

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 140/90
~~XXXXXX~~

199x

DATE OF DECISION 20.6.90

T.A. Synuddin Applicant (s)

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

UOI rep.by Secretary, Respondent (s)
M/o Personnel, P.G & Pension and others.

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

CORAM:

The Hon'ble Mr. **S.P.Mukerji, Vice Chairman**

The Hon'ble Mr. **N. Dharmadan, 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

(Hon'ble **Shri S.P.Mukerji, Vice Chairman**)

under Section 19 of A.T.Act
In this application dated 15th February, 1990/the

applicant who is an Ex-serviceman and re-employed under the Controller of Defence Accounts has prayed that in cancellation of the impugned orders at Annexure-I and III his initial pay on re-employment should be refixed by giving him the benefit of the number of years of service put in by him in the Army in accordance with the O.M. of 25.11.1958. He has also prayed that the respondents should be directed to give him relief on pension also.

2. The brief facts of the case are as follows.

The applicant retired from the Army in 1982 after 15 years of service. At the time of his discharge from the Army his basic rank pay was Rs. 255 plus classification pay of Rs. 30/- giving a total of Rs. 285/-. His military pension was Rs. 139/- and the pension equivalent of gratuity was Rs. 18.55. He was reemployed as a Telegraphist in C.T.O. Palghat on 2.9.85 in the pay scale of Rs. 260-480. His initial pay on reemployment was fixed at the minimum of the pay scale of Rs. 260/-. According to him his total emoluments before retirement from the Army was Rs. 574.30 whereas by fixing his pay at the minimum of the pay scale of Rs. 260/- his total emoluments along with his military pension and pension equivalent of gratuity came to Rs. 260+139+18.55 i.e., Rs. 417.55. Accordingly in accordance with the O.M. of 25.11.58 at Annexure IV his reemployment pay should be enhanced from the minimum of the pay scale i.e., Rs. 260/- by adding one increment for each year of equivalent service rendered in the Army. His other contention is that his entire military pension was liable to be ignored for fixing his pay on reemployment and on that account also his pre-retirement pay being more than the minimum of the pay scale of Rs. 260/- he is entitled to advance increments.

3. According to the respondents his total emoluments of Rs. 417.55 including the minimum of the pay scale of the re-employment post plus military pension plus pension equivalent of gratuity being more than the pre-retirement basic military pay of Rs. 285/- there is no hardship caused to him and he is not entitled to get any advance increments, in accordance with D.G. P&T's letter of 10.8.87. They have also indicated that in accordance with the Govt. of India, Ministry of Finance's letter dated 11.2.77 (Exbt.R.3A) relief on pension cannot be granted during reemployment.

4. We have heard the learned counsel for both the parties and gone through the documents carefully. In regard to the question of advance increments to be given to re-employed ex-servicemen, whose entire or part of military pension has to be ignored, a Full Bench of this Tribunal in their judgment dated 13.3.90 in O.A.3/89, O.A.15/89, O.A.K.288/88 and O.A.K.289/88 held as follows:

- “(a) We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of the reemployed post in accordance with the 1958 instructions (Annexures IV in OA-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, 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.”

Since in the instant case before us the applicant was re-employed after 1983, his entire military pension and pension equivalent of gratuity has to be ignored in reckoning if there is any hardship in fixing his re-employment pay at the minimum of the pay scale of Rs.260-480. Since the basic military pay before retirement was admittedly Rs.285/- the minimum of the pay scale on re-employment without taking into account the military pension, being less than the pre-retirement military pay, he is entitled to increments for each year of military service in grades equivalent to that of Telegraphist.

5. As regards relief on pension during re-employment a Larger Bench of this Tribunal presided over by the Hon'ble Chairman in its judgment dated 20.7.89 in T.A.K.732/87 etc. by a majority decision 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, 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. O.M.No.F. 22(87-EV(A)/75 dated 13.2.76, O.M.No.F.10(26)-B(TR)/76 dated 29.12.76, O.M.No.F.13(8)-EV(A)/76 dated 11.2.77 and O.M.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 as interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P.Mukerji, Vice Chairman)."

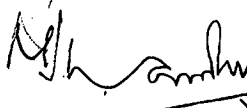
In view of the above decision the applicant will be entitled to relief including adhoc relief on his entire military pension which stood ignored by the order of 1983.


6. In the facts and circumstances, we allow this application with the following directions:

(a) The initial pay of the applicant on re-employment in the scale of Rs. 260-480 should be re-fixed by granting him one advance increment for each completed year of his military service in grades equivalent to that of Telegraphist in the scale of Rs. 260-480 but in no case should his initial pay be more than the last pay drawn by him in the Armed Forces. We direct that the pay of the applicant should be re-fixed on the above lines within a period of three months from the date of communication of this order; and ✓

(b) Since the entire military pension of the applicant is to be ignored, the relief including adhoc relief relatable to his military pension cannot be suspended, withheld or recovered during the period of his reemployment. We direct that the relief including adhoc relief on his military pension should be paid to him during the period of his reemployment and if any amount has been recovered or suspended the same should be refunded to him within a period of three months from the date of communication of this order; and ✓ ✓

(c) There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(S. P. Mukerji)
Vice Chairman

20.6.90