

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
XXXXXX
T.A. No.

99/ 1990

DATE OF DECISION 23.11.1990

N.C Varghese and 14 others Applicant (s)

M/s. M.R Rajendran Nair & Advocate for the Applicant (s)
P.V Asha

Versus

Union of India, represented by its Secretary to Govt, Ministry of Personnel, Public Grievances and Pension, New Delhi Respondent (s)

Mr N.N.Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P MUKERJI, VICE CHAIRMAN

&

The Hon'ble Mr. A. V HARIDASAN, 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

(Hon'ble Shri S.P Mukerji, Vice-Chairman)

The fifteen ex-servicemen re-employed on various dates and in various capacities under the Collector of Central Excise, Cochin and the Controller of Defence Accounts, Allahabad have collectively moved this application dated 27th January 1990 praying that they should be declared to be entitled to relief on the ignorable part of their military pension with effect from the date of their re-employment. Their second prayer is that the respondents be directed to re-fix their pay on the basis of the orders dated 19.7.78 and 8.2.83 without loss of increments. They have relied upon the judgment of this Tribunal in TAK 404/87 delivered on 31.10.1989 whereby

petitioners therein similarly situated were allowed ad-hoc and regular reliefs on the ignorable part of their pension during the period of their re-employment and were also allowed on fresh option the benefits of the O.Ms of 19.7.1978 and 8.2.83. The respondents have stated that for re-employed ex-servicemen the ignorable amount of pension was fixed at Rs.50/- in the O.M of 16.1.64, which was increased to Rs.125/- in the O.M of 19.7.78 and the entire pension for the purposes of fixation of pay was allowed to be ignored vide the O.M of 8.2.83. These benefits were to be given only to those who were re-employed on or after particular dates mentioned in the O.Ms or those having been re-employed before those dates ^{to who} _{as} opted to come under the new scheme as fresh entrants. They have also referred to orders of 9.12.86 extending the benefits of revised pay scales to the re-employed ex-servicemen and the order dated 11.9.1987 directing that on revision of pension with effect from 1.1.86 the revised pay with effect from 1.1.86 should be re-fixed by taking into account the revised pension. By these orders even where the entire amount of ^{unrevised} military pension was to be ignored, the same ^{on revision} would be adjusted against the revised re-employment pay. They have argued that the finding of this Tribunal in TAK 404/87 and other connected cases cannot be extended to the applicants as an SLP

has been filed against that order before the Hon'ble Supreme Court and stay has been granted by them.

2. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the first prayer of the applicants regarding their entitlement to relief on the ignorable part of military pension during the period of their re-employment is concerned, we have to advert to the decision of the Larger Bench of this Tribunal dated 20.7.1989, in TAK 732/87 etc. The Larger Bench by its majority judgment 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 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 13.2.1976, 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. 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)".

The learned counsel for the respondents conceded that even though an SLP has been filed and the order has been

stayed, the ruling of the Larger Bench will still be binding on this Tribunal till the aforesaid judgment of the Larger Bench is set aside. The Delhi High Court in Jagmohan vs. State 1980 CRLJ 742 held that mere pendency of appeal in Supreme Court does not take away the binding nature of a High Court decision unless it is set aside by the Supreme Court. In Roshan Jagdish Lal Duggal and others vs. Punjab State Electricity Board, Patiala and others, 1984(2) SLR 731, the High Court of Punjab and Haryana ruled that even where the High Court's order is stayed by the Supreme Court in a pending appeal, the order of the High Court will still be treated as binding precedent and the pendency of appeal does not render the order 'non est.' Similar observations were made by the Supreme Court in Alpana V. Mehta vs. Maharashtra State Board of Secondary Education and another, AIR 1984 SC 1827. Accordingly we find that the applicants before us are entitled to get the relief and adhoc relief on the ignorable part of the pension during the period of re-employment restored back to them. If any recovery has been made or the relief has been suspended, the amount recovered or suspended should be refunded.

3. As regards getting the benefit of the O.Ms of 1978 and 1983 even though the applicants had not opted for the same the issue was decided in favour of the re-employed pensioners in the judgment of this Tribunal

12

dated 31.10.89 in TAK 404/87 (to which one of us was a party). It was held that merely because these ex-service-men had been re-employed before certain date, they could not be deprived of the benefits of these orders or forced to forego the increments earned by them. Relying upon the dictum of the Supreme Court in Nakara's case (D.S Nakara vs. Union of India, AIR 1983 SC 130), it was held that there should be no discrimination amongst re-employed ex-servicemen on the basis of a cut off date of re-employment. The following observations from the judgment of this Tribunal would be relevant.

"From the above it is clear that the Supreme Court were keen that no discrimination should be made between the pensioners based on the date of retirement. It was also felt that notional fixation of pension on the date of retirement even though it may be anterior to the promulgation of Liberalised Pension Scheme without giving them arrears for the past period (between the date of retirement and date of promulgation) will not be giving retrospective effect to the Scheme and will not violate its prospective nature. In the case of revision of pay scale from a particular date even old entrants are allowed revision of pay scale from a particular date and the benefit of increments which they had earned during the past period is also duly accounted for. It therefore seems to us inequitable that the re-employed pensioners who had been re-employed prior to February, 1983 should be forced to lose the benefit of their past service by exercising option on a "take it or leave it basis".

^{10.} 10. We feel that for those ex-servicemen who had been re-employed prior to the issue of the O.M their re-employment pay should be

102

determined notionally on the date of their re-employment by applying the enhanced limit of ignorable pension and their pay as on 8th February, 1983 reckoned by giving them the benefit of earning increments over and above the notional pay so fixed. Their actual pay will be revised accordingly with effect from the date of issue of the relevant O.M without any arrears based on notional pay fixation for the past period."

Accordingly we find that the applicants ~~will~~ ^{are} be fully entitled to the benefits of the O.Ms dated 19.7.78 and 8.2.83 to get the part or whole of their military pension ignored for the purposes of pay fixation on re-employment even though they had ~~not~~ ^{been} re-employed before the dates from which the O.Ms. were made operative, without loss of increments. Since it will be a ritualistic exercise to ask to give fresh options, their re-employment pay should be re-fixed without loss of increments earned during re-employment as if they had exercised options. Their pay, however, will be re-fixed by calculating their notional pay on the date of their initial re-employment by applying the O.Ms of 19.7.78 and 8.2.83 for re-fixing their pay as from the dates of operation of these orders without payment of arrears of pay prior to those dates.

4. The effect of the above will be that their entire military pension will be ignored on the basis of the O.M of 8.2.83. After the recommendations of the Fourth Pay Commission were accepted and pay scales were revised across the board with effect from 1.1.86, by a subsequent order

dated 9th December 1986, the re-employed pensioners were also given the benefit of revised pay scales with effect from 1st January 1986. By a subsequent O.M dated 11th September 1987 referred to in the counter affidavit, it was indicated that for re-employed pensioners, the revised pension will also be taken into account for fixing their re-employment pay in the revised scales with effect from 1.1.86. This was interpreted by the respondents to mean that even where before 1.1.86 the entire military pension was to be ignored vide the order of 8.2.83, after 1.1.86 when the military pension was revised and a minimum military pension of Rs.375/- was prescribed the revised military pension will have to be adjusted against the revised re-employment pay. Such an approach was challenged by the re-employed ex-servicemen in O.A 42/90 which was decided by us by the judgment dated 22.11.1990. It was held by us that the O.M of 9th December 1986 ex facie indicated that the revised pension which was to be totally ignored before 1.1.86 will have to be ignored even after the re-employment pay ^{and pension was} ~~was~~ revised. As regards the interpretation of the O.M of 11th September 1987, the following observations were made:-

"Since the order of 11th September 1987 directs adjustment of the pension of ex-servicemen by re-fixation of their re-employment pay in terms of the O.M of 9th December 1986, the respondents cannot reintroduce through the back door, the ignorable part of the pension which continued to be ignored by the O.M of 9th December 1986. The question of deduction of pension from the re-employment revised pay arises only in respect of those re-employed ex-servicemen who fall

"within sub-para 2(ii) of the O.M of 9th December, 1986. Since the applicants before us had their entire amount of pension ignored by virtue of the 1983 order, which has not been superseded by the impugned order of 11th September 1987, they fall within the application of sub-para 2(i) of the O.M of 9th December 1986 wherein there is no mention of adjustment of pension by deduction from pay as has been mentioned in sub-para 2(ii) thereof. The above conclusion is supported by the Ministry of Finance's letter No. A-38015/72/88-Ad.IX dated 5th April 1989 (Annexure 2) as quoted below:-

" Sub: Re-fixation of pay of re-employed military pensioners as per CCS(RP) Rules, 1986- regarding.

I am directed to refer to your letter F.No. 250/1/Estt/Rep/89 dated 6.1.1989 on the above subject and to say that matter has been examined in consultation with departments of Personnel & Training and P&FW who have held the views that as far as the application of O.M.No.3/9/87/Estt (P-II) is concerned increase in pension w.e.f 1.1.86 has to be adjusted from the pay fixed in the revised scale excepting those where pension is not at all reckonable factor e.g. those governed under O.M No.2(1)/83-D(civ.1) dated 8.2.1983 of the Ministry of Defence. Any over payments already made also required to be recovered.

" 2. Regarding fresh opportunity to exercise option under Clause (b) of sub-rule (i) of Rule 19 of CCS(Pension) Rules 1972, the Department of Pension & Pensioners Welfare had stated that option once exercised is final and cannot be changed. The petitioner may be informed accordingly. (emphasis added) "

From the above clarificatory order it is crystal clear that where pension is to be ignored there is not to be any adjustment of re-employment pay in the revised scale. By the same logic where the part and not the whole of military pension is to be ignored for pay fixation, the same is to be ignored in the revised pension for purposes of pay fixation in the revised pay scale.

" 5. Even otherwise the contention of the respondents that one should not get the double benefit of revised pension and revised pay simultaneously is not valid, when military pension as such has to be ignored in part or full as the case may be. That the ignorable part of pension is irrelevant and 'non est' for the purposes of pension relief or advance increment for re-employed pensioners, has been so held by two Larger Benches of this Tribunal in their judgment dated 20.7.1989 in TAK 732/87 etc. for pension relief and in judgment

dated 13.3.90 in O.A 3/89 etc. for advance increments. Fortified in ratio by these two judgments of the Larger Benches and in letter by the Ministry of Finance's O.M of 5th April 1989, we have no hesitation in reiterating our earlier finding that re-employed military pensioners whose full or part of the pension was to be ignored before 1.1.86 will continue to have the whole or part of their revised military pension ignored for the purposes of refixation of their re-employment pay in the revised scales after 1.1.1986. We, however, find nothing wrong in the O.M of 11th September, 1987 which seems to have been misinterpreted and wrongly applied in the case before us."

Accordingly we are fully convinced that even after 1.1.86 the military pension which was to be ignored in part or whole as on 31.12.85 will continue to be ignored with effect from 1.1.86 irrespective of the quantum of ignorable revised pension.

5. In the conspectus of facts and circumstances we allow this application declaring that the applicants herein are entitled to relief on the ignorable part of their military pension during the period of their re-employment and that they are entitled ^{to} getting their re-employment pay refixed on the basis of the O.Ms of 19.7.78 and 8.2.83 without loss of increments even though they had not opted for these O.Ms, but without arrears of pay as indicated in the preceeding paras. Their re-employment pay with effect from 1.1.86 would be re-fixed in the revised pay scales without taking into account their revised military pension with effect from 1.1.86, if their military pension was fully ignored

P2

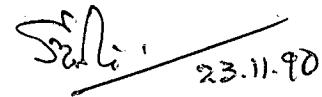
.10.

on 31.12.1985. Action on the above lines should be completed within a period of three months from the date of communication of this order and payments of arrears of relief on pension, re-employment pay or recovery made, if any, should be made good within the same period.

There will be no order as to costs.



(A.V HARIDASAN)
JUDICIAL MEMBER



(S.P MUKERJI)
VICE CHAIRMAN

n.j.i