

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 110 of 1993.

DATE OF DECISION 19-4-1993

Mr MP Varghese and 15 others Applicant (s)

Mr M Paul Varghese Advocate for the Applicant (s)

Versus

UOI represented by Secretary, Respondent (s)
M/o Defence, New Delhi & 6 others

Mr KL Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. **AV HARIDASAN, JUDICIAL MEMBER**

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

JUDGEMENT

The grievance of the applicants 16 in number is that the respondents are denying them the relief and adhoc relief relatable to their Military Pension during the currency of their re-employment. All the applicants are persons who after a tenure in Defence Service got discharged before attaining the age of 55 years and re-employed under the Southern Naval Command on different dates as mentioned in paragraph 4(B) of the application. After their re-employment the respondents did not pay them the relief on their Military Pension. A full Bench of this Tribunal had in TAK-732/87 held that when pension is ignored either in whole or in part for fixing the pay of the re-employed Ex-service-man who retired from 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 pensioners has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. According to the various instructions contained in the memoranda of Ministry of Defence the pay of the re-employed ex-Serviceman was to be fixed ignoring upto Rs.50/- till July 1978, upto Rs.125/- till 25.1.1983 and the entire pension in the case of persons below the rank of commissioned officers after 25.11.1983. According to the dictum of the Larger Bench in TAK-732/87 the relief on the ignorable part of the Military Pension should not be withheld or recovered during the period of re-employment in the case of Ex-Servicemen. Inviting attention to the authorities into the decision of the Larger Bench, it appears that the applicants had made representations but without success. It is in these circumstances that the applicants have filed this application praying that it may be declared that the applicants are entitled to receive the relief and the adhoc relief on their Military Pension during the re-employment and for a direction to the respondents to pay the applicants the relief on their Military Pension including the adhoc relief for the entire period.

2. The respondents in the reply statement contend that the challenge against the order of Ministry of Finance No.23013/152/79/MF/CGA/VI(Pt)/1118, dated 26.3.1984 is barred by limitation, that the Hon'ble Supreme Court has stayed the operation of the

order in TAK-732/87 in SLP No.117/90, that for that reason the above referred ruling cannot now be followed and that the re-employed ex-Servicemen are not entitled to get relief on the Military Pension for the reason that they are being paid relief and adhoc relief on the re-employment pay and therefore the double benefit of relief is not at all intended.

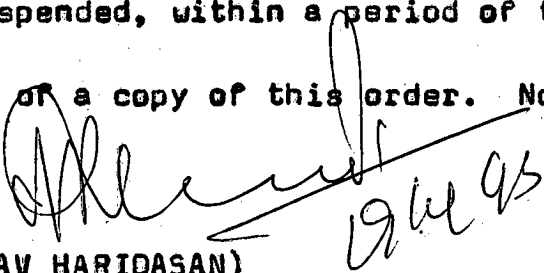
3. I have heard the arguments of the counsel on either side and have also carefully gone through the pleadings.

4. The contention that the application is barred by limitation for the reason that the applicants are challenging an order dated 26.3.1984 has no merit because for one thing the applicants have not challenged the memorandum in this case and secondly this memorandum has already been considered by the Larger Bench in TAK-732/87 and it has been observed that for the purpose of fixing the re-employment pay and for granting the relief on Military Pension, the memorandum should be treated to have been modified. Therefore it is not necessary for the applicants to challenge the memorandum dated 26.3.1984. Hence it is not a case where the relief claimed in this application is barred by limitation. So long as the applicants are re-employed ex-Servicemen, they have got a continuing grievance as far as the denial of relief on their pension is concerned. The Larger Bench of this Tribunal in TAK-732/87 has held 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, relating 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 February 13, 1976 O.M.No.F.10(26)-B(TR)/76, dated December 29, 1976, O.M.No.F.13(8)-EV(A)/76 dated February 11, 1977 and O.M.No.M.23013/152/79/MF/CGA/VI(Pt)/1118, dated March 26, 1984 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines."

Though the Hon'ble Supreme Court has stayed the operation of the order in TAK-732/87, so long as the principle underlining the ruling has not been set aside or modified by the Hon'ble Supreme Court, I am of the view that there is nothing improper in following the dictum. I am in full agreement with what is observed by the Larger Bench in the ruling quoted above. According to the dictum of the Larger Bench in TAK-732/87, the pension either in whole or in part according to the status of the official and applicability of the instruction depending on the date of employment, the relief and adhoc relief relating to the ignorable part of the pension shall not be withheld or suspended during the currency of the re-employment. Following the above dictum, I allow the application in part, declare that the applicants are entitled to get the relief on the ignorable part of their Military Pension along with the pension during the period of their re-employment and I direct the respondents to disburse to the applicant the relief on the ignorable part of the Military Pension and to refund to them whatever amount of relief on pension has been so far withheld recovered or suspended, within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER
19-4-1993