

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 68 of 1993.

DATE OF DECISION 26.5.93

Jose K. John and 19 others Applicant (s)

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

Versus

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

Mr. Tomy Sebastian, ACGSC th. Advocate for the Respondent (s)
proxy counsel Mr. R. Ashok

CORAM : None present for other respondents (R. 7&8)

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

The Hon'ble Mr. R. Rangarajan, Administrative 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

(Hon'ble Mr. N. Dharmadan, Judicial Member)

Both the learned counsels appearing in this case have agreed that this case is covered by the Full Bench Judgment in T.A.K. 732/87. According to the applicants this case can be disposed of following the dictum laid down in that judgment.

2. According to the learned counsel for the applicants, the applicants are re-employed ex-servicemen and entitled to relief on pension on the basis of the Government orders. He has produced Annexure-I order dated 8.2.1983 issued by the Government indicating the guidelines for granting the pension relief. All the applicants are re-employed after 25.1.83. According to the applicants as per the order of the first respondent

the entire retirement benefits of the applicants, who were re-employed after 25.1.83, are to be ignored for the purpose of pay-fixation. This position is covered by the law laid down by the Full Bench in T.A.K.732/87. In a number of similar cases, we have ~~disposed~~ *disposed in decision and 4* disposed of the cases following the law laid down in T.A.K.732/87. The relevant portion of the judgment 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, 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 13.2.76, 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/MF/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."

3. The respondents have not filed any reply in spite of number of opportunities given to them. The learned ² operation of counsel for the respondents submitted that the judgment in T.A.K.732/87 has been stayed by the Supreme Court and hence the original application is to be dismissed. In a number of similar cases identical contention has been raised by the respondents but we have taken the view that so long as the judgment of the Full Bench is in ~~force~~ *force without being reversed or overruled 2* ⁴ ~~course~~, we are bound by the same. The respondents

have no case that the judgment in TAK 732/87 has been or modified ⁴, set aside/by the Hon'ble Supreme Court. Hence we follow the law and dictum laid down in that judgment and allow the O.A. with the direction to the respondents to pay the pension relief to the applicants during the period of their re-employment. We further direct that the respondents shall disburse to the applicants the pension relief if any suspended or withheld from them. The aforesaid directions shall be complied with within a period of three months from the date of receipt of a copy of this judgment.

4. The application is allowed as above. There is no order as to costs.


(R. RANGARAJAN)
ADMINISTRATIVE MEMBER


(N. DHARMADAN)
JUDICIAL MEMBER
26.5.93

26th May, 1993

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