

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 111/92
XXXXX

XXX

DATE OF DECISION 04.9.92

Mr PV Joseph & another Applicant (s)

Mr M Rajagopalan Advocate for the Applicant (s)

Versus

Defence Pension Disbursing Respondent (s)

Officer, Cochin & 2 others

Mr AA Abul Hassan, ACGSC Advocate for the Respondent (s) 1 & 3

CORAM: Mr D Sreekumar, GP -do- 2

The Hon'ble Mr. PS Habeeb Mohamed - Administrative Member

&

The Hon'ble Mr. AV Haridasan - Judicial Member

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

(Mr AV Haridasan, Judicial Member)

The applicants who are ^{re}employed Ex-Servicemen, have

filed this application challenging the suspension of the payment of pension relief to them. Both the applicants are re-employed Ex-Servicemen below the cadre of commissioned officers. The 1st applicant after a service of 18 years in the Army was discharged from service on 29.2.1984 before the age of 55 years and got re-employed as a Security Guard in the Cochin Export Processing Zone under the Ministry of Commerce in November 1986. The second applicant who served the Indian Airforce for 17 years was discharged on 17.10.1970 earning a pension of Rs.95.00 per month and got re-employed as a Commercial

Clerk in the Southern Railway on 8.9.1980. The pay of the applicants was not fixed taking into account their Defence Service. They were getting the Defence Service Pension and pension relief in addition to the pay of the posts of which they are holding. While so the respondents have suspended the pension relief. Aggrieved by that the applicants have filed this application. They have claimed that they are also entitled to the benefits of the judgement of the Full Bench in TAK-732/87. The applicants therefore pray that the respondents may be directed to pay pension relief to them during the period of their re-employment and not to recover the pension relief already paid to them and to pay back the entire pension relief so far suspended. They have also prayed that it may be declared that the pension relief of the applicants cannot be suspended during the period of their re-employment.

2. The respondents in their reply statement contend that the re-employed Ex-Servicemen are not entitled to be paid the relief on pension in accordance with the letter of the Government of India, Ministry of Finance F.No.13(k)-EV(A)/74 dated 6.4.1974 as amended vide No.F.13(ii)EV(A)/75 dated 20.5.1975 and that as there are conflicting rulings by different Benches of the Tribunal and different High Courts on this matter and as the decision of the Full Bench of the Tribunal in TAK-732/87 has been challenged before the Supreme Court, the applicants are not entitled to the reliefs claimed.

3. We have heard the arguments of the counsel for the parties and have perused the pleadings and documents.

4. Both the applicants are Ex-Servicemen below the level of Commissioned Officers. According to the principle in vogue regarding fixation of pay of the re-employed Ex-Servicemen who had retired from Military service before attaining the age of 55 years, pension upto Rs.50.00 was to be ignored. This ignorable limit of pension was increased from Rs.50.00 to Rs.125.00 in accordance with the Government of India, Ministry of Finance O.M of 19.7.1978. 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 24.10.1983, ignorable limit of the pension for fixation of pay was enhanced to Rs.250.00 in the case of Commissioned officers and in the case of officials below Commissioned officers to the entire pension. So at the time when the 2nd applicant was employed, the ignorable portion of the pension was Rs.125.00 and when the 1st applicant got re-employed, the entire pension of Ex-Servicemen below the rank of Commissioned officer was to be ignored. The second applicant was getting a pension of Rs.95.00 only and therefore while fixing the pay of the second applicant on re-employment, his entire pension was liable to be ignored. In the same way in the case of the 1st applicant, since he got re-employed only below the rank of Commissioned Officer in the year 1986 being an Ex-Serviceman, his entire pension was liable to be ignored. The Larger Bench of the Tribunal in TAK-732/87 has observed as follows:

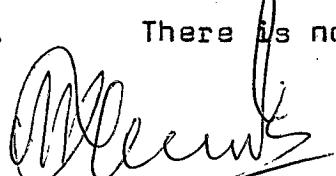
"Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed

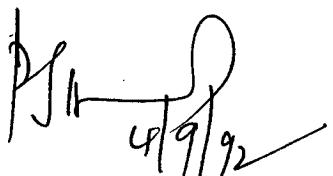
ex-Servicemen who retired from military service before attaining the age of 55 years, the relief including adhoc relief, relatable to the ignorable part of the pension cannot be suspended, withheld or recovered, so long as the dearness allowance received by such re-employed pensioner has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. The impugned orders viz. OM No.F. 22(87-EV(A)/75 dated 13.2.1976, OM No.F.10(26)-B(TR)/76 dated 29.12.76, OM No.F.13(8)-EV(A)/76 dated 11.2.77 and OM 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."

Though the Government of India has filed an SLP before the Supreme Court against the judgement of this Tribunal in TAK-732/87 and though the operation of the order in that case has been stayed, since the Hon'ble Supreme Court has not modified or set aside the order of the Larger Bench, we are of the view that the same has to be followed by us.

5. Hence following the dictum laid down by the Larger Bench in TAK-732/87, we hold that the relief on pension of the applicants is not liable to be withheld or suspended during the course of their re-employment. The application is therefore allowed, declaring that the pension relief of the applicants 1&2 in this case is not liable to be suspended during the period of their re-employment. We direct the respondents to pay the pension relief of the applicants and not to recover the pension relief already paid to them and to pay back the entire pension relief already suspended, within a period of 3 months from the date of communication of this order.

6. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

4-9-1992

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