

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~F. A. No.~~

620

1992

DATE OF DECISION 18.9.92

N.T. Induchodan and 23 others Applicant (s)

Mr. M. Rajagopalan Advocate for the Applicant (s)

Versus

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

Mr. George C.P. Tharakan, SCGSC Advocate for the Respondent (s) 1-4, 6 & 7

CORAM :

Mr. S. Parameswaran for R-9
Mr. S.R. Dayananand ~~Prabhakar~~ for R-11
Mr. V.V. Surendran for R-10
M/s. ~~Espeel~~ Associates for R-12

~~The Hon'ble Mr.~~

The Hon'ble Mr. **N. DHARMADAN, 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? 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

Mr. N. Dharmadan, Judicial Member

Applicants are re-employed Ex-Servicemen. They are employed as LDC, HS-II, Mech (AS)SK etc. in the Southern Naval Command, Cochin-4 except applicant at Sl. No. 24 who is employed in the Naval Physical Oceanographic Laboratory, Cochin-21. Their complaint is against the fixation of their pay in the re-employed post. According to the applicants, as per the order of the first respondent the entire pension and other retirement benefits of the re-employed ex-servicemen are to be ignored for pay fixation. All the applicants were discharged before obtaining 55 years and they were not Commissioned Officers. They were also re-employed before 1.1.86. They claim that their entire pension benefits have to be ignored while fixing their pay on the re-employed post. They further claim that they are entitled to the relief payable

to them on the military pension. Applicants are drawing their pension through Respondent No. 2 to 12 who are pension disbursing officers. They further submitted that they are entitled to get the benefit of Annexure A-1 Office Memorandum dated 8.2.83 and the decision of the Full Bench of the Tribunal in TAK 732/87.

2. Since respondents have not filed any reply in this case, on 11.9.92 as a last chance they were given two weeks' time to file their reply, if any, denying the averments and allegations in the application. However, they had filed a statement on 25.5.92 giving the following statements:

"It is most respectfully submitted that the Original Application is not maintainable before this Hon'ble Tribunal and therefore the reliefs as prayed for are not liable to be granted. Since the applicants are retired personnel from Armed Forces of the Union they are not entitled to approach this Hon'ble Tribunal as this Hon'ble Tribunal has no jurisdiction to consider their claims under Section 2(1)(a) of the Central Administrative Tribunal's Act, 1985. Their remedy lies elsewhere. This has now been clarified by the Full Bench of this Hon'ble Tribunal in O.A. 939/91 by judgment dated 12.3.92."

3. At the time when the case came up for final hearing, learned counsel for the respondents relied on the decision of the Full Bench in O.A. 939/91 and submitted that the applicants are praying reliefs on their military pension and hence the application is not maintainable and is liable to be dismissed.

4. The arguments of the learned counsel for respondents based on the statement and also the decision in O.A. 939/91 were answered by the learned counsel for the applicant relying on the observations in TAK 732/87. The relevant portion of the Full Bench decision is extracted below:

"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, relatable to the ignorable part of the pension cannot be

suspended with held 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. OM No. F 22(87-EV(A)/75 dated 13.2.76 OM No. F 10(26)-B(TR)/76 dated 29.12.76, OM No. F 13(8) EV(A)/76 dated 11.2.77 and OM No. M 23013/152/7/MF/CGA VI(Pt/1118 dated 26.3.84 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.."

5. Learned counsel for respondents further submitted that the decision in TAK 732/87 has been stayed by the Supreme Court and hence that decision cannot be followed in this case. We have considered identical contention in similar cases and held that this Tribunal is bound to follow the Full Bench decision since it has not been set aside or reversed by the Supreme Court. Respondents have no case that the decision in TAK 732/87 has been set aside or reversed by the Supreme Court after hearing arguments in the case.


6. Learned counsel for respondents also submitted that reliefs claimed by the applicants are based on their rights accrued towards pension on account of their past service in the Armed Force. I am unable to accept this argument in the light of the clear statement and averments of the applicants in this application. Applicants are admittedly re-employed ex-servicemen in the various posts, which are not under the Armed Force and the claim of the applicants is related to relief payable to them based on the orders at Annexure A-1. The respondents have not produced any material before me so as to deny jurisdiction of this Tribunal. Hence, I am of the view that they are entitled to the reliefs. Accordingly I follow the judgment in TAK 732/87 and grant the relief which has

been granted to the applicants in that case. I direct the respondents to pay the applicants the entire relief on their pension during the period of their re-employment. I also direct the respondents to disburse the applicants arrears of relief on pension withheld from the date of re-employment to them within a period of three months from the date of communication of this order.

Corrected the judgement as per order in RA 135/92 in OA-620/92 dated 2.11.92.

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7. The application is allowed as indicated above.
8. There will be no order as to costs.

 18.9.92

(N. Dharmadan)
Judicial Member
18.9.92

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