

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX
X

93

1990

DATE OF DECISION 31.12.90

P. Padmanabhan

Applicant (s)

Mr. M.R.Rajendran Nair Advocate for the Applicant (s)

Versus

Divisional Personnel Officer, S.Railway, Trivandrum & 2 others. Respondent (s)

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. To be circulated to all Benches of the Tribunal? *N*

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 22.1.1990, filed under section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman, re-employed in the Southern Railway, has prayed that the respondents be directed to re-fix his re-employment pay, on the basis of the order dated 25.11.58, with effect from 19.12.79, and also to pay relief on his military pension during the period of re-employment along with arrears of pay and pension relief. The brief facts of the case are as follows:

2. The applicant was re-employed as Loco Khalasi in the Southern Railway in the pay scale of Rs. 196-232 on 18.12.79. He

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had retired from the Army on 7.4.78 while working as Havildar, with a basic pay of Rs. 314, Good Service Pay of Rs. 12 and class pay of Rs. 15⁴, making a total of Rs. 341. He was granted a military pension of Rs. 168 and Rs. 438.61 was pension equivalent of the gratuity received by him from the Army. Since the minimum of the pay of the re-employment post, i.e. Rs. 196 plus his gross military pension of Rs. 206.61, giving a total of Rs. 402.61, was more than the last military pay drawn by him, he was not given the benefit of advance increments in the re-employment post. The applicant's grievance is that, instead of re-fixing his pay, the respondents called for unnecessary details of his military service from the Record Office of Madras Regiment. The Army authorities could not supply the details as the records had been weeded out. The applicant's contention is that the basic information needed for re-fixation of his pay on re-employment was already available with the respondents in the certificate given by the Army authorities, a copy of which is at Annexure-I. His claim is that he is entitled to get the maximum of the pay scale of Rs. 232 on re-employment, because this amount plus the unignorable part of the military pension ^{that is Rs. 81.61} after ignoring Rs. 125 in accordance with the order of 19.7.78, would be less than the last military pension drawn by him of Rs. 341. He is also entitled to the pension relief on the ignorable part of the pension.

3. The respondents have, on the other hand, referred to the Railway Board's orders and instructions, in accordance with which the gross military pension will have to be added to the re-employment pay for the purpose of deciding whether advance increments should be given or not. They have also referred to certain instructions by which pension relief cannot be granted during re-employment. They have, however, conceded that, for re-employed ex-servicemen, Rs. 50 of military pension had to be ignored by the order dated 12.5.64. This amount was increased to Rs. 125 by the order dated 20.9.78 and by the order dated 8/16.6.83, the entire military pension in the case of personnel below commissioned officers rank was to be ignored for the purpose of pay fixation on re-employment. However, for the purpose of advance increments, according to them, the entire military pension has to be taken into account.

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4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. As regards grant of relief on pension during the course of re-employment, a Full Bench of this Tribunal, in TAK 732/87 and other cases, by a majority judgement dated 20th July 1989, to which one of us was a party, decided as follows:

"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 ad hoc 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 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 ad hoc 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 in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P.Mukerji, Vice Chairman)."

Based on the aforesaid judgement which has not yet been set aside by the Hon'ble Supreme Court, we find that the applicant, who is similarly circumstanced as the applicants in the aforesaid case, is entitled to pension and pension relief during the period of his re-employment also.

5. As regards the grant of advance increments at the time of re-employment, the question is whether the ignorable part of the pension which was admittedly Rs. 125, when the applicant was re-employed, should also be added to the minimum of the pay scale of the re-employment post, so as to reckon whether the minimum plus the military pension was less or more than the last pay drawn by the applicant. In accordance with the Ministry of Finance's O.M. of 25th November, 1958, increments can be allowed at the time of

re-employment only if pension plus minimum of the pay scale is less than the last pay drawn. In the applicant's case, if the total military pension is allowed to be reckoned, then the minimum of the pay scale of Rs. 196 plus the gross military pension including the ignorable part of Rs. 125 being more than the last military pay of Rs. 341, he will not be entitled to draw any advance increments by virtue of his military service. If, however, Rs. 125 of the pension is ignored from his gross military pension of Rs. 206.61, the balance of the military pension which should be reckoned, would be Rs. 81.61 (Rs. 206.61 less Rs. 125) which, together with the minimum of the pay scale of the re-employment post of Rs. 196, would be only Rs. 277.61. This amount being less than the last military pay of Rs. 341 drawn by him, the applicant would be entitled to get one increment for each year of military service in scales equivalent to or higher than that of Loco Khalasi in the scale of Rs. 196-232.

6. The question whether for the purpose of granting advance increments over and above the pay scale of the re-employed post in accordance with the O.M. dated 25.11.58, the whole or part of the military pension of the ex-servicemen, which is to be ignored for the purpose of pay fixation, can be taken into account to reckon whether the minimum of the pay scale of the re-employment post plus pension is more or less than the last military pay drawn by the re-employed ex-serviceman, was considered on reference, by a Full Bench of this Tribunal in OA 3/89 and three other cases. In its judgement dated 13.3.90, that Bench held as follows:

"We hold 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 OA 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."

In view of the decision of the Full Bench of the Tribunal and in the circumstances mentioned in para 5 above, the applicant's ignorable part of the pension cannot be taken into account for determining his entitlement to advance increments at the time of his re-employment.

7. In the facts and circumstances, we allow the application with the following directions to the respondents:-

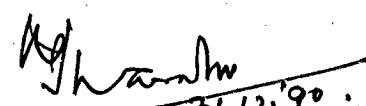
(a) The applicant should be paid relief including ad hoc relief on the ignorable part of his military pension, i.e. Rs. 125 between 18.12.79 and 16.6.83 when the ignorable part of the pension was extended to the total military pension. With effect from 17.6.83, the applicant should be paid relief including ad hoc relief, if any, on the total amount of his military pension which was to be ignored for the purpose of pay fixation.

(b) The ignorable part of his military pension of Rs. 125 should not be added to the minimum of the pay scale of the post of Loco Khalasi at the time of his re-employment for the purpose of determining admissibility of advance increments and since the minimum of the pay scale of Loco Khalasi of Rs. 196 plus the unignorable part of the military pension of Rs. 81.61 was less than the last pay drawn by him in the Army, the applicant is entitled to get one increment for each completed year of military service in military grades equivalent or above the grade of Loco Khalasi which is in the scale of Rs. 196-232. In that regard, in absence of further details, the service rendered by the applicant from 26th March 1965 (Annexure-I) onward as Sub. Havildar and Havildar should be taken as service equivalent to or higher than that of Loco Khalasi.

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(c) Arrears of pension relief and re-employment pay determined on the above basis should be paid to the applicant within a period of 3 months from the date of communication of this order.

(d) There will be no order as to costs.


(N.Dharmadan) 31.12.90
Judicial Member


(S.P.Mukerji) 31.12.90
Vice Chairman