

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 78/2004

Wednesday, this the 16th day of June, 2004.

CORAM;

HON'BLE MR S.K.HAJRA, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. K.Madhusoodanan,
Upper Division Clerk,
Passport Office,
Kozhikode.
2. K.Mohanan,
Upper Division Clerk,
Passport Office,
Kozhikode.
3. S.Prakash,
Upper Division Clerk,
Passport Office,
Kozhikode.
4. V.Balakrishnan,
Upper Division Clerk,
Passport Office,
Kozhikode. - Applicants

By Advocate Mr Shafik.M.A.

Vs

1. Union of India represented by
Secretary to the Government of India,
Ministry of External Affairs,
New Delhi.
2. The Chief Passport Officer &
Joint Secretary(CPV),
Ministry of External Affairs,
New Delhi.
3. The Passport Officer,
Passport Office,
Kozhikode. - Respondents

By Advocate Mr C.Rajendran, SCGSC

The application having been heard on 16.6.2004, the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicants are Ex-servicemen, reemployed as Upper Division Clerks under the 3rd respondent. All of them have been completed more than 15 years of service in their respective grades. On appointment, their basic pay was fixed at the minimum of the scale of Rs.950/- in the pay scale of Rs.950-1500 and the applicants were drawing military pension. By virtue of the impugned orders A-1 to A-4, the respondents have refixed their pay and ordered recovery of excess payment already drawn for the period from 1.1.96. Aggrieved, the applicants have filed this O.A. for the following reliefs:

- i) To call for the records relating to A-1 to A-10 and to quash A-1 to A-4 as illegal and unconstitutional;
- ii) To declare that the applicants are entitled to get their pay fixed in the present post, without reducing the enhanced military pension on the basis of various rulings of the Hon'ble Supreme Court and this Hon'ble Tribunal and any action, based on the O.M. dated 19.11.97 of the DOPT is illegal, now that the said O.M. itself is declared as ultravires by this Hon'ble Tribunal.
- iii) To direct the respondents to repay the amounts already recovered from the pay of the applicants as over payment based on A-1 to A-4;



2. Respondents have filed a reply statement contending that the local audit has pointed out that the pay fixation of re-employed Ex-servicemen were not found in order and also suggested that the pay should be fixed as per DOPT's O.M. dated 19.11.97 with effect from 1.1.96. As per the above O.M. the Local Audit has also directed to deduct the revised/enhanced Military Pension excluding ignorable portion of Rs.15/- from the pay of all the applicants on each month. According to the respondents, they have corrected the error in pay fixation as suggested by the Local Audit which cannot be faulted.

3. We have heard Shri M.A.Shafik, learned counsel for applicant and Shri C.Rajendran, learned SCGSC for respondents. We have also perused the records and other material placed on record.

4. Learned counsel for the applicant argued that an earlier O.M. issued by the DOPT on the very same subject was set aside by the Hon'ble Supreme Court in Union of India & others Vs Vasudevan Pillay and others [(1995) 2 SCC 32] as unconstitutional. Learned counsel submitted that the impugned O.M. is the exact reproduction of the earlier O.M. which was set aside by the Apex Court. Learned counsel for the respondents submitted that the action of the respondents is justified as per their pleadings in the reply statement.

5. It is an admitted fact that the applicants were Ex-servicemen and they have been drawing military pension till

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the impugned orders were passed. It has been averred in the reply statement that the impugned orders were issued based on an audit objection. We make it clear that an audit objection may not be a cause of action for initiating such proceedings without verifying the actual position of the individual cases. On going through R-1 order and going through the decision in G. Vasudevan Pillay's case, we are convinced that the O.M. dated 19.11.97 (R-1(A)) based on which the impugned orders were issued is the reproduction of the earlier O.M. in its character and spirit which was set aside by the Hon'ble Supreme Court as unconstitutional. The applicants' counsel also brought to our notice a decision of the Principal Bench of this Tribunal in O.A.No.1514/2002 dated 29.7.2003 where an identical matter came up for consideration and the Tribunal allowed the O.A. and set aside the O.M. dated 19.11.97 as ultra vires. The Tribunal relied on a decision of the Delhi High Court in Lt. Col. B.R. Malhotra V Union of India & others, 71 (1998) DLT 498 wherein it has been held:

"5. Taking the first point raised by the petitioner regarding non-payment of disability pension, I find the defence raised by the respondent without substance. Pension is not a bounty nor an award. It is a deferred wage. Simply because the petitioner got absorbed in a Public Sector Undertaking and that too in public interest his deferred wage i.e. the pension earned by him could not be denied. The Supreme Court in the case of Smt. Bhagwati Vs Union of India reported in AIR 1989 Supreme Court 2088, held that pension is paid on the consideration of the past service rendered by a Government servant. The pension is linked with past service and the avowed purpose of the pension rule is to provide sustenance in old age. Therefore, simply because petitioner was allowed to get absorbed in BEL after getting retired from the Army his deferred wage for which he became entitled could not be deprived to him."



We are in respectful agreement with the decision of the co-ordinate Bench of this Tribunal in O.A.1514/2002 and we are of the view that the impugned orders were not passed in conformity with the true spirit of the judgement of the Hon'ble Supreme Court as discussed above. The O.M. dated 19.11.97 cannot stand in its legs since it is the old wine in the new bottle.

6. In the conspectus of facts and circumstances discussed above, the O.A. is allowed. The impugned orders A-1 to A-4 are set aside as illegal and unconstitutional. We declare that the applicants are entitled to get their pay fixed as it is before the impugned order passed, without reducing the enhanced military pension. Respondents are directed to refix the pay as above and refund the amounts, if any, recovered from the pay of the applicants. The above exercise shall be complied with within a period of two months from the date of receipt of a copy of this order. In the circumstances, there is no order as to costs.

Dated, the 16th June, 2004.



K.V. SCAHIDANANDAN
JUDICIAL MEMBER



S.K. HAJRA
ADMINISTRATIVE MEMBER

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