prays that the impugned orders may be quashed.

3. The respondents in the reply affidavit have justified the impugned orders on the ground that, the refixation was made according to rules as clarified in the DG's letter No.45-29/86-PAT dated 10.8.1987, and that, therefore, the applicant is not entitled to challenge the refixation and

the order to refund the excess amount paid to him on the basis of the fixation erroneously made as per order dated 10.6.1985. It is further contended that the question of granting advance increment would arise only in cases where there is exceptional hardship, that is in cases where the pay and pension put together would be less than the pay drawn by the ex-serviceman while in Military Service.

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

5. The identical question of fixation of pay of ex-serviceman came up for consideration before the Full Bench of the Tribunal in OA 3/89, OA 15/89 and OA K 288/88. The Full Bench has held as follows:

"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 (~~Annexure IX to OA 2/88~~), 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 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."

It was also held by the Full Bench that, the provisions of the Civil Service regulations are statutory in nature, and that the instruction on 1964, 1978 and 1983 have been issued by the Government under the said regulations and ...5/-

are supplement to the provisions to the said regulations.

It was further observed that the clarification issued by the department on 30.12.1985 and subsequent orders cannot over-ride to the earlier instructions issued in 1964, 1978 and 1983 retrospectively, and that the purported modifications of the earlier instructions on the subject would have only projective operation. In this case the initial pay of the applicant was fixed at the stage of Rs.232/- in the scale of Rs.196-232/- w.e.f. 17.6.1983 by order dated 10.6.1985 in accordance with the provisions of the OM No.8(34)Est.III/57 dt.25.11.1958 read with OM No.7(34)Est.III/82 dt.16.1.1964, OM No.E1(14)Est.III(B) 77 dt.19.7.78 and Ministry of Defence OM No.2(1)83/D(Civ-1) dt.8.2.83 ignoring the entire military pension of the applicant who was a non-commissioned officer. The executive orders referred to in the reply statement of the respondents justifying the cancellation of the original order of fixation has been held to be having only prospective operation by the Full Bench of the Tribunal in the order mentioned above. the decision of the Full Bench Therefore, in view of/the order of the initial pay fixation of the applicant at Rs.232/- w.e.f. 17.6.1983 is not liable to be cancelled. The result is that the impugned orders at Annexure-A1 and A2 are unjustified and illegal.

6. In view of what is stated in the forgoing paragraph we find that the impugned orders at Annexure-A1 and A-2 are illegal and unsustainable, and therefore, we quash

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and set aside these orders. The parties are directed to
bear the costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

29/6/90


(M.Y. PRIOLKAR)
ADMINISTRATIVE MEMBER

28.6.90

29.6.1990