

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXXX~~

134/90

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DATE OF DECISION 23.7.91

P.C. Samuel Applicant (s)

Mr.M. Rajagopalan Advocate for the Applicant (s)

Versus

The Director, Respondent (s)
Naval Physical & Oceanographic Lab(NPOL)
Naval Base, Cochin-4 and another

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.S.P.MUKERJI, VICE CHAIRMAN

~~The Hon'ble Mr.~~

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

JUDGEMENT

The applicant who is an ex-serviceman reemployed under the Director, Naval Physical & Oceanographic Laboratory, Cochin of the Ministry of Defence has in this application dated 14.2.1990 prayed that the impugned order dated 11th January 1990 at Annexure A3 refixing his reemployment pay between 23.5.81 and 14.10.84 be set aside and the respondents directed not to cancel the increments given to the applicant till 25.1.1983 by treating him as employed afresh. His further prayer is ^{that} ₆ his entire military retirement benefits be ignored in accordance with the option contemplated at Annexure A1. The brief facts of the case are as follows.

2. The applicant was discharged from the Army with a military pension of Rs.208/- and pension equivalent of gratuity of Rs.25/-. His last military pay was Rs.381/- per month. He was reemployed as JSA Grade II under the respondents

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on 23.5.1981 in the scale of Rs.380-560. He was given the minimum of the pay scale. By the Ministry of Defence O.M of 8.2.83(Annexure A1) the entire military pension was to be ignored for fixation of reemployment pay provided the applicant exercised the option to come under that O.M. In that case he was to be treated as a freshly reemployed. The applicant exercised the option and his entire pension was ignored. He was promoted as JSA Grade I in October 1984 and as SSA in the scale of Rs.1640-2900 on 16.9.88. His pay was fixed on every promotion at the minimum of the corresponding scale. By the order dated 23.5.81 his reemployment pay in the scale of Rs.380-560 was fixed at Rs.380/- per month with a deduction of Rs.107.01. In the same order it was notified that his pay is refixed at Rs.380/- per month again with effect from 25.1.83 as JSA Grade II without any constant deduction on account of the option and the increments earned by him in 1983 and 1984 are treated as cancelled. By the impugned order dated 11.1.90 an amount of Rs.3058/- is to be deducted because of the cancellation of the increments. The applicant has referred to the decision of this Tribunal in TAK 404/87 and further confirmed in OAK 507/88 where it has been held that discriminating between ex-servicemen who have been reemployed before 25.1.83 and those who have been reemployed after 25.1.83 is arbitrary.

3. In the counter affidavit the respondents have referred to the Ministry of Defence O.M of 8.2.83 by which ^{the} entire amount of military retirement benefits of ex-servicemen are to be ignored for the purposes of fixing reemployment pay provided the ex-serviceman was below the rank of a Commissioned Officer.

The applicant having exercised his option his pay was to be fixed afresh from 25.1.83.

4. ^g~~We~~ have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question of the legality of denying the ex-servicemen who were reemployed before 25.1.83 the benefit of ignoring the entire military pension for purposes of reemployment pay ^{if they do not exercise option and} ~~by~~ considering them ^{to} be freshly reemployed with effect from 25.1.83 on their exercising an option, was considered by this Tribunal in the judgment dated 31.10.89 in TAK 404/87 and 3 other applications disposed of by a common judgment ^{to which I was a party.} The following extracts from that judgment will be extremely relevant and pertinent.

" The relevant portion from the O.M. of 8th February, 1983 reads as follows:-

" In the case of the pensioners who are already on re-employment, the pay may be re-fixed on the basis of these orders with immediate effect provided they opt to come under these orders. If they so opt, their terms would be determined afresh as if they have been re-employed for the first time from the date of these orders. The option should be exercised in writing within a period of six months from the date of these orders. The option once exercised shall be final".(emphasis added)

"The petitioners have argued that there should be no discrimination based on the date of reemployment. Referring to the celebrated ruling of the Supreme Court in D.S.Nakara v. Union of India, AIR 1983 SC 130, they have indicated that just as for the availability of the benefits of the Liberalised Pension Rules, the Supreme Court has made no distinction between the categories of pensioners who retire before or after the crucial date on which the scheme of liberalised pension was promulgated. Likewise the benefit of the ignorable pension should be equally available to all reemployed pensioners irrespective of whether they were reemployed before or after the date on which the pensioners were reemployed. The respondents have argued that the orders of the Government enhancing the amount of ignorable pension for fixation of pay on reemployment in respect of those who retired before attaining the age of 55 years have been made applicable from a specific date decided by the Government. Those who were reemployed before that date are governed by the orders and instructions prevailing at the time of their reemployment. If they want to come over to the revised orders if they are more beneficial to them they can opt for the same, but once they opt for the revised orders their reemployment pay will be fixed as if they were reemployed for the first time on the date of issue of the revised orders.

" 8. We have given our anxious consideration to the rival contentions of both the parties and have also examined the applicability of the principle enunciated by the Supreme Court in the case of D.S.Nakara. We feel that reemployed military pensioners cannot be discriminated on the basis of the date of reemployment just as pensioners cannot be discriminated on the basis of the date of retirement as has been laid down by the Supreme Court in Nakara's case. The difficulty arises as regards the computation of re-employment pay of such pensioners before and after the issue of the aforesaid O.M of 19.7.78 or of 8th February, 1983. For the sake of convenience let us take the O.M of 8th February, 1983. The petitioners who were not Commissioned Officers would be entitled to get their entire military pension ignored with effect from 8th February 1983 by virtue of the O.M. of that date if they had been reemployed after 8th February, 1983. Since they had been reemployed before that date, in order to get the benefit of this O.M they would have to opt for this O.M and in that case their reemployment pay will be fixed as if they have been reemployed with effect from 8th February, 1983. This means that their previous service on re-employment during which period they had earned a number of increments would be totally lost to them. That is, if one of the petitioners had been reemployed in 1979 and had earned four increments in the reemployment post, his pay in February, 1983 will be refixed as if he was reemployed for the first time in February, 1983. In other words, if there is another reemployed military pensioner who is recruited for the first time without any previous reemployment service, the petitioner and the newly reemployed military pensioner will be treated alike, like fresh starters in the post.

" 9. If however, for the petitioner who was reemployed in 1979 when the ignorable pension was Rs.125/-, is allowed to get his reemployment pay in 1979 revised by ignoring the entire pension (vide the OM of 1983) and given increments for the period from 1979 to 1983 and his pay in 1983 revised on that basis, will it be giving retrospective effect to the O.M of February, 1983? Following the dicta of Nakara's case, if no arrears of pay on revision are paid to the petitioner between 1979 and 1983 but his pay in 1979 is fixed notionally to determine his actual pay in 1983 it will not be tantamount to giving retrospective effect to the O.M. The following extracts from the judgment in Nakara's case may be relevant:-

" 49. But we make it abundantly clear that arrears are not required to be made because to that extent the scheme is prospective. All pensioners whenever they retired would be covered by the liberalised pensions scheme, because the scheme is a scheme for payment of pension to a pensioner governed by 1972 Rules. The date of retirement is irrelevant. But the revised scheme would be operative from the date mentioned in the scheme and would bring under its umbrella all existing pensioners and those who retired subsequent to that date. In case of pensioners who retired prior to the specified date, their pension would be computed afresh and would be payable in future commencing from the specified date. No arrears would be payable."

" 10. The Supreme Court in Nakara's case compared the position of pensioners vis-a-vis the Liberalised Pension Scheme with the position of serving Government servants vis-a-vis the scheme of revised pay scales. The following further extracts from the same judgment will be relevant:-

"Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service . In other words, benefit

of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only. Therefore, there is no substance in the contention that the Court by its approach would be making the scheme retroactive, because it is implicit in theory of wages⁹ (emphasis added)

From the above it is clear that the Supreme Court were keen that no discrimination should be made between the pensioners based on the date of retirement. It was also felt that notional fixation of pension on the date of retirement even though it may be anterior to the promulgation of Liberalised Pension Scheme without giving them arrears for the past period (between the date of retirement and date of promulgation of scheme) will not be giving retrospective effect to the Scheme and will not violate its prospective nature. In the case of revision of pay scale from a particular date even old entrants are allowed revision of pay scale from a particular date and the benefit of increments which they had earned during the past period is also duly accounted for. It therefore seems to us inequitable that the reemployed pensioners who had been reemployed prior to February, 1983 should be forced to lose the benefit of their past service by exercising option on a "take it or leave it basis".

"11. We feel that for those ex-servicemen who had been reemployed prior to the issue of the O.M their reemployment pay should be determined notionally on the date of their reemployment by applying the enhanced limit of ignorable pension and their pay as on 8th February, 1983 reckoned by giving them the benefit of earning increments over and above the notional pay so fixed. Their actual pay will be revised accordingly with effect from the date of issue of the relevant O.M without any arrears based on notional pay fixation for the past period."

5. Relying on the aforesaid judgment I allow this application to the extent of setting aside the impugned order dated 11.1.90 at Annexure-A3 and directing the respondents to refix the reemployment pay of the applicant on the date of his reemployment notionally by ignoring his entire military retirement benefits and on that basis to determine his actual pay with effect from 8.2.83 by giving him the benefits of notional increments over and above the notional pay fixed on the date of his original reemployment. No arrears of pay on the basis of the revised pay be given to him prior to 8.2.83. Action on the above lines should be completed within a period of three

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months from the date of communication of this order. There will be no order as to costs.

S.P. Mukerji

23.7.91

(S.P. Mukerji)
Vice Chairman

n.j.j