

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 621 199 2

DATE OF DECISION 2.12.92

V.Velayudhan, Francis K.J and Applicant (s)
C.K. Rajendran

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

Versus

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

Mr. George C.P. Tharakan, SCGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. Dharmadan, Judicial Member

~~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

Mr. N. Dharmadan, Judicial Member

The applicants three in number are ex-servicemen re-employed under the first respondent. They are aggrieved by the denial of the dearness relief on military pension to them on their re-employment.

2. According to the applicants, they were discharged from Military service before attaining the 55 years and they were holding rank below Commissioned Officers. According to the Government orders issued in this behalf, the entire pension can be ignored while fixing the pay of the applicants in the re-employed post and they are entitled to dearness relief on pension. Applicants 1 & 2 were drawing their

pension from the third respondent and the third applicant from the 4th respondent. The applicants had brought to the notices of the respondents the decision of this Tribunal in the Full Bench in TAK 732/87 by which the law was laid down by stating that the entire pension is to be ignored while fixing the pay of the ex-servicemen in the re-employed post. Nevertheless, the benefit of the above judgment was not extended to the applicants. Hence, they have filed this application under section 19 of the Administrative Tribunals' Act with the following prayers:

- "a) to direct the respondents to pay the relief payable to the applicants on their military pension during the period of their employment.
- b) To direct the respondents to return the entire pension relief of the applicants suspended so far
- c) to grant such other relief deem fit to the Hon'ble Tribunal."

3. In spite of a number of opportunities ^{made} given to the respondents, they have not filed any reply denying the averments in the application.

4. At the time when the case was taken up for final hearing, learned counsel for the applicants submitted that a number of similar cases have been disposed of by this Tribunal following the Full Bench decision in TAK 732/87. Learned counsel for respondents submitted that the department has filed SLP before the Supreme Court against the Full Bench decision of the Tribunal and the Supreme Court has granted stay and hence, this O.A. is to be dismissed.

5. Having heard learned counsel for both sides, I am of the view that this application is squarely covered by the decision of this Tribunal in TAK 732/87. The decision of the Full Bench in TAK 732/87 has not been set aside or modified and the stay order does not stop the operation of judgment and it is binding on the Tribunal. We held in a number of cases that so long as decision of the Full Bench


is in force, the law laid down by the Full Bench of the Tribunal is applicable and binding ^{by} ~~on~~ this Tribunal. The Full Bench in TAK 732/87 and connected cases held as follows:

"... When pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed exservicemen who retired from military service before attaining the age of 55 years, the relief including adhoc relief, relatable to the ignorable part of 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. OMF-22(87)/EV(A)/75 dated 13.2.76, OM-F-10(26)-B(TR)/76 dated 29.12.76, OM F-13(8)-EV(A)/76 dated 11.2.77 and OM No. M-23013/152/152/79/MF/CGA/VI(Pt)/1118 dated 26.3.84 for suspension will stand modified and interpreted on the above lines..."

6. In the light of the law laid down by the Full Bench I direct the respondents to pay the applicants relief payable to the applicant on their military pension during their re-employment in accordance with law laid down by this Tribunal in the Full Bench decision in TAK 732/87 and connected cases. I also direct them to disburse the entire pension relief to the applicants so far suspended. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

7. The application is thus allowed.

8. There shall be no order as to costs.


(N. Dharmadan)
Judicial Member
2.12.92

kmm