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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Dated Thursday the Twentieth day of July, One thousand nine hundred eighty nine

PRESENT

Hon'ble Mr. Justice Amitav Banerji-Chairman
and
Hon'ble Mr. S.P. Mukerji - Vice Chairman
and
Hon'ble Mr.N.V.Krishnan- Admve. Member

T.A.K. 732/87 (OP No.1272/82)

P.G. Laxmana Panicker & Others ..	Petitioners
Vs	
Secretary to Govt. of India & others ..	Respondents
Counsel for petitioners ..	MPR Nair.
Counsel for respondents ..	Mr.P.V.Madhavan Nambiar SCGSC Mr.KP Balasubramanian for R.4

T.A. 336/86 (O.P.No.1835/84)

T.K. Viswanathan & 4 others ..	Petitioners
Vs	
Union of India rep. by Ministry of Finance, New Delhi and others ..	Respondents
Counsel for petitioners ..	Mr. KRE Kaimal
Counsel for respondents ..	Mr. P.V.Madhavan Nambiar, SCGSC

T.A. 388/86 (OP No.3340/84)

K. Sankara Pillai & 10 others ..	Petitioners
Vs	
Union of India rep. by Ministry of Finance, New Delhi & others ..	Respondents
Counsel for the petitioners ..	Mr. MR Rajendran Nair
Counsel for the respondents ..	Mr. P.Santhalingam, ACGSC

T.A. K.404/87 (OP 5786/84)

G.Vasudevan Pillai and 22 others ..	Petitioners
Vs	
Union of India rep. by Secretary, Ministry of Finance & others ..	Respondents
Counsel for the petitioners ..	M/s MR Rajendran Nair and A.Ramanathan.
Counsel for the respondents ..	1. Mr.P.Santhalingam ACGSC R1to5. 2. TR Govinda Warrier R.10 3. T.Karunakaran Nambiar R.9 4. V.Rama Shenoi R.11

T.A.K. 420/87 (OP 6816/84).

V. Parameswaran & 19 others .. Pet
Vs.
Union of India rep. by .. Respondents
Secretary, Ministry of Finance & others
Counsel for the petitioners .. M/s MR Rajendran Nair and A Ramanathan.
Counsel for the respondents .. Mr. P. Santhalingam, ACGSC

T.A.K. 17/88 (OP 10118/84).

M.K. Joseph & 3 others .. Petitioners
Vs.
Union of India, rep. by .. Respondents
Ministry of Finance, New Delhi and others.
Counsel for the petitioners .. M/s MR Rajendran Nair A Ramanathan & Mary Isabella SD.
Counsel for the respondents .. Mr. P. Santhalingam ACGSC R1, 2, 5&6.

O.A. 108/85

M.V. Michael .. Applicant
Vs.
Union of India rep. by .. Respondents
Secretary, Ministry of Finance and others
Counsel for the applicant .. Mr. KRB Kaimal.
Counsel for the respondents .. PA Mohammed, ACGSC

O.A.K. 292/87

A.V. Madhavan Vs. Superintendent of Post Offices & others
Counsel for the applicant .. M. Rajagopalan
Counsel for the respondents .. Mr PA Mohammed, ACGSC

T.A. 42/87 (OP 7610/84)

K.P. Phillip & others .. Petitioners
Vs.
Controller General of Accounts, .. Respondents
M/o Finance, New Delhi & others
Counsel for the petitioners .. Mr. KRB Kaimal
Counsel for the respondents .. Mr P.A. Mohammed, ACGSC

O R D E R

Hon'ble Shri S.P. Mukerji, Vice Chairman

The Division Benches of Madras and Ernakulam of the Central Administrative Tribunal sitting at Ernakulam have referred these nine transferred and original applications, to the Hon'ble Chairman of the Tribunal for getting an issue adjudicated upon by a Larger Bench of the Tribunal because of the divergent opinions expressed earlier by two different Benches of the Madras Bench of the Tribunal. By a common judgment dated 29.1.1988 disposing of Transferred Applications No.K110/87, K.112/87 and 44/86 a Division Bench of Madras comprising the then Vice Chairman Mr. Justice G. Ramanujam and Member Shri C. Venkataraman dismissed the Transferred Applications by concluding that the benefit of relief and adhoc relief on the entire pension of reemployed ex-servicemen is not admissible during the period of reemployment even where a part of the pension is to be ignored for the purpose of fixation of pay against the re-employment post. Without being aware of this decision another Division Bench of Madras Tribunal consisting of Shri P. Srinivasan, Administrative Member and Shri G. Sreedharan Nair, Judicial Member in their judgment dated 10th June, 1988 in T.A.K. 334/87 found that in respect of the re-employed ex-servicemen relief on

pension relatable to that part of the pension which is ignored for the purpose of fixation of re-employment pay cannot be touched by recovery or suspension during the period of re-employment. This Larger Bench was accordingly constituted by the Hon'ble Chairman to resolve the divergence.

2. The limited issue before the Larger Bench therefore, is as follows: "Whether it is permissible to stop payment of relief (including ad hoc relief) on that/portion (part or full) of pension of re-employed ex-Servicemen during the period of re-employment, which portion/ (part or full) is ignored for the purpose of fixation of pay on re-employment." The Ramanujam Bench of the Madras Tribunal observed that the pension relief is given to the pensioner to help him in maintaining himself and his family but once a pensioner is re-employed and is getting a monthly salary in addition to his pension it is open to the Government to say that the relief and adhoc relief on pension will not be paid during the period of his re-employment. It has further been stated that since the O.M. of 29.12.1976 is silent about the ignorable part of the pension which is not deducted from re-employment pay and such ignorable part had been spelt out by the earlier O.M. of 16.1.1964, it can be presumed that the intention in the O.M. of 29.12.76

was to disallow the pension relief on the total pension including the ignorable part during the period of re-employment. The Srinivasan Bench of the Madras Tribunal however conceived of relief on pension as constituting a part of the 'real' pension as the relief was granted to compensate the pensioners for the rise in the cost of living index which reduces the real value of the pension. The Bench further, held that since the ignorable part of the pension is not taken into account in reducing the re-employment pay of the pensioners in calculating the dearness allowance the ignorable part of the pension does not play any part in fixation of pay and dearness allowance. Therefore, the situation of giving double benefit of dearness allowance and pension benefit on the ignorable part of pension does not arise. Accordingly recovery of relief on pension in so far as the ignorable part of pension is concerned would amount to deprivation of property without authority of law. That Bench also remarked that the position (regarding discrimination in regard to fixation of pay) would have been different if the applicants had contended that deduction of even pension or any part of pension from the pay of the re-employed post would itself amount to discrimination against the re-employment pensioners. But since that issue had not been raised by the applicants they refrained from expressing any opinion on that issue.

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Accordingly they quashed the impugned orders to the extent they prescribed recovery of relief on the ignorable part of the pension. So far as recovery of relief on the non-ignorable part of pension is concerned that Bench upheld the impugned orders.

3. It may be made clear at the outset that there has been no divergence of opinion about (a) the stoppage or adjustment of pension during re-employment through reduction of re-employment pay and (b) on the question of stoppage or adjustment or pension relief relatable to that part of pension which is taken into account for determining the re-employment pay. These issues therefore are not being considered in this judgment but left to the Division Benches concerned to be decided in accordance with law in the cases where they have been raised.

4. It will be useful to recapitulate certain relevant facts to put the issue before us in proper perspective.

Appendix 7 of Swamy's compilation of F.R. -S.R. (Part I General Rules, 8th Edition) which has been approved by the Comptroller & Auditor General as a reference book and which is corrected upto 1st August, 1985 gives at pages 382 to 409

the various provisions under the rubric of Regulation of Pay on Re-employment of Pensioners. This Appendix gives certain provisions of the Civil Service Regulations (CSR) governing fixation of pay of re-employed Civil and Military pensioners. Section (II) of the CSR comprising regulations 511 to 524 (C) are relevant to Civil Pensioners while Section (III) comprising CSR 525 and 526 are relevant to Military pensioners. CSR 510 which is in Section I and applies to both the Civil and Military pensioners, authorises the re-employing authority to direct whether any deduction is to be made from pension or salary. CSR 526 further enjoins that in case of re-employed ex-servicemen drawing Military pension, "the authority competent to fix the pay and allowances of the post in which he is re-employed shall in fixing his pay and allowances in the post in which he is re-employed take into account the amount of pension, including such portion which may have been commuted." It also authorises him to "with effect from the date from which the pension is granted reduce such pay and allowances with reference to such officers or soldier by any amount not exceeding the amount of such pension." However, this is subject to Clause (c) of CSR 526 which reads as follows:

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"(c) In the case of service personnel who retire from the forces before attaining the age of 55 and are re-employed in civil posts on or after 16th January, 1964, the pension shown below shall be ignored in fixing their pay on re-employment:-

(i) in the case of pensions not exceeding Rs.50.00 per mensem, the actual pension:

(ii) in other cases, the first Rs.50.00 of the pension.

Those who were re-employed before 16th January, 1964 and who had opted for the above orders will, however, be treated as fresh entrants from the date."

5. At this stage it may be useful to recall the basic principle in regulating the pay during re-employment of Civil and Military pensioners. This is given in Govt. of India's decision No.1, under the heading "Regulation of pay during Reemployment" in Appendix 7 referred to above, (Pages 388-390) and succinctly enunciated in Government of India's Decision No.20 (page 405). The basic principle is that for fixation of pay on re-employment the pay granted to the officer plus pension and pension equivalent to gratuity should not exceed the last pay drawn by the officer at the time of his retirement. This principle has been in vogue ever since the Government of India, Ministry of Finance O.M. of 25th November, 1958 onwards. This principle read

with CSR 526 as quoted above makes it clear that in case of re-employed ex-servicemen who had retired from military service before attaining the age of 55 years, while reducing their reemployment pay by the amount of military pension in accordance with the basic principle, Rs.50 of military pension have to be ignored. If the pension is less than Rs.50/- the whole of pension and if it is more than Rs.50 the first Rs.50/- have to be ignored. The ignorable limit of pension was further increased from Rs.50/- to Rs.125/- in accordance with the Government of India's Ministry of Finance O.M. of 19th July, 1978. This O.M. applied to civil and military pensioners equally. The matter was further considered in respect of re-employed ex-servicemen who had retired from military service before attaining the age of 55 years and in accordance with the Ministry of Finance order dated 24th October, 1983 the ignorable limit of pension for fixation of pay on re-employment in civil post was increased to Rs.250/- in case of commissioned officers and in case of persons below commissioned officer's rank, the entire pension was to be ignored.

6. So far as not reckoning the ignorable and

reckoning the non-ignorable portion or pension, for the purpose of fixing re-employment pay, is concerned there is no ambiguity or divergence of views. The ambiguity has arisen because with effect from 1.1.1973 after the recommendations of the II Ird Pay Commission, pensioners also like serving Government servants were allowed what are known as adhoc and regular reliefs to compensate them to some extent against the rising cost of living and falling value of their pension. In this respect the Ministry of Finance O.M. No.F.13(5)-EV (A)/73 dated 21.3.74 may be quoted as follows:

"The undersigned is directed to say that the Third Pay Commission in paragraph 92 of Chapter 60 of its Report recommended that for possible increase in the cost of living index in future Central Government employees who retired on or after 1.3.73 should be given relief as follows:

"All future pensioners, irrespective of the amount of pension drawn by them should be given a relief at the rate of 5% of their pension subject to a minimum of Rs.5/- p.m. and a maximum of Rs.25/- p.m. The relief at these rates should be given as and when there is a 16 point rise in the 12 monthly average of the All India Working Class Consumer Price Index (1960=100). The relief for the first time at these rates should be paid when the 12 monthly average of this index reaches 216".

2. The Government have since accepted the above recommendation with the modification that this recommendation will apply to Central Government employees belonging to Classes II, III, and IV who retired on or after 1-1-1973 vide Resolution No.

70(34)/73 -Imp dated 1-11-1973 published in the Gazette of India Extraordinary No.257 dated 1.11.73. Accordingly, keeping in view that the 12 monthly average of the All India Working Class Consumer Price Index (1960 + 100) reached 216 in July, 1973, and 232 in December, 1973 the President has been pleased to grant to the above category of retired Central Government employees a relief at the rate of 5% of their pension subject to a minimum of Rs.5/- and a maximum of Rs.25/- p.m. with effect from 1.8.1973 and 1.1.1974 respectively. The term 'pension' for purpose of grant of relief as above shall mean pension as finally calculated keeping in view Government's decisions on pay scales and pensionary benefits recommended by the Third Pay Commission." (emphasis added)

In respect of those who retired before 1-1-1973 ad hoc relief was granted vide Ministry of Finance O.M.No.13(1)-E.V(A) dated 6th April, 1974. The question arises as to how in considering the fixation of pay and dearness allowance (D.A.) of re-employed ex-servicemen the relief (including adhoc relief) on pension should be reckoned.

7. Again, the general principle applicable to computation of D.A. of reemployed pensioners is somewhat as follows. If an ex-serviceman in receipt of pension is reemployed in a post with a specified basic pay with commensurate dearness allowance, his basic pay is reduced by the amount of basic pension that he is getting so that the reduced pay plus pension does not exceed the last pay drawn.

So far as the dearness allowance is concerned the same is given to him not in relation to the reduced pay i.e., effective pay but in relation to the full pay (before reduction) attached to the post. As a result, his dearness allowance covers not only the reduced pay (effective pay) but also the pension element (ineffective pay) of his pay by which his pay is reduced. Since the dearness allowance on the ineffective pay i.e. the amount by which the pay of the post is reduced (equivalent to his pension) is generally more than the adhoc and other relief that he was getting on his pension, in order to avoid double payment of relief on pension, the pension relief is not allowed during the period of re-employment. There is no dispute about the fact that reemployed ex-servicemen are allowed dearness allowance on the unreduced pay even though the pay is reduced by the amount of pension. In their Counter Affidavit in T.A. No.404/87 before us the respondents have stated as follows:

"Government's intention in not granting relief to re-employed pensioners is that re-employed pensioners are paid Dearness Allowance with their re-employed salary in which a portion is taken into account while re-fixing the pay of re-employment and dearness allowance is paid on that portion also in ADDITION TO THIS, D.A. in the name of relief should not be paid to them with their pension to avoid double payment and that the 'carry home amount' (re-fixed pay plus pension) is never less than what they would have

earned had they been continued in military service".

The position would be clear by an illustration. Suppose an ex-serviceman drawing military pension of Rs.400/- with a total relief of Rs.20/- on pension, is re-employed in a post carrying a pay of Rs.1,000/- with dearness allowance of Rs.100/-. His effective basic pay on reemployment will be Rs.1000/- less pension of Rs.400/-, that is, Rs.600/-. His ineffective basic pay will be Rs.400/- which he receives as pension. Presuming for the sake of argument that dearness allowance is directly proportionate to the basic pay his dearness allowance on his effective pay Rs.600/- would have been Rs.60/-. But, in accordance with the existing system his dearness allowance remains unreduced as Rs.100/- admissible to the unreduced pay of Rs.1,000/-. Thus the reemployed person gets the following emoluments:

- (a) Basic reduced re-employment pay
(effective pay) Rs.600/-
- (b) Proportionate dearness allowance
on the effective pay received from
his employer. Rs.60/-
- (c) Ineffective pay received in shape
of pension from his Bankers Rs.400/-
- (d) Proportionate dearness allowance
received on ineffective pay
(pension) from his employer Rs.40/-

The question which remains is whether in addition to Rs.40/- which he is getting in the form of dearness allowance on the ineffective pay cum pension of Rs.400/-, he should be entitled to

Rs.20/- also which he was getting from his Bankers ~~before~~ before re-employment as relief on pension. The contention of respondents is that since the re-employed person is being adequately compensated by the grant of dearness allowance both on effective pay and on ineffective pay cum pension, further grant of pension relief will result in giving once the dearness allowance and again pension relief on the same portion of ineffective pay cum pension.

8. I have heard the arguments of the learned counsel for the parties in details and have gone through the documents carefully. I have no hesitation in concluding that where dearness allowance on re-employment is paid both on the reduced (effective) pay as also on the ineffective pay cum pension, further relief on pension during reemployment will be conferring double benefit on the pension element of the pay and will not be justified. Nor will the stoppage of pension relief on re-employment where full dearness allowance is paid on the unreduced pay inclusive of pension, be tantamount to deprivation of property, as withdrawal of pension relief is more than adequately compensated by grant of dearness allowance on the ineffective pay cum pension.

9. The position however undergoes a qualitative change if a part of the or whole of the pension is to be ignored in fixing the effective pay on re-employment. If the whole of the pension is ignored, the effective pay on re-employment

becomes equal to the pay of the post. The ineffective pay vanishes and the conceptual link between ineffective pay and pension completely breaks down. The dearness allowance which such re-employed ex-servicemen receives is 100% related to the effective pay and no element of dearness allowance can be related to ineffective pay which he can be deemed to be receiving in the shape of pension, because there is no ineffective pay at all. The pension assumes an independent status untrammelled by the fact of reemployment and ~~important~~ to reduce the pay of the post.

In such a situation the pension relief which is basically and organically related to and derived from pension cannot be touched by the re-employing authority. Where the re-employing authority cannot reckon pension for the purpose of fixation of re-employment pay it will be illogical and irrational to assume that he can touch the pension relief. The situation of double payment of relief on pension also does not survive because no part of the dearness allowance can be related to ineffective pay cum pension as indicated above.

10. The same 'ratio' will apply where a part of pension is to be ignored for the purpose of pay fixation. In such a case the pay of the reemployment post is reduced by the amount of non-ignorable part of the pension yet the dearness allowance which the reemployed ex-serviceman receives is given on the reduced pay as also on the ineffective pay which he is receiving as the non-ignorable part of the pension.

The dearness allowance however does not cover the ignorable amount of pension because this amount of pension plays no part in the determination of the basic pay of the re-employed ex-servicemen, in the same manner as if he was not receiving the ignorable part of pension at all. Where the ignorable amount of pension cannot be reckoned by the re-employing authority, he cannot touch that part of pension relief either which is relatable to the ignorable part of pension. Thus I find that the theory of double payment on the basis of which the respondents have built up their case of withdrawal or suspension or recovery of relief (including adhoc relief) on pension of ex-servicemen during the period of their re-employment, will be valid only for the non-ignorable part of the pension and is wholly unwarranted in respect of the ignorable part of the pension.

11. Shri P.V. Madhavan Nambiar, Sr.Central Government Standing Counsel for some of the respondents stoutly defended the case of the respondents for withdrawing pension relief even on ignorable part of the pension by arguing that re-employment itself is a bounty and if the re-employed ex-serviceman is paid full dearness allowance on full pay against the re-employment post he has no claim whatsoever on any part

of the pension relief whether any part of relief is related to ignorable pension or not. I cannot persuade ourselves to accept this proposition as it smacks of elements of condescension and bargaining on the rights and expectations of re-employed pensioners. The pension relief as has been indicated in the O.M. of 21.3.74 as quoted in para 6 above, is given to compensate the pensioner for the rise in cost of living and falling value of the pension. If the pension in whole or in part is protected and exempted from consideration for fixing pay during re-employment, it goes without saying that pension relief also relatable to the exempted part has to be ignored.

Merely because the pensioner has been re-employed, he cannot be deprived of his legitimate dues allowed to him in shape of exempted pension and pension relief thereon, in addition to the ~~full~~ pay and allowances of the re-employment post. Pension is no longer of a bounty and pension relief cannot be deemed to be charity given or withdrawn 'ipso dixit' at sweet will.

In Bharat Petroleum Management Staff Pensioners Vs.

Bharat Petroleum Corporation Ltd. and others, AIR 1988 SC 1407, the Supreme Court held as follows:

"Judicial notice can be taken of the fact that the rupee has lost its value to a considerable extent. Pension is no longer considered as a bounty and it has been held to be property. In a welfare State as ours, rise in the pension of the retired personnel who are otherwise entitled to its accepted by the State and the State has taken the liability."

I find that adhoc relief granted to underpin the value of pension is also as good a 'property' as pension itself and the pensioner cannot be deprived of the same without due process of law. Since the ignorable part of the pension is not covered by any element of dearness allowance received during re-employment, deprivation of the pension relief relatable to ignorable part of the pension remains uncompensated by any part of the dearness allowance. Accordingly, the relief cannot be withdrawn during the re-employment on the plea that the pensioner has been re-employed, in the same manner as he cannot be deprived of the pension relief on the plea that he has won a lottery or his son has come of age. In D.S.Nakara Vs. Union of India, AIR 1983 SC 130, the Supreme Court in the matter of pension expressed itself in following terms:

"The antiquated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deoki Nanda Prasad V. State of Bihar, 1971 (Supp) SCR 634: (AIR 1971 SC 1409) wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension"

does not depend upon anyone's discretion."

In the aforesaid case of D.S. Nakara Vs. Union of India, the Supreme Court further observed as follows:

"The discernible purpose thus underlying pension scheme or a statute introducing the pension scheme must inform interpretative process, and accordingly it should receive a liberal construction and the Court may not so interpret such statute as to render them inane (see American Jurisprudence 2d.881).

From the discussion three things emerge:

(i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution, (ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered; and (iii) it is a social welfare measure rendering socio-economic justice to those who in the hey day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch." (emphasis supplied).

Shri Nambiar, Sr.C.G.S.C. drew our attention to various orders passed by the Ministry of Finance in which drawal of pension relief was disallowed according to him, across the board, without reference to the ignorable part of the pension. A closer reading of these orders would indicate that the disallowance was on the presumption that no part of the pension is to be ignored for fixing the reemployment pay which is

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is inclusive of the pension received by the re-employed pensioner. Since the dearness allowance was given on the re-employment pay plus the ineffective pay corresponding to the pension, the question of further payment of pension relief did not arise. In this respect paragraph 7 of the O.M.No.F.13(1)-E.V(A)/74 dated 6th April, 1974 may be quoted as follows:

"7. The reliefs indicated in these orders will not be admissible to pensioners who were in re-employment on 1-1-1973 or are re-employed thereafter, during the period re-employment as they would get dearness allowance appropriate to their pay (which is inclusive of pension) during such re-employment. Orders have since issued vide this Ministry O.M.No. 67/II/16/74-Imp dated 18-3-74 regarding refixation of pay of such re-employed pensioners." (emphasis added).

Similar paragraph 2 of the O.M.No.F.13(5)E.V(A)/73 dated 27th August, 1974 reads as follows:

(ii) The relief indicated in the said orders will not also be admissible to pensioners who were in re-employment on or after 1-1-73 as during the period of re-employment they would get dearness allowance appropriate to their pay (which is inclusive of pension) during such re-employment. Orders have since been issued vide this Ministry's O.M.No.67/II/16/74-Imp dated 18-3-74 regarding fixation of pay of such re-employed pensioners."

(emphasis added)

That the pension relief on ignorable part of the pension has to be distinguished from the pension relief

on the non-ignorable part is evident from the following extracts from Government of India,

Ministry of Finance O.M.No.67/II/16/74-Imp dated 18th March, 1974 quoted at Govt. of India's decision No.22 (page 406 of Appendix 7 referred to above), in connection with pay fixation of re-employed pensioners who opt to be governed by the revised pay scales of the re-employed post.

"The existing emoluments for pay fixation will be calculated taking into account :

(a) basic pay and special pay, if any, where reckonable in terms of Rule 3(2) of the CCS (RP) Rules, 1973 as on 1-1-1973.

(b) that quantum of pension and/or pension equivalent of gratuity or other retirement benefits taken into account while fixing pay at the time of re-employment; and

(c) dearness allowance, dearness pay and interim reliefs appropriate to the pay and pensionary benefits as detailed in (a) and (b) above admissible as on 1-1-1973 under the relevant existing orders of the Ministry of Finance relating to grant of dearness pay/dearness allowance/interim reliefs to re-employed pensioners."

Five percent on basic pay plus quantum of pension and/or pension equivalent of gratuity or other retirement benefits taken into account while fixing pay on re-employment subject to a minimum of Rs.15 and maximum of Rs.50/- will be added to the existing emoluments and rounded off to the nearest rupee. Pay shall then be fixed in the revised scale at the stage equal to the amount so computed or if there is no such stage in the revised scale, at the stage next above the amount so computed." (emphasis added).

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The above will show that re-fixing the pay in the revised scale is to be done by taking into account the interim relief relatable to the non-ignorable portion of the pension and not on the total pension.

12. The judgment given by the Bench consisting of Mr. Justice Ramanujam and C. Venkataraman of Madras Tribunal upholding the case of respondents and disallowing pension relief in toto did not take into account the fact that adhoc relief was disallowed not because of the fact that the pensioner was reemployed but because the dearness allowance that was given to him against the re-employment post was on the total pay which included pension also. The argument in that judgment that 'once a pensioner is reemployed and is getting a monthly salary in addition to his pension it is open to the Government to say that the relief and adhoc relief on pension will not be paid so long as the pensioner is re-employed and got a monthly salary in addition to the monthly pension' may not be wholly acceptable both in terms of logic as also in terms of socio economic values and objectives enshrined in our Constitution. It will not be logical to say that merely because a pensioner is getting a monthly salary (which may be even rupee one per month) he should be deprived of the adhoc relief on pension. The fact remains that inspite of re-employment if the whole or part of his pension is ignored nothing

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can be said in favour of taking into account the pension relief on the ignored part of the pension. The judgment states that "when the O.M. dated 29.12.1976 was passed for payment of relief and adhoc relief along with the basic pension, the O.M. dated 16.1.1964 according to which pension upto Rs.50/- is to be ignored in fixation of pay on their reemployment was in operation. Nonetheless, no reference was made to the ignored portion of the pension in the subsequent O.M. dated 29.12.76. Therefore, the condition imposed in directing the amount of relief paid along with pension to be recovered from the salary of the pension has to be satisfied irrespective of the fact whether any portion of the pension is to be ignored or not for the purpose of fixation of pay on re-employment." If, however, the O.M. of 29.12.76 is read in its entirety it will be clear that the term 'Pension' used in that O.M. is nothing else but the non-ignorable part of the pension. Paragraph 2 of this O.M. opens as follows:

"2. A certificate of non-employment/re-employment is intended to regulate the payment of relief on pension so that (i) the payment of relief is suspended when a Government servant is re-employed in a Government Department or any of the aforesaid organisations and (ii) the quantum of pension(exclusive of the amount of relief is taken into account while fixing pay of the pensioner on re-employment". (emphasis added)

13. Since only the non-ignorable quantum of pension is taken into account while fixing pay of the pensioner on re-employment, the quantum of pension referred to in the aforesaid paragraph of the O.M. must be construed to connote the non-ignorable part of the pension. Therefore, it cannot be the intention of this O.M. that relief even on the ignorable part of the pension also should be suspended or recovered from the dearness allowance on the re-employed post.

14. Further, in the Ministry of Finance O.M. No.13011/1/E.II(B)/71 dated 21.11.1977 regarding general orders of dearness allowance the grant of the allowance to re-employed pensioners is provided for as follows:

"Retired Government servants who have been or may be re-employed and who are allowed to draw their pension in addition to pay, will be eligible to draw the allowance if their pay (or leave salary) plus pension does not exceed the monetary limits prescribed. In such cases, the allowance will be calculated as follows:

- (a) In the case of persons whose pay plus pension exceeds the sanctioned maximum pay of the post, the allowance will be calculated on the maximum.
- (b) In the case of persons whose pay on re-employment in a civil post is fixed without taking into account the entire pension or a part thereof the amount of pension so ignored shall also not be taken into account for the purpose of calculating dearness allowance.
- (c) In the case of persons on leave during

such re-employment, the allowance will be calculated on leave salary alone (excluding pension). (emphasis added).

The above provision makes it clear that the D.A. allowed to re-employed pensioners whose part or entire pension is ignored, does not cover the ignored portion of the pension. This is exactly what has been concluded by us above. If the ignored portion of pension has not been covered by the dearness allowance, the question of withholding pension relief on that part of the pension or recovering the same from the dearness allowance on the re-employment pay will be nothing less than arbitrary deprivation of a benefit given on reasonable considerations. It is now established law that administrative discretion should be exercised fairly and reasonably. I do not find it reasonable that while the ignorable part of pension is totally ignored for the purpose of fixing of pay on re-employment, the pension relief relatable to that ignorable part of the pension should be withheld on the mere ground that the dearness allowance (which is not relatable to the ignorable part of pension) is being given to the re-employed pensioner.

15. Shri P.A. Mohammad, the learned counsel for the respondents in O.A. K-292/87 has referred in Annexures to the counter affidavit, two judgments delivered by the High Court of Kerala in which the stoppage of pension relief during the period of re-employment of Ex-servicemen, has been upheld. I have gone through these two judgments, one dated 18.9.87 in O.P. 6460/84 and another dated 15.12.87 in O.P. 8362/84. These judgments refer to the orders of withdrawal or stoppage of pension relief during the period of re-employment. As has been discussed above, I agree that the benefit of pension relief on pension which is taken into account for fixation of re-employment pay cannot be allowed. This is because the re-employed ex-serviceman gets dearness allowance on pension equivalent of pay also which we have termed as ineffective pay cum pension. These judgments do not however specifically or constructively discuss the controversial issue raised before us namely whether the pension relief should be suspended even ~~in~~ that portion of pension which portion has to be ignored in fixing the re-employment pay. This issue does not seem to have been raised before the High Court and in any case has not been discussed in these judgments. To the limited controversial issue before the Larger Bench therefore, these two judgments to my mind are not relevant.

16. In the conspectus of the facts and circumstances I give my findings 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)-E.V(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 may be remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation.

(S.P. MUKERJI)
VICE CHAIRMAN

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Order by Hon'ble Shri NV Krishnan, Administrative Member

I have had the advantage of studying the order of my learned brother and senior colleague, the Hon'ble Shri SP Mukerji, Vice Chairman - The difference of opinion between the two Benches presided over by the Hon'ble Shri Justice G Ramanujam, Vice Chairman and the Hon'ble Shri P. Srinivasan, Member relates only to the legality of the denial of relief on the ignorable portion of the pension.

2 The Hon'ble Shri SP Mukerji, Vice Chairman has held in his order that the ignorable portion of pension stands on a different footing from the non-ignorable portion. For, this amount, admittedly, is not taken into account while computing the amount on which DA is paid. The argument is that, as, on this portion, dearness allowance has not been given, relief cannot be denied thereon. It is with great respect and regret that I find myself unable to agree with this conclusion for the reasons set forth in the subsequent paragraphs.

3 Apparently this argument flows from para 7 of the O.M. No. F.13(1)-EV(A)/74 dated 6.4.74 extracted below.

"7. The relief indicated in these orders will not be admissible to pensioners who were in re-employment on 1.1.73 or are re-employed thereafter, during the period of re-employment as they would get dearness allowance appropriate to their pay (which is inclusive of pension) during such re-employment."

This O.M. grants relief on pension to persons who retired before 1.1.73. Similar orders in respect of pensioners who retired after 1.1.73 were earlier issued in OM No.13(5)-EV(A)/73 dated 21.3.74. That OM did not contain the provision extracted above. In that O.M. also, the para extracted above was added subsequently,

by an OM of even number dated 27.8.74. Thus, the justification for denial of relief on pension during the period of re-employment of pensioners is rested on the ground that they would get dearness allowance appropriate to their pay in the re-employed post, which is inclusive of pension.

4. However, by OM No. F13(2)-EV(A) dated 20.5.75 the said para (extracted in para 3 supra) was deleted from both the OM dated 21.3.74 and 6.4.74 and the following para was substituted in its place:

"The pensioners who were in re-employment on 1.1.73 or are re-employed thereafter shall not be eligible to draw any relief during the period of re-employment".

That OM is silent about the reason for this substitution. What is clear is that the substituted para dis-entitles re-employed pensioners to any relief on pension - whether or not it is taken into account in the fixation of their pay on re-employment. The deleted para (ie para 7 of the OM dated 6.4.74 extracted in para 3 above) did not have such a sweeping effect. The direction in that para could have applied on the basis of the rationale mentioned therein, to only the non-ignorable portion of pension taken into account for fixation of pay and not to the ignorable portion. This seems to be the reason for such substitution.

5. The justification for denying relief on the ignorable portion of the pension (despite the fact that, admittedly, no DA is paid on this portion alongwith the pay) was given by ^{the Senior Central Govt Standing Counsel} Shri PVM Nambiar, learned (SCGSC) for the Respondents in some applications. He pointed out that while pension is no ^U doubt, a right, the normal rule in the case of re-employment is to fix the pay after taking into account the pension. Therefore, the orders issued on various dates stating that the first Rs.50 of the pension - raised to Rs.125 later and extended to the entire pension in some cases at a still

later date - should be excluded while fixing the pay on re-employment, is itself a very big concession. It is for this reason, that it was felt that there was no need to grant relief on the ignorable portion of pension. This does not affect anyone adversely because of the very nature of the rules/instructions regarding fixation of pay on re-employment and grant of dearness allowance to them.

6. The relevant regulations/instructions may now be noticed and for this purpose reference may be made to Chaudhri's Compilation of the Civil Service Regulations (13th edition, 1986) and Swamy's Compilation on Re-employment of Pensioners (Civilian and Ex-serviceman) (Second Edition). Article 510 of the Civil Service Regulations (CSR, for short) provides that, at the time of re-employment, all pensioners have to declare the amount of pension/gratuity granted to them in respect of their previous employment. The re-employing authority is required to specifically state in the order of re-employment "whether any deduction is to be made from the pension or salary as required by the Rules of this Chapter" (ie Chapter XXI of the CSR relating to re-employment of pensioners). Article 521 of CSR applies to Civil pensioners and Art. 526 of CSR applies to Military Pensioners. They are quoted below.

"521. The authority competent to fix the pay and allowances of the post in which the pensioner is re-employed shall determine whether the pension shall be held wholly or partly in abeyance. If pension is drawn wholly or in part, such authority shall take the fact into account in fixing the pay to be allowed to him.

Provided that in the case of any such person who retires before attaining the age of fifty five and is re-employed on or after 16th January 1964, the amount of pension drawn by him if it is less than fifty rupees, or the first fifty rupees, shall not be taken into account in fixing his pay on re-employment."

"526 (a) Where a pensioner, formerly in military service obtains employment in Civil Department after having been granted a military pension, and continues to draw his military pension, the authority competent to fix the pay and allowances in which he is re-employed shall, in fixing his pay and allowances in the post in which he is re-employed, take into account the amount of pension, including such portion of it as may have been commuted.

(b) xxx xxx xxx

(c) In the case of service personnel, who retire from the Forces before attaining the age of 55 and are re-employed in civil posts on or after 16th January, 1964, the pension shown below shall be ignored in fixing their pay on re-employment:-

(i) in the case of pensions not exceeding Rs.50 per mensem, the actual pension;

(ii) in other cases the first Rs.50 of the pension.

Those who were re-employed before 16th January 1964 and who had opted for the above orders will however, be treated as fresh entrants from that date."

Govt. of India have issued instructions under Art. 510 of the CSR, which as noted above, covers the re-employment of all pensioners. Instruction 10 issued on 25.10.68 and amended from time to time, is relevant for our purpose. The relevant provisions of these instructions as they stand now are extracted below:

"10(b) The initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

In cases where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed.

(c) In addition to (b) above the Government servant may be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefit for which he is eligible e.g., Government's contribution to a Contributory Provident

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Fund, gratuity, commuted value of pension, etc. provided that the total amount of initial pay as at (b) above, plus the gross amount of pension and/or the pension equivalent of other forms of retirement benefit does not exceed:-

(i) the pay he drew before his retirement (pre-retirement pay, or)

(ii) Rs.8,000 whichever is less.

Note 1. In all cases where either of these limits is exceeded, the pension and other retirement benefits may be paid in full and the necessary adjustments made in the pay, so as to ensure that the total of pay and pensionary benefits is within the prescribed limits.

Where after the pay is fixed at the minimum or any higher stage, it is reduced below the minimum as a result of the said adjustment, increase in pay may be allowed after each year of service at the rate of increments admissible as if the pay had been fixed at the minimum of the higher stage as the case may be.

Note 2. Pay last drawn before retirement will be substantive pay plus special pay, if any, drawn in an officiating appointment may be taken into account if it was drawn continuously for at least one year before retirement.

(d) xxx xxx xxx

(e) In cases where the minimum pay of the post in which the officer is re-employed is more than the last pay drawn, the officer concerned may be allowed the minimum of the prescribed scale of the post less pension and pension equivalent of other retirement benefits.

(f) xxx xxx xxx

(g) Once the initial pay of a re-employed pensioner has been fixed in the manner indicated above, he may be allowed to draw normal increments in the time-scale of the post to which he is appointed, provided that the pay and gross pension/pension equivalent of the other retirement benefits taken together do not at any time exceed Rs.8,000 per month.

It has only to be added that for the purpose of granting increment to mitigate hardship (vide para (b) of the instruction 10 under Art. 510 CSR) the Deptt. of Personnel & Training has issued instructions to the effect that hardship

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should be construed to exist if the minimum of the pay scale of the re-employed post plus the full pension (whether ^{the pension equivalent of gratuity} ignorable or not) and ~~(PEG)~~ is less than the last pay drawn at the time of retirement (P 51 of Swamy's Compilation)

7. The point made by the learned counsel for the Respondent (para 5 supra) is important and merits consideration. It is better to examine specific cases to see the results of the application of these rules. In the cases before us very few applicants have given full information. There are, however, two cases where the information available facilitates analysis. These can be considered.

8. The first is the case of applicant Madhavan in OAK 292/87. The basic facts are as follows:

(An assumption is made that the DA on pay/relief on pension is payable at 20% of the pay/pension.)

- (i) Discharged on 29.1.82;
- (ii) Last pay drawn : Rs.325/-
- (iii) Pension : Rs.175/- Pension equivalent of gratuity (PEG for short) not given
- (iv) Re-employed on : 20.5.82
- (v) Pay scale of re-employed post : Rs.260-480
- (vi) Pay fixed Less than minimum (Rs.243/-) till 24.1.83 when pay was fixed at Rs.260/-

It is stated that he was receiving relief on pension also (contrary to the OM referred to in para 3&4 supra) and hence there has been double payment. This is being set right by recovery of the excess amount, which has been challenged.

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9. From the above data, the following inferences can be drawn:-

- (i) The gross pay on the re-employed post may not

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exceed normally the last pay drawn i.e. Rs.325/- unless the minimum of the re-employed post itself is more than Rs.325/- i.e. the last pay drawn.

(ii) As the pension equivalent of gratuity (PEG) is not known, it is being ignored, but this will not affect the conclusion significantly.

(iii) Assuming that the entire pension of Rs.175/- was non-ignorable, (which was not the case), the maximum net pay he could have got is Rs.325 — Rs.175 = Rs.150, to ensure that the pay + pension is equal to the last pay drawn ie. Rs.325/-. He would have got DA on Rs.325/- . No relief is payable on the pension.

(iv) The total emoluments will be -

Pay (Net)	- Rs.150
Non-ignorable pension -	<u>Rs.175</u>
Gross pay	Rs.325
DA on Rs.325	<u>Rs. 65</u>
	<u>Rs.390/-</u>

This is equal to the amount he must have got at the time of retirement, but is much higher than what he would get as pension & relief (Rs.175+ 20% thereof ie Rs.35= Rs.210), had he not been re-employed.

(v) Actually Rs.125/- pf the pension was to be ignored. His initial pay must have been fixed at the minimum of Rs.260/- ie, less than last pay drawn. On account of this hardship, he must have been given increments based on length of service rendered in posts carrying a pay scale not less than Rs.260-Rs.480 (about which there is no information) such that with the addition of the

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non-ignorable portion of pension (ie. Rs.175-
Rs.125 = Rs.50) and the PEG (exact amount not
known) the total pay would not exceed Rs.325/-.

It is in this manner that the initial pay must
have been actually fixed at Rs.243/-.

(vi) Taking the actual pay of Rs.243/- and the fact
that Rs.125/- of the pension was ignorable, his
gross pay and total emoluments would have been
as follows:

Pay (Net)	Rs.243
Non-ignorable portion of pension	Rs. 50
<hr/>	<hr/>
Gross pay	Rs.293
DA at 20% on Rs.293	59
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Total	Rs.352
Add ignorable pension	Rs.125
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Total emoluments	Rs.477
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It may be noticed that his pay plus total pension
(Rs.243+Rs.175=Rs.418) is higher than the last
pay drawn. This is due to ignoring Rs.125/- of
pension and it is this benefit which has been
termed as a concession by Shri PVM Nambiar in his
argument. As a result, his total emoluments come
to Rs.477, which is higher than the presumptive
total emoluments at the time of his retirement,
i.e. Rs.390/-

(vii) After Feb. 83, when the entire pension became
ignorable, the position would have been as
follows:

Pay (Gross & net pay) Rs.293 (ie minimum of
pay+increment
to meet hard-
ship - PEG)

DA at 20% Rs. 59
Rs.352

Ignorable pension	<u>Rs.175</u>
Total emoluments	<u>Rs.527</u>

Both the pay plus total pension (Rs.293+175=468) and the total emoluments (Rs.527) exceed the total emoluments at the time of retirement (Rs.390).

9. The second is the case of Vasudevan Pillai, the first of 23 applicants in TAK 404/87. The basic data are as follows:

- a) Retired in Jan. 75
- b) Last pay Rs.365
- c) Pension Rs.144
- d) Pension equivalent of gratuity Rs. 20
- e) Re-employed in Nov.75 - Pay scale Rs.380-560
- f) Pay fixed at Rs.266/-
- g) Ignorable pension Rs.50/-
- h) No relief on pension

The case is analysed as follows:

(i) His initial pay was fixed at Rs.266 as follows:

Minimum of pay scale which is higher than last pay Rs.380

Less non-ignorable part of pension (144-50) (-) 94

Less PEG (-) 20

Net pay Rs.266

DA on Rs.380 at 20% Rs. 76

Total Rs.342

Total emoluments, Rs.342+Rs.144= Rs.486

(ii) When ignorable portion was raised to Rs.125/-

the pay must have been fixed as follows:-

Minimum of pay scale Rs.380

less nonignorable portion of pension (Rs.144 - 125) 19

Less PEG 20

Net pay 341

DA on Rs.380 at 20% 76

Total 417

Total emoluments, Rs.417+Rs.144=Rs.561.

(iii) After Feb. 83 when the entire pension was ignorable the pay must have been fixed as follows:

Minimum pay	Rs.380
Less non-ignorable pension Rs. -	
Less PEG	Rs. 20
	<u>Rs.360</u>
DA on Rs.380 at 20%	Rs. 76
	<u>Rs.436</u>

Total emoluments = Rs.436 + 144 = Rs.580

(iv) If he had not retired, he would have got as pay the same pay he was getting at the time of retirement (i.e. Rs.365) and his total emoluments with DA at 20% would have been Rs.365+73 = Rs.418. As against this, in each of the three cases above, his total emoluments are greater than Rs.418, even though no interim relief on pension has been taken into account whether it is ignorable or non-ignorable. This is due to two important facts. Firstly a part of the pension upto Feb. 83 and the whole of it since then, is ignorable. Secondly the minimum pay of the post is itself higher than the last pay drawn.

10. It has only to be added that the relativities among the total emoluments given in para 8 and 9 would remain unchanged even if the rates of DA on pay and of relief on pension is computed at 100%. The last pay of Shri Madhavan (para 8 supra) being Rs.325, his total emoluments including 100% DA would be Rs.650/-. As against this, the total emoluments, without providing any relief on the ignorable portion of pension of Rs.125/- and the entire amount of Rs.175/-, (as in para 8(vi) & 8(vii) above) work out to Rs.711 and Rs.761 respectively. Similarly,

Shri Vasudevan Pillai (Para 9) would, on the basis of his last pay of Rs.365/-, have drawn Rs.730/- as his total emoluments before retirement, including DA at 100%. On his re-employment the total emoluments without granting any relief on the ignorable portion of Rs.50, Rs.125/- of his pension pension and the entire pension of Rs.144/- (as in para 9(i), (ii), & (iii)) work out to Rs. 790. Rs.865 and Rs.884 respectively.

11. The analysis of the two specific cases in the foregoing paragraphs helps to conceptualize the nature of the impugned restrictions imposed on the entitlement to relief on pensioners during re-employment. The restriction imposed may be justified on two counts. Firstly, the relief that is denied on the non-ignorable part of pension (ie, the portion taken into account in the computation of pay on re-employment) is fully made good by the payment of dearness allowance on the re-employed post on an amount, which, besides the net pay, is inclusive of the non-ignorable portion of the pension and the pension equivalent of gratuity. Secondly, in so far as the ignorable portion is concerned, the compensation lies in the very fact that this amount is ignorable ie, not taken into account at all for pay fixation. For, by that very concession of exclusion, the effective pay increases by the same amount as the ignorable amount of pension and so too does the total emoluments.

12. It only remains to be added that pensioners normally take decisions intelligently and therefore, the above results normally follow. However, these results may not follow in certain extreme circumstances, which may not arise at all, but which have to be thought of. For example, para 12 of the order of my learned brother rightly points out that denying relief on pension, even if ~~pay~~ on re-employment is only Re. 1/-, will be inequitous. It is, therefore, necessary to stipulate that the disentitlement to relief will apply only when the pensioner is not re-employed on a post, the maximum of the pay scale, which is less than his pension. For, if he chooses to be so re-employed, the relief on his pension would be more than the dearness allowance he would get, because, the DA can be computed, at best, only on the maximum of the pay scale. He would then be a loser. In that case, that he should be entitled to get relief on his pension. Considering that other pensioners, re-employed on posts on a pay greater than pension, get a larger amount by way of dearness allowance, he should also get DA on pay, in addition.

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13. It is contended that relief is an integral and inseparable part of pension and therefore where, what is called as basic pension is granted, the appropriate relief has to be given automatically. In such circumstances, the denial of the relief or the recovery of the relief already granted will amount to deprivation of property rights without the sanction of law, and is thus violative of Art. 300 A of the Constitution.

14. With great respect, I find it difficult to accept this conclusion for two reasons. Firstly, relief is not an integral portion of pension. Secondly, disentitlement to get relief on pension during re-employment is not as a consequence of any order relating to pension, but is as a consequence of fixation of pay on re-employment, in respect of which this is a condition of service.

15. Taking the first ground, it may be noted that the expression "pension" is defined in Rule 3(1)(b) of the Central Civil Services (Pension) Rules 1972 (Rules for short) to include gratuity, excepting when the term 'pension' is used in contra distinction to gratuity. This by itself does not help in deciding the issue. However, Rule 49(2) relates the quantum of pension to 'average emoluments'. As defined in Rule 3(1) (b), this is determined in accordance with the Rule 34 i.e. with reference to the emoluments drawn by a Government servant during the last ten months of his service.

16. The emoluments referred to in Rule 34 means 'pay' as defined in rule 9(21) of the Fundamental Rules (including dearness pay, as determined by the order of

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the Government issued from time to time) which a Government servant was receiving immediately before his retirement or on the date of his death. (Rule 33 read with Rule 3(1)(e))

17. This takes us back to Rule 9(21) of the Fundamental Rules which defines the expression 'pay'. Thus it may be seen that pension as computed by the Pension Rules does not include any relief that may be granted by Government to compensate for the higher cost of living.

18. As pointed out by Shri PA Mohamed, Additional Central Govt. Standing Counsel, there is one set of rules relating to pension in which the relief on pension has been specially excluded while defining pension. Thus Rule 3(j) of the Central Civil Services (Commutation of Pension) Rules 1981 defines pension as follows:-

"Pension" means any class of pension including compassionate allowance referred to in Chapter V of the Pension Rules but does not include extra pension and the amount, by whatever name called, granted by the Government to a pensioner as a compensation for higher cost of living" (Emphasis supplied)

Relief on pension is for compensating the higher cost of living and stands specifically excluded. It may, no doubt, be argued that as pension has not been so defined elsewhere, in this manner, the implication is that for purposes other than commutation of pension, the expression "pension" would include relief on pension. However, as pointed out in the earlier paragraph, the computation of pension is done in a manner which excludes such relief. Besides, it has to be remembered that all the rules were framed before the concept of relief on pension was even thought of. That being the case, the expression "pension" used in the CSR and other instructions cannot be construed to include relief on

pension. It would appear that the definition extracted above has only made explicit what has always been implicit in the concept of pension. Two other circumstances lend support to the view that the relief, even after it is granted, is not a part of pension. Firstly, in the order which first sanctioned relief to pensioners who retired after 1.1.1973, (OM No. F-13(5)-EV(A)/73 dated 21.3.74), it is stated as follows: "The term 'Pension' for purpose of grant of relief as above shall mean pension as finally calculated keeping in view Government decisions on pay scales and pensionary benefits recommended by the Third Pay Commission." Secondly, in the above OM a relief at the rate of 5% of pension was sanctioned. These indicate that pension is the basis for calculation of relief. It is also not as if the relief becomes part of pension after it is sanctioned. For if the rate of relief is enhanced to 10%, it is computed on the original pension alone, excluding the 5% relief granted earlier.

19. The second ground is that the deprivation of relief on pension would amount to deprivation of property rights violating Article 300 A of the Constitution. As pointed out above, the relief on pension is not an integral part of pension. Pension by itself is a statutory right and is property. There is no doubt, that a pensioner's pension cannot be reduced or taken away except in accordance with law. That can not be said about the relief on pension. The authority which granted that relief, by an executive order, to compensate for the erosion in the value of pension caused by the higher cost of living, can withdraw the relief, when the cost of living gets reduced below the level for which compensation was given. The more

important point is that neither the disentitlement to relief nor the recovery from the pay of the amount of relief paid with pension, which are the issues involved in these cases, is directly related to pension as such. It was rightly pointed out by Shri P. Santhalingam, Additional Central Govt. Standing Counsel, that the moment a pensioner is re-employed, he becomes an active Government servant, as distinct from a pensioner. In respect of the post to which he is re-employed his pay has to be determined. That is done in accordance with the provisions contained in the Civil Rights Regulations and other instructions referred to in para 6 above. The stipulation regarding disentitlement to relief on pension during the period of re-employment does not stand alone by itself. It applies only if a pensioner is re-employed. This is a condition of service relating to his emoluments on employment. Therefore, what is being regulated is not either his pension or the relief thereon, but his pay on re-employment. It is only for administrative reasons that this takes various forms from time to time. Thus at one time it was ordered that he should not be given any relief with his pension. Later it was directed that he could be granted relief with pension, but that the amount of relief so paid would be recovered from his pay in respect of the post of re-employment.

/but, instead, the DA on pay be fixed on an amount which besides the pay, includes the pension.

20. There is considerable merit in this argument. The pension as such has neither been reduced nor withdrawn, and that alone could give rise to a claim of violation of Article 300 A. Similarly, even the relief as such has neither been reduced nor withdrawn. What

is determined is the pay of a Govt. servant on re-employment. It has to be remembered in this connection that the re-employment of a pensioner has social implications. It deprives ~~the~~ unemployed persons of a post against which one of them could have been employed. Further, it also deprives a number of other Govt. employees of a chance to get promoted to a higher grade because, if the pensioner had not been re-employed, that post could well have been filled up by a promotion from the lower rank. It is, keeping in view of these social factors, that the Govt. (i.e. Respondents) have rightly decided that certain restrictions should be placed on the total emoluments of a re-employed pensioner, without being unfair to him. To give effect to this decision they have formulated certain regulations governing fixation of pay on re-employment. It is in that process that certain restrictions have been laid regarding entitlement to relief on pension. I am, therefore, of the view that the denial of relief on pension during re-employment does not either deprive the pensioner of any property or violate the provisions of Article 300 A.

21. For these reasons, I uphold the validity of the para extracted in para 4 to the effect that where a pensioner is re-employed, he is disentitled from receiving any relief on his pension, irrespective of whether or not a part thereof or the whole of it is taken into account for the fixation of his ^{pay} on the post to which he is re-employed.

22. It is only necessary to add that the Respondents in OAK 292/87 have, in the counter affidavit, stated inter alia, that the High Court of Kerala has earlier

dismissed certain writ petitions in which recovery from pay of amounts paid as relief on pension was challenged. Shri PA Mohamed, the learned Addl. Central Govt. Standing Counsel furnished a paper book containing a copy of the judgment dated 15.12.87 of the High Court of Kerala in OP No.8362/84 and certain other similar petitions. The judgment clarifies that all these cases are covered by the earlier judgments delivered in OP No.5701/82, 6460/84 and 7520/84. It then proceeds to state that in these earlier judgments it was held as follows:

"We have held in the said decisions that persons who were serving in the Armed Forces and had become entitled to pension and are receiving remuneration for their subsequent employment in any form from the Central Government/State Government Department/Office Public Enterprise or autonomous body or nationalised Banks including the Reserve Bank of India or a local fund as referred to in rule 3(1)(m) of the CCS (Pension) Rules, 1972 shall not be entitled to payment of ad hoc relief or graded relief during the said period having regard to the stipulations contained in the OM No.F.13(8)-EV(A)/76 dated 11.2.1977 issued by the Ministry of Finance, (Department of Expenditure) and the subsequent clarification of the same made by Ext.P2 dated 26.3.84 produced in OP No.7960/84. We have made clear that the question as to whether the remuneration is received by way of employment, re-employment or absorption in service makes no difference regarding denial of the benefit of ad hoc relief or graded relief during the period when such remuneration is received.

2. We have also held that the suspension of the benefit of ad hoc relief or graded relief during the period when the incumbent received remuneration for such employment cannot be regarded as arbitrary or violative of Article 14 of the Constitution in the absence of specific pleadings as material to indicate that the ad hoc relief and graded relief denied is of a higher value than the emoluments which are received on such fresh employment after retirement."

It may be mentioned here that the OM dated 26.3.84 referred to in the above extract has been impugned in

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TA 42/87 and OA 108/85. In OM No. F-10(26)-8(TR)/76 dated 29.12.76 (which is impugned in TAK 732/87 & 336/86) it was directed that the relief on pension could be disbursed to the re-employed pensioners alongwith their pension, but an equivalent amount should be recovered from the pay and allowances they receive in respect of their re-employment. As the implementation of this direction was causing difficulty, it was superceded by OM No. 23013/152/79/MF/CGA/VI (Pt)/1118 dated 26.3.84. This OM reverses the earlier direction. It provides that during re-employment, no relief will be paid with the pension by the pension disbursing authority. After the re-employment comes to an end, the pension disbursing authority will revive the relief.

23. It may be noticed from this judgment that the High Court of Kerala did not consider two issues which arise in these applications viz. the question of violation of Art. 300 A of the Constitution relating to property rights and, the claim to relief in respect of the ignorable portion of the pension, on the ground that, on that portion, no DA is paid.

24. In the light of the discussion in the preceding paragraphs, I am of the view that except the four applications, viz. TA 388/86, TAK 404/87, TAK 420/87 and TAK 17/88, all the other applications deserve to be dismissed subject to the directions given later in this paragraph. As regards the four applications referred to above, they raise issues which have not yet been decided by the Ernakulam Bench of the Tribunal. At any rate, the difference of

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opinion between the two Division Benches of the Madras Bench of the Tribunal sitting at Ernakulam which has been referred to this full Bench, does not relate to these issues. Therefore, these four applications should be referred back to the Ernakulam Bench for disposal in accordance with law.

25 The other five applications should, therefore, be dismissed. However, a direction has to be issued to the respondents that they will be bound to pay the re-employed pensioners relief on pension in cases where the amount on which dearness allowance is payable in respect of their re-employment is less than their pension. The relief so paid shall not be recovered from their pay. In addition to this relief, they should be paid DA on their pay on re-employment.

(NV Krishnan)
Administrative Member

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

TAK 732/87 (OP No.1272/82).

P.G. LAXMANA PANICKER & OTHERS Petitioners.

Vs.

Secretary to Govt. of India & Ors ... Respondents.

and

connected Nos. TA 336/86 (OP No.1885/84).
TA 388/86 (OP No.3340/84).
TAK 404/87 (OP No.5786/84).
TAK 420/87 (OP No.6816/84).
TAK 17/88 (OP No.10118/84).
OA 108/85.
OAK 292/87
TA 42/87 (OP 716/84),
T.A.K.732/87 (OP 1272/87)

Opinion of Hon'ble Shri Justice Amitav Banerji, Chairman.

I have read opinions of Hon'ble Shri S.P.Mukerji, Vice-Chairman and Hon'ble Shri N.V. Krishnan, Administrative Member. They have differed on the question of legality and denial of relief on the ignorable portion of the pension.

It is not necessary to set out the facts which have been cogently stated by Hon'ble Shri S.P.Mukerji, Vice-Chairman in his opinion. I propose to indicate my views on the question where the two Hon'ble Members have taken different views.

"Hon'ble Shri S.P. Mukerji, Vice-Chairman has held in his order that the ignorable portion of pension stands on a different footing from the non-ignorable portion. For, this amount, admittedly, is not taken into account while computing the amount on which DA is paid. The argument is that, as, on this portion, dearness allowance has not been given, relief cannot be denied thereon."

This has been quoted from the opinion of Hon'ble Shri N.V.Krishnan, Administrative Member. He has further

referred to para 7 of the O.M.No.F.13(1)-EV(A)/74 dated 6.4.1974 which is quoted below:

"7. The relief indicated in these orders will not be admissible to pensioners who were in re-employment on 1.1.1973 or are re-employed thereafter, during the period of re-employment as they should get dearness allowance appropriate to their pay (which is inclusive of pension) during such re-employment".

Hon'ble Shri N.V.Krishnan, Administrative Member says further:

"This O.M. grants relief on pension to persons who retired before 1.1.1973. Similar orders in respect of pensioners who retired after 1.1.1973 were earlier issued in OM No.13(5)-EV(A)/73 dated 21.3.1974. That O.M. did not contain the provision extracted above. In that O.M. also, the para extracted above was added subsequently by an O.M. of even number dated 27.8.1974. Thus, the justification for denial of relief on pension during the period of re-employment of pensioners is rested on the ground that they would get dearness allowance appropriate to their pay in the re-employed post, which is inclusive of pension. However, by O.M. No.F 13(2)-EV(A) dated 20.5.1975 the said para (extracted above) was deleted from both the O.M. dated 21.3.1974 and 6.4.1974 and the following para was substituted in its place:

"The pensioners who were in re-employment on 1.1.1973 or are re-employed thereafter shall not be eligible to draw any relief during the period of re-employment".

That O.M. is silent about the reason for this substitution. What is clear is that the substituted para disentitles re-employed pensioners to any relief on pension - whether or not it is taken into account in the fixation of their pay on re-employment. The deleted para (i.e. para 7 of the O.M. dated 6.4.1974 extracted above) did not have such a sweeping effect. The direction in that para could have applied on the basis of the rationale mentioned therein, - to only

the non-ignorable portion of pension taken into account for fixation of pay and not to the ignorable portion. This seems to be reason for such substitution".

Firstly, it has to be noticed that the respondents have consistently relied on that retired pensioners would get D.A. appropriate to their pay in their re-employed post, which is inclusive of pension. Now they are saying that the grant of relief of pension which is included in the grant of D.A. on re-employment will amount to double benefit where the ignorable part of pension is not reckoned for D.A., there will be no double benefit.

In reference to O.M. No.F 13(2)-EV(A) dated 20.5.1975, it may be stated that this was issued for general application to civil pensioners by the Ministry of Finance. In such cases, no question of ignorable pension exists. Ignorable pension arises in case of ex-servicemen who retire before 55 years of age. It may be noted that for such persons orders are issued by the Ministry of Defence. Hence, the orders of Ministry of Finance which do not specifically pertain to ignorable part of pension cannot be taken into consideration for ascertaining the validity of the decision on relief on ignorable part of pension of re-employed ex-servicemen.

In regard to the O.M. dated 6.4.1974, it may be stated that such orders apply where pensions are per se ignorable for civil person. Para 7 of O.M. dated 6.4.1974 and the substituted para dated 20.5.1975 are in effect the same and disallow pension relief because D.A. on re-employment pay includes D.A. on pension equivalent of pay (i.e. the

part of pay which is not allowed because of pension) i.e. the non-ignorable part of pension.

The fixation of pay of a re-employed person is done without any consideration whatsoever to ignorable part of pension. D.A. is also fixed without any reference to that portion of pension. Consequently, to deny the relief on the ignorable portion of pension merely on the ground of re-employment, will be arbitrary and amount to deprivation of property.

Where the law provides that D.A. will be given on the pension to an ex-serviceman on his re-employment, it does not mean that D.A. on the part of the pension which is to be ignored is not entitled to be taken into consideration in calculating the relief. I think the position between a civilian employee on his retirement and that of a defence employee is entirely different. There is nothing like ignorable part of pension in case of a civilian. The re-employment of a civilian employee comes after the age of superannuation - say 55 or 58 years, as the case may be. On the other hand, a person employed in the defence establishment who is not a civilian is retired at a much earlier age than 55 or 58 years and upon his re-employment, he is given certain advantages. One of the advantage is that on his re-employment a certain part of his pension is ignored for the purpose of giving him relief. But he is entitled to DA on the amount of pension drawn by him. A question may arise as to what is the meaning of the word 'drawn by him'. It includes both the portions which is

ignorable and non-ignorable.

In para 7 of his opinion, Hon'ble Shri N.V.Krishnan, Administrative Member has referred to certain cases and sought to explain the matter by application of the principle holding that the interpretation put by him would be proper since the existing system was advantageous. The question whether a particular system is advantageous or not is not up for consideration before us.

We have to interpret the rules in accordance with the accepted norms of interpretation. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise (Maxwell on The Interpretation of Statutes 12th Edition p.29). The interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient. (Coleridge J. in Gwynne V. Burnell (1840) 7 Cl. & F.572).

It has been held that if any statutory provision is capable of only one construction then it would not be open to the Court to put a different construction upon the said provision merely because the alternative construction would lead to unreasonable or even absurd consequences. The question of consequences and considerations of policy would be relevant only where the provision sought to be construed is capable of two constructions. In such a case the Court is not concerned with the results which may ensue from giving to the plain meaning of the words used by the Legislature.

In such a case the Legislature may take action to remedy the defects of the law and enactments.

It has also been laid down that a court cannot stretch the language of a statutory provision to bring it in accordance with a supposed legislative intention underlying it unless the words are susceptible of carrying out that intention.

It has also been well settled that if the provisions are clear and unambiguous, a Court of law has nothing to do with the reasonableness or unreasonableness of such statutory provisions, except where it is held while interpreting what the Legislature has said (Calcutta Corporation Vs. Sub-Postmaster, Dharamtola, AIR 1950 Cal 417; Damodar Vs. Nandram, AIR 1960 MP 345, 354). In the case of Commissioner of Agricultural Income-tax Vs. Keshab Chandra Mandal, 1950 SCR 435, 466, per Das J, speaking for the Supreme Court Das J observed-

"Hardship of inconvenience cannot alter the meaning of the language employed by the Legislature if such meaning is clear on the face of the statute or the rules".

For the reasons indicated above, I am of the view that the relief including adhoc relief, relatable to the ignorable part of the pension cannot be suspended, withheld or recovered in respect of a re-employed ex-serviceman who retired from military service before attaining the age of 55 years. I am in agreement with the views expressed by Hon'ble Shri S.P. Mukerji, Vice-Chairman and would reiterate

the direction proposed by him in his judgment.

(Amitav Banerji)
Chairman.

The order of the Bench is 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 above judgment was pronounced in the open court on behalf of the Larger Bench by us.

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(N.V. Krishnan)
Member (Admve)

soft
(S.P.Mukerji)
Vice Chairman

20.7.1989



TRUE COPY
Dated *20.7.1989*
Deputy Registrar

N.M.S
CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATED THURSDAY THE THIRTY FIRST DAY OF AUGUST ONE THOUSAND
NINE HUNDRED EIGHTY NINE

P R E S E N T

HON'BLE SHRI S.P MUKERJI, VICE CHAIRMAN

&

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

ORIGINAL APPLICATION No.108/85

M.V. Michael

.. Applicant

v.

1. Union of India
2. Divisional Engineer,
Telegraphs, Kottayam.
3. The Pension Paymaster,
Quilon.

.. Respondents

Mr.K.R.B Kaimal

.. Counsel for the
applicant

Mr.P.A Mohammed, ACGSC

.. Counsel for the
respondent

O R D E R

Shri S.P Mukerji, Vice-Chairman

The Applicant is an Ex-serviceman, who having
retired from the Army in May, 1979 with a basic military
pension of Rs.127/- joined the Telephones Department as a
Lineman on 2.8.1979. He is aggrieved by the order dated
31.10.1985 issued by the second respondent directing
recovery of Rs.3,424.90 as over payment of relief on pension
received by him between 2.8.81 and 25.3.84. Further payment
of relief on pension has also been stopped. The recovery
and stoppage of pension is based on the Government of
India's O.M dated 26.3.1984 at Annexure II. The applicant's
contention is that recovering relief on pension and stopping
its further payment is discriminatory and violative of
Articles 14 and 16 of the Constitution of India. He has also

challenged the order dated 26.3.84 at Annexure-II denying relief on pension to reemployed Ex-servicemen as discriminatory.

2. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. The issue raised in this application is whether relief and ad hoc relief on pension earned by military pensioners, the whole or part of which is ignored for purposes of fixation of pay on their re-employment, should be exempted from suspension, recovery or stoppage during the period of re-employment. This issue was referred to a Larger Bench of this Tribunal, presided over by the Hon'ble Chairman Mr. Justice Amitav Banerji. By a majority judgment, the Bench 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)!"

3. It transpires that from 19.7.78 military pension upto Rs.125/- per month is to be ignored for purposes of pay fixation in case of re-employed Exservicemen. From 24.10 .83 pension upto Rs.250/- for Commissioned Officers

and the whole of pension for Non Commissioned Officers is to be ignored. In the instant case before us, since the pension allowed to the applicant was Rs.127/- per month, the whole of it will have to be ignored for pay fixation from 24.10.83 and Rs.125/- out of Rs.127/- have to be ignored from the date of his re-employment, i.e., 2.8.79 till 23.10.83.

4. In the facts and circumstances we allow this application, set aside the impugned order dated 31.10.85, at Annexure -I and the O.M dated 26.3.1984 at Annexure-II in so far as the applicant is concerned and direct that proportionate relief and ad hoc relief only on the non-ignorable part of Rs.2/- of his pension upto 23.10.83 need only be recovered from the applicant. The applicant will be entitled to proportionate ad hoc relief and relief of Rs.125/- on his pension upto 23.10.83 and full adhoc relief and relief on his pension of Rs.127/- with effect from 24.10.83, during the period of his re-employment. The relief including adhoc relief relatable to the ignorable part of his pension recovered from him should be refunded to him and such a relief stopped or suspended should be restored back to him with retrospective effect from the date of its stoppage. This will be irrespective of whether the stoppage has been effected by deduction of relief from his emoluments on re-employment or by the

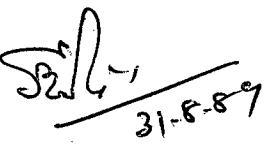
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Pension Payment Authority disbursing his military pension.

It is directed that full payment of refund of the recovery already made and payment of arrears of relief stopped or deducted, should be completed within a period of three months from the date of communication of this order.

There will be no order as to costs.


(N.DHARMADAN) 31/8/89
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN
31-8-89

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