

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 121

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~~T. A. No.~~

DATE OF DECISION 2.12.1991

K. Radhakrishnan Applicant (s)

Mr. M. R. Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
Secretary to Govt., Department of Posts,
New Delhi and others

Mr. A.A. Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N. V. KRISHNAN, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? ^{Yes}
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

MR. N. DHARMADAN, JUDICIAL MEMBER

The applicant is aggrieved by the refusal of the respondents to re-fix his pay in accordance with Government orders provided for fixation of pay of the re-employed ex-serviceman as interpreted by the Full Bench of this Tribunal in O.A. 3/89 and connected cases.

2. The applicant who retired from Indian Air Force on 7.4.1978 was re-employed as Postal Assistant in the Postal Department w.e.f. 25.10.1982. The applicant was drawing Rs. 415/- (pre-revised) as his pay at the time of

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retirement from Air Force. His monthly pension was fixed at Rs. 208/-. On re-appointment in the post of Postal Assistant, the pay of the applicant was fixed at Rs. 237/- w.e.f. 25.10.82 to 24.1.83 and at Rs. 260/- w.e.f. 24.1.83 with date of next increment as on 1.1.84. Since his pay has not been fixed in accordance with the principle laid down by the Full Bench of this Tribunal in O.A. 3/89 and connected cases, the applicant submitted representation to the authorities for proper fixation of his pay. This has not been done. Hence, the applicant filed this application with the following reliefs:

- "i) Direct the respondents to refix the pay of the applicant by granting 1 additional increments for every completed year of service in the Air Force subject to a maximum of Rs. 415/- in the scale of Rs. 260-480/- with effect from 25.10.82 with financial benefits from 25.1.83.
- ii) Direct the respondents to disburse the relief payable on pension drawn by the applicant and disburse the entire arrears due to the applicant in respect of relief of pension drawn by the applicant.
- iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant and
- iv) grant the cost of this original application."

3. The respondents 1 to 3 have filed counter affidavit in which they have submitted that the initial pay of applicant on re-employment has been fixed in accordance with DG (P)'s letter No. 2/110/84-PA dated 27.12.85 and G.O.I. Memo No. 3(34)-Est.III/57 dated 25.11.1958 as amended from time to time. It is also stated that the issue raised in the Original Application is already

under consideration of the Hon'ble Supreme Court in Special Leave Petitions filed by the Department in similar common decision of this Hon'ble Tribunal in O.A. 3/89 and connected cases and stay has been granted in this case.

4. As regards the second relief is concerned, it is submitted that according to circular No. AT-1/1/234-IV dated 20.6.84 of CDA(P), Allahabad, military pensioners who are re-employed on or after 29.12.76 are not entitled for relief on their military pension and the re-employed pensioners are allowed full pay and allowances during their re-employed period.

5. Today when the application was taken up for final hearing, the learned counsel for the respondents is not in a position to distinguish the facts of this case from that of the facts in O.A. 3/89 and other connected cases and TAK 404/87 and connected cases. He agreed that the judgments applies to this case.

6. Having considered the matter we are of the view that the claim of the applicant for re-fixation of his pay is squarely covered by the decision of the Full Bench of this Tribunal in O.A. 3/89 and connected cases. Hence, this case can be disposed of following the principles laid down by the Full Bench. The relevant portion of the judgment of the Full Bench in O.A. 3/89 is extracted below:

"(a) We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of the re-employed post in accordance with the 1958 instructions (Annexure-IV in O.A. 3/89) the whole or part of the military pension of Ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983 (Annexures-V-a and VI respectively), cannot be taken into

account to reckon whether the minimum of the pay scale of the re-employed post plus pension is more or less than the last military pay drawn by the re-employed ex-servicemen.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983 cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions."

7. As regards the second relief is concerned, we uphold the arguments of the learned counsel for the applicant that it is covered by this Tribunal's judgment in TAK 404/87. The operative portion of the judgment is indicated below:

"(a) The petitioners are declared to be entitled to ad hoc and regular relief on the ignorable part of the pension during the period of their re-employment and if any amount has been withheld or recovered, the same should be refunded to them within a period of three months from the date of communication of this order. The relevant impugned orders and instructions will stand modified or interpreted accordingly..."

8. In this view of the matter, we follow the judgments of the Full Bench in O.A. 3/89 and the judgment in T.A.K. 404/87 and allow the application to the extent and on the lines indicated below:

(i) We direct the respondents to re-fix the pay of the applicant in the re-employed post by granting advance increment for each completed year of service which the officer had rendered before retirement in a post not lower than the post in which he is re-employed subject to a maximum of Rs. 415 per month;

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ii) The applicant shall be entitled to financial benefits like arrears of pay only w.e.f.

7.1.88 i.e. three years prior to the date on which he first preferred his claim by addressing the Annexure-II letter to the Respondent-2.

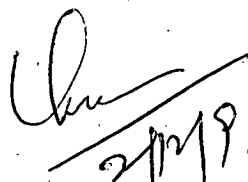
iii) The applicant is declared to be entitled to ad hoc and regular relief on the ignorable part of the pension during the period of his re-employment and if any amount has been withheld or recovered, the same should be refunded to them within a period of three months from the date of communication of this order. The relevant impugned orders and instructions will stand modified or interpreted accordingly.

9. The original application is allowed as indicated above. There will be no order as to orders.



(N. DHARMADAN)
JUDICIAL MEMBER

2.12.91



(N. V. KRISHNAN)
ADMINISTRATIVE MEMBER

2.12.91

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