

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM

O.A. No.  
T.A. No.

601/90

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DATE OF DECISION 11.4.1991

U.Chenthamarakshan Applicant (s)

Mr.MR Rajendran Nair Advocate for the Applicant (s)

Versus

UOI rep. by Secy., Min. of Respondent (s)  
Communications, New Delhi & 3 others

Mr.K.A.Churian, ACGSC(R.1 to 3) Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. I.K.Rasgotra - 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? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

AV Haridasan, Judicial Member

The applicant who retired from Indian Navy while working as Leading Seaman on 31.7.1980 got reemployed as a Telegraphman in the Department of Telecommunication on 2.5.1983. His pay at the time of his retirement from Navy was Rs.283 plus Rs.15/- as good conduct pay. The scale of pay of Telegraphman was Rs.196-232 when he joined. The second respondent, the Chief General Manager, Telecommunication, Kerala Circle, Trivandrum by his order dated 20.12.1988 at Annexure-I fixed his pay as Telegraphman at Rs.196/- at the minimum of the scale of Rs.196-232. The applicant was getting Military pension. His present pension is Rs.369/- after commuting Rs.88/-. He has not been paid the relief on pension

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from June 1987 onwards. According to the applicant, as per the Government of India, Ministry of Finance OM No.8(34) Est(iii)/57 dated 25.11.1958 and various subsequent orders, the applicant is entitled to have his pay fixed on reemployment by granting additional premature increments for every year of completed service rendered by him in an ~~in~~<sup>e</sup>quivalent or higher grade in Navy and therefore as he was throughout his service in the Navy working in the equivalent or higher grade than that of a Telegraphman, he is entitled to have his pay fixed at Rs.232/- giving advance increments. Aggrieved by the fixation of pay at Rs.196/- and the denial of relief on pension, the applicant has filed this application under Section 19 of the Administrative Tribunals Act praying that the impugned order at Annexure-I may be set aside, that it may be declared that he is entitled to have his pay fixed in the scale of Rs.196-232 granting one advance increment <sup>each</sup> for completed year of military service in equivalent grade with effect from 2.5.1983, that the respondents may be directed to refix his pay accordingly, and that they may be directed to grant him relief on pension. It has been averred in the application that in OA-3/89 and OA-15/89, this Tribunal has held that for the purpose of grant of advance increment over and above the minimum of the pay scale of the reemployed post in accordance with 1958 instructions, 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 and that the orders issued by the Government in 1985 and 1987, contrary to the instructions in 1964, 1978 and 1983 cannot be <sup>given</sup> retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of those instructions. It has also been averred that following the judgement of the Larger Bench in OA-3/89, OA-15/89 in OAK-18/88 in the case of one Shri E Somanathan, this Tribunal has declared that he was entitled to be granted one advance increment in the scale of Rs.196-232 for each year of his Military service in equivalent or in higher grade, subject to the condition that initial pay so fixed does not exceed pre-retirement pay. The applicant's claims that as he is similarly situated as the above said Shri Somanathan, he is entitled to the same relief.

2. The application is opposed by the respondents. In the reply statement, it has been contended that in accordance with the provisions in the O.M. dated 25.11.1958 and official memorandum dated 8.2.1983 and letter No.45-29/86 PAT dated 10.8.1987, the fixation of the applicant's pay at the minimum of the scale of Rs.196-232 is perfectly in order and that the applicant is not entitled to have his pay fixed as claimed by him in the application. It has also been contended that against the judgement of the Tribunal in OAK-18/88, the Department has filed an S.L.P. before the Supreme Court. The respondents pray that the application may be dismissed.

3. We have heard the arguments of the learned counsel for the parties and have also carefully gone through the documents.

In  
/OA-3/89 and OA-15/89, a Full Bench of the Tribunal consisting  
of Shri BC Mathur, Hon'ble Vice Chairman, Shri PK Kartha,  
Hon'ble Vice Chairman and Shri N Dharmadan, Judicial Member  
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 VII, 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 above ruling of the Full Bench, this Tribunal in OAK-18/88 declared that the applicant in that case was entitled to be granted one advance increment in the scale of Rs.196-232 for each completed year for his military service in equivalent or higher grade, subject to the condition that the initial pay was fixed does not exceed the pre-retirement pay. The applicant in this case just as the applicant in OAK-18/88 was a non-commissioned officer in the Navy and therefore, according to the O.M. of the year 1983 his entire military pension is liable to be ignored in fixing his re-employment pay. Therefore, we are convinced that the applicant is entitled to the same relief as granted to the applicant in OAK-18/88.

The fact that the respondents have filed an S.L.P. before

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the Supreme Court need not deter us from taking the very same view as long as the reasoning in that order has not been modified or set aside. In TAK-404/87, this Tribunal has held as follows:

"The petitioners are declared to be entitled to ad-hoc and regular relief on the ignorable part of the pension during the period of their reemployment and if any amount 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. The relevant impugned orders and instructions will stand modified or interpreted accordingly."

This Tribunal has been taking the very same view regarding the relief on pension of ex-servicemen in all the cases of this nature consistently. Therefore we are of the view that the applicant in this case is also entitled to get the relief on pension.

4. In the result, the application is allowed and the impugned order at Annexure-I is set aside. It is declared that the applicant is entitled to have his pay fixed in the scale of Rs.196-232 granting one advance increment each for completed year of military service in equivalent grade with <sup>h</sup> with the condition that the initial pay thus fixed would <sup>m</sup> effect from 2.5.1983 /and we direct the respondents to refix <sup>h</sup> accordingly the pay of the applicant <sup>m</sup> and pay him the arrears accordingly. We also direct the respondents to grant the applicant relief on pension and to disburse to him arrears of relief on pension which has been withheld since 1987. Action on the above lines should be completed and the arrears should be paid within a period of three months from the date of communication of this orders.

/not exceed the  
pre-retirement  
pay

( AV HARIDASAN )  
JUDICIAL MEMBER

( IK RASGOTRA )  
ADMVE. MEMBER

trs

11-4-1991