

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~X. A. No.~~

597/1992

~~X. A. No.~~

DATE OF DECISION 31.8.1992

N.M.Mathew and twelve others. Applicant (s)

Mr.Rajagopalan Advocate for the Applicant (s)

Versus

Union of India represented by
~~the Secretary, Ministry of~~ Respondent (s)
Defence, New Delhi and five others.

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **S.P.MUKERJI, VICE CHAIRMAN**

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
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

In this application dated 21.4.1991 the thirteen ex-servicemen who have been re-employed under the first respondent in the Naval Physical Oceanographic Laboratory have prayed that the respondents be directed to pay relief on their military pension during the period of their re-employment and the amount already recovered from them should be returned and the pension relief revived. According to them the sole ground on which the relief on their pension has been withheld is that they are now re-employed. The applicants have relied upon the earlier judgments of this Tribunal for the relief claimed. They were discharged from Defence Services before attaining the

age of 55 years and accordingly by the order dated 8.2.83 their entire military pension is to be ignored for fixing their pay on re-employment.

2. Since the question involved has already been decided by a Full Bench of this Tribunal and a plethora of cases have been decided on that basis, the learned counsel for both the parties argued the case on the basis of available documents when the respondents did not file any reply despite opportunities given to them.


3. The question whether relief including adhoc relief on that portion of military pension which is ignored for the purpose of pay fixation of re-employed pensioners should be allowed to be drawn or not, ^{during re-employment} was considered by a Full Bench of this Tribunal in the judgment dated 20.7.1989 in T.A.K.732/87 and other cases. By a majority judgment, the Full Bench decided as follows:-

"Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed ex-servicemen who retired from military service before attaining the age of 55 years, the relief including adhoc relief, relating to the ignorable part of the pension cannot be suspended, withheld or recovered, so long as the dearness allowance received by such re-employed pensioner has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. The impugned orders viz. O.M No.F.22 (87-EV(A)/75 dated 13.2.1976, O.M No.F.10 (26)-B(TR)/76 dated 29.12.76, O.M No.F.13 (8)-EV(A)/76 dated 11.2.77 and O. M No.M.23013/152/79/ME/CGA/VI (Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and adhoc relief on pension

will stand modified and interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P. Mukerji, Vice Chairman)".

The applicants are therefore, entitled to draw dearness allowance and other reliefs attached to their re-employment post as also the relief and ad-hoc relief attached to the ignorable part of their pension. If their entire military pension is to be ignored, they will get full relief on the military pension. But if a part of the military pension is to be ignored, they will get relief proportionate to the ignorable part of their pension even during the period of their re-employment.

4. In the circumstances I allow the application ^{of the applicants} with the direction to the respondents that the relief including the ad-hoc relief on the ignorable part of the military pension ^{and continued to be paid to} should be paid to them for the entire period of their re-employment and if any such relief has been withheld or recovered, the same should be refunded to them within a period of three months from the date of communication of this order. There will be no order as to costs.


31.8.72
(S.P. MUKERJI)
VICE CHAIRMAN

n.j.j