

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 111 of 1993

DATE OF DECISION 25-2-1993

Mr M Govindankutty & 2 others Applicant (s)

M/s MR Rajendran Nair & Advocate for the Applicant (s)
PV Asha

Versus

UOI represented by Secretary, Respondent (s)
Dept. of Pension & Pension Grievances, New Delhi

Mr Purushothama Kaimal, ACGSC Advocate for the Respondent (s)
represented by proxy counsel

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 ? *Y*
2. To be referred to the Reporter or not *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. To be circulated to all Benches of the Tribunal ? *NO*

JUDGEMENT

The grievance of the applicants who are re-employed ex-Servicemen is that the respondents despite their attention having been drawn to the ruling of this Tribunal in TAK-404/87 are refusing to give the applicants the relief on the ignorable part of their Military pension. They have therefore filed this application for a declaration that they are entitled to get relief on pension which is ignored for the purpose of fixation of pay and for a direction to the respondents to disburse to them the amount of relief on pension so far withheld from them. All the applicants are stated to be ex-Servicemen who were discharged from Defence service below the rank of commissioned officer and before

attaining of the age of 55 years. They were re-employed in the Postal Department as Postal Assistants on 18.10.1981, 19.11.1982 and 4.9.1981 respectively. Since the respondents have stopped payment of relief on pension from the date of their re-employment they individually and through Association made representation to the Department for disbursement to them the relief on the ignorable part of their pension inviting attention to the judgement of the Tribunal in TAK-404/87. The applicants case is that as the pension upto Rs.50/- till 1964, upto Rs.125/- upto 1978 and the whole pension after 25.1.1983 in the case of Defence personnel is to be ignored in fixing their pay on re-employment below the rank of commissioned officers, the respondents should have given to them the relief on the ignorable part of their pension.

2. The respondents contest the claim of the applicants on the ground that since the applicants are getting dearness allowance on the re-employment pay, allowing them to receive relief on the Military Pension would amount to a double benefit which never was/intended and it was in these circumstances the Department issued orders to the effect that relief on pension shall not be paid during the period of re-employment.

3. Having heard the counsel on either side, I am of the view that there is little merit in the argument raised on behalf of the respondents to resist the claim of the applicants. The pay of the ex-Servicemen on re-employment is fixed on the basis of the various Government of India instructions issued on that subject. As per the instructions certain amount of pension

was to be ignored for the purpose of fixation of pay. Initially it was Rs.50/- then it was enhanced to Rs.125/- and later by order dated 8.2.1983 the entire pension of officials below the rank of commissioned officers were to be ignored in fixing the re-employed pay. The pay fixed ignoring the pension therefore do not take into account that ignorable part of the pension at all. The D.A. which the re-employed ex-Servicemen get on their basic pay is an adjunct of that pay and it is in noway relatable to the pension which was ignored for the purpose of fixation of pay. The relief on the ignorable part of the Military pension is an adjunct of that pension which cannot be detached from the pension and therefore that also has absolutely no connection or bearing in the fixation of pay of the re-employed ex-Servicemen. A Larger Bench of this Tribunal has in TAK-732/87 declared that when pension is ignored either/whole or in part, the relief on the ignorable part of the pension ~~is not~~ ⁱⁿ suspended or withheld during the period of re-employment of an ex-Servicemen. Almost similar view was taken in the judgement in TAK-404/87 to which the attention of the respondents was drawn by the applicants individually as also through the association. The respondents have not taken care to implement the spirit of the judgement in the case of re-employed ex-Servicemen. It was in these circumstances that the applicants were constrained to file this application. Since the pension or part thereof has been ignored in the case of the applicants for the fixation of their pay on re-employment, I am of the definite view that the relief

on the ignorable part of the pension cannot be withheld or suspended. Therefore I reject the argument raised on the side of the respondents.

4. In the conspectus of facts and circumstances, the application is disposed of as below:

The applicants are entitled to the relief on the ignorable part of their Military Pension during their re-employment and that the withholding or suspension of the relief on the ignorable part of the pension on account of their re-employment is illegal and void. I direct the respondents to pay to the applicants the relief on the ignorable part of their pension and also to disburse to them the entire amount of relief on the ignorable part of their pension so far withheld or recovered from them within a period of three months from the date of communication of this order. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER

25-2-1993

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