

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No.100 of 1994.

Wednesday, this the 16th day of November, 1994.

CORAM

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

TM Ramachandran,
S/o TS Muthukutty Iyyer,
Retd. Travelling Ticket Inspector/Sleeper,
(Chembai Village),
Kottayam Post- 678 572 ...Applicant

By Advocate Mr R Santhoshkumar

vs

1. Union of India through
The Secretary,
Ministry of Railways,
Railway Board, New Delhi.
2. The Chief Personnel Officer,
Southern Railway,
Madras-3
3. The Divisional Personnel Officer,
Southern Railway,
Palghat. Respondents

By Advocate Mr Thomas Mathew Nellimootttil.

ORDER

P. SURYAPRAKASAM, JUDICIAL MEMBER

Applicant is a retired Travelling Ticket Inspector retired voluntarily from service on 31.1.93. His case is that he is an ExServiceman reemployed in the Railways. He has been discharged from service on 24.3.70 and joined the Railways as a Ticket Collector on 17.10.79, and accordingly his pay has been fixed at the minimum in the scale of Rs 260-400. At the time of his discharge, he was drawing military pension of Rs 95/. His case is that his pay at the time of reemployment has been fixed only after the ignorable portion of the pension has also been taken into account, and as such, his pay has to be refixed on the basis of the judgment rendered in OA 3/89 and other batch of cases.

2. Respondents denied the averments of the applicant, and stated that the applicant had defence service from 1.2.58 to 24.3.70 alone. His pay at that time has been fixed at Rs 260/- as though he entered service afresh. Further more, respondents submitted that the matter regarding refixation of pay of the applicant has been referred to Headquarters Office, Madras on 6.5.94, and orders are being awaited from Headquarters Office. As regards the Full Bench judgment is concerned, Respondents submitted that the said judgment has already been taken in appeal before the Hon'ble Supreme Court, and the same is pending. However, the Hon'ble Supreme Court granted interim stay in the said appeal. Therefore, applicant cannot claim any benefits of the judgment in OA 3/89.

3. Applicant has filed a representation dated 4.7.93 (Annexure A2) before the second respondent to refix his pay on the basis of the judgment rendered in OA 3/89.

4. In OA 3/89 the Full Bench has enunciated the following principles:

"In the light of the foregoing, we hold that the fixation of pay of exservicemen on their reemployment in Government Service, will have to be on the basis of the instructions in force at the relevant time before the clarifications were issued by the Department of Personnel & Training in 1985. We further hold that the clarifications issued by the Department of Personnel & Training will have no retrospective operation so as to prejudicially affect the pay already fixed in respect of exservicemen who were reemployed before the issue of such clarifications."

"(a) We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of the reemployed post in accordance with the 1958 instructions (Annexure IV in OA 3/89), the whole or part of the military pension of exservicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983(Annexures V, Va, and VI, respectively), cannot be taken into account to reckon whether the minimum of the pay scale of the reemployed post plus pension is more or less than the last military pay drawn by the reemployed exservicemen."

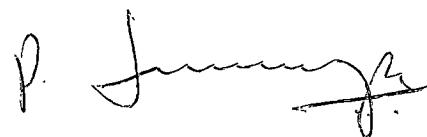
(b) The orders issued by the respondents in 1985 or 1987 contrary to the Administraative Instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of exservicemen who were reemployed prior to the issue of these instructions."

"The provisions of the Civil Service Regulations are statutory in nature and the instructions of 1964, 1978 and 1983 have been issued by the Government under the said Regulations and supplement the provisions of the said Regulations. The clarifications issued by the respondents on 30.12.1985 and subsequent dates, cannot override the earlier instructions issued in 1964, 1978 and 1983 retrospectively. The purported modification of the earlier instructions on the subject will have only prospective operation."

The grant of the interim stay by the Hon'ble Supreme Court against the judgment rendered in OA 3/89 is not a bar to dispose of the case as has been followed in O.A.662/93 and O.A.1117/93 as also Alpana V Mehta V Maharashtra State Board

of Secondary Education and another (AIR 1984 SC 1827). But in this case the applicant himself stated that the representation made by him (Annexure A2) is pending for a long time. Further more, respondents also in the reply statement specifically stated that by the letter dated 6.5.94 addressed to the higher authorities to consider refixation of the pay of applicant and are awaiting the orders, and as such, the second respondent is directed to dispose of the representation (Annexure A2) in the light of the judgment rendered in OA 3/89, within three months from the date of receipt of this order. No costs.

Dated the 16th day of November, 1994.



P. SURYAPRAKASAM
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A2: True copy of Representation submitted by the applicant to the 2nd respondent dt. 4.7.93.

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