

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. 70/93

Tuesday, the eleventh day of January, 1994

MR. N. DHARMADAN MEMBER (JUDICIAL)
MR. S. KASIPANDIAN MEMBER (ADMINISTRATIVE)

M.C. Chacko s/o Mr. Chacko Chacko
Malippurath house, Kizhakkunbhagam p.o.
Pathanamthitta district

Applicant

By Advocate M. Rajagopalan

vs.

1. Divisional Personnel Officer
Divisional Officer, Personnel Branch
Southern Railway, Trivandrum

2. Financial Advisor & Chief Accountant Officer
Park Town, Southern Railway, Madras-3

3. Officer I/C Records, Air Force Records
Office, Subroto Park, New Delhi

Respondents

By Advocate Smt. Sumathi Dandapani

ORDER

N. DHARMADAN

The applicant is an ex-serviceman who is reemployed in the Southern Railway. In this application filed under section 19 of the Administrative Tribunals' Act, he is claiming the following reliefs:

- "a) to direct the respondents 1 & 2 to fix the pay of the applicant protecting his last pay ignoring his entire pension and other retirement benefits and grant him all consequential benefits including the arrears from the date of his re-employment
- b) to direct the third respondent to send applicant's pay particulars to the 1st respondent for the purpose of pay fixation
- c) to declare that the applicant is entitled to get his pay fixed, protecting his last pay ignoring the entire retirement benefits.
- d) to grant such other relief deem fit to this Hon'ble Tribunal;"

2. The facts are admitted. Even though the original application was admitted on 15.1.93 and posted more than a dozen times before the Registrar's court and the Bench, no reply has been filed. Hence, it is to be presumed that the respondents have no reply claiming that the case is not

covered by the Full Bench judgment of this Tribunal in O.A. No. 3/89 which was followed in a number of similar cases. Under these circumstances, we presume that the respondents do not want to persuade us to take a different view.

3. The applicant was discharged from the Indian Air Force on 30.9.76. He served the Air Force for fifteen years from 5.9.61. His last pay in the Air Force was Rs. 375/- per month (Rs. 360 + 15). He was getting a pension of Rs. 128/- per month. He was re-employed in the Southern Railway in the post of Commercial Clerk in the scale of Rs. 260-480/- on 18.10.79. His request for fixation of his pay protecting his last pay was not considered. Since the respondents have not followed the principles enshrined in the Government orders ^{explained in the} as Full Bench decision of this Tribunal in O.A. No. 3/89, he has filed this application.

3. We have disposed of a number of cases following the Full Bench judgment. The relevant portion of the Full Bench judgment is extracted below:

- "a) We held 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 O.A. 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 VI 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 instruction of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were reemployed prior to the issue of these instructions."

4. In the light of the Full Bench decision, we allow the application and direct the respondents to fix the pay of the applicant ignoring the entire pension and other retirement benefits. We ^{also} direct the respondents to disburse

the arrears to the applicant after complying with the above direction within the period of four months from the date of receipt of the judgment.

5. The application is allowed as indicated above.
6. There shall be no orders as to costs.

S. Kasipandian

(S. KASIPANDIAN)
MEMBER (ADMINISTRATIVE)

kmm

N. Dharmadan
11.1.94.

(N. DHARMADAN)
MEMBER (JUDICIAL)