

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 154/91
T. A. No.

199

DATE OF DECISION 23.9.1991

P.V. Thirupathy & another Applicant (s)

M/s K.V. Kuriakose Advocate for the Applicant (s)

Versus

UOI, Secretary, M/o Finance & Respondent (s)
Three others.

Mathews J. Nedumpara for R.1-4 Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV 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

SHRI N DHARMADAN, JUDICIAL MEMBER

The applicants are re-employed Ex-Servicemen drawing military pension through the 4th respondents. The first applicant was re-employed in the Government of India Press, Koratty as a permanent labourer on 4.10.76. Similarly the second applicant after his retirement joined as Bindery Assistant in the Government of India Press, Koratty. According to the applicants, on their re-employment they became entitled to their pay and other allowances in addition to their army pension because

the same is ignorable amount under the OM issued by the Government of India. From the date of their re-employment the applicants were also not paid the DA due to them on defence pension drawn by them. The applicants further submitted that similar issue came up for consideration before this Bench in TAK-704/87, and this Tribunal allowed the OA by Annexure-I judgement. The applicants submitted representations producing the copy of the judgement before the Pension Pay Master, for getting the similar reliefs. But, they did not get any reply or relief. Hence, they have filed this application with the following prayers.

- "(a) An order directing the respondents not to recover or withhold from the applicants, the Dearness Allowance payable to them on their Defence Pension;
- (b) An order directing the respondents to pay to applicants the amounts of Dearness Allowance payable on their Defence Pension and withheld by the respondents, from their respective dates of re-employment, namely, 8.6.1981, 26.11.1976, 11.4.1983, 4.10.1976 and 2.4.1981,
- (c) To allow this application with costs."

2. The third respondent filed counter affidavit

in which he stated that the various High Courts and Central Administrative Tribunals have dismissed a number of similar cases filed by re-employed pensioners

with identical reliefs. But he has admitted that by the judgement Annexure I and TAK-409/87, 732/87, OA-140/90, OA-586/90 and OA-46/90 were ^{also} allowed relying on the decision of the larger bench of this Tribunal in TAK-732/87. He further submitted that against the judgement of this Tribunal in the TAK-732/87, the respondents have filed a Special Leave Petition before the Supreme Court challenging the decision, which was admitted (Special Leave Petition, Civil No. 117/90) and the court stayed the operation of the judgement of the CAT. Annexure R-3(d) is the order of the Supreme Court. The operative portion of the order reads as follows:

"Issue notice on the interim application returned on 19/2/90 Pending notice there will be stay of the operation of the order of the Administrative Tribunal."

Hence, according to the 3rd respondent, there is no merit in this application and it is liable to be dismissed.

3. We have heard the arguments and perused the records. The question which arising for consideration in this case is covered by the judgement of the

larger bench of this Tribunal dated 20.7.89 in

TAK-732/87. The relevant portion in the judgement is extracted below:

"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 ad hoc 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 29.12.1976, OM. No. F.10(26)-B(TR)/76 dated 29.12.1976, OM. No. M23013/152/79/MF/CCA/VI/(Pt)/1118 dated 26.3.84 for suspension and recovery or relief and ad hoc relief on pension will stand modified and interpreted on the above lines. The cases referred to the larger Bench are remitted back to the Division Bench of the Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us".

4. We have followed this decision of the larger bench in Annexure-A(I) Judgement in a large number of other similar cases even after Annexure R-3(d). Hence, there is no reason why this case should be dismissed as contended by the learned counsel for the respondents.

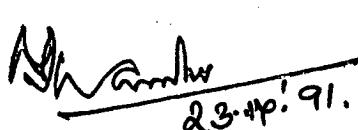
5. The contention of the respondents is that in the light of the stay order, Annexure-R3(d) issued by the Supreme Court this case should be dismissed. We are unable to accept this contention. The Supreme Court stayed the operation of the judgment of larger bench in TAK-732/87 which operates only against the

parties, in that case. Till that decision of the larger bench of this Tribunal is set aside or reversed by the Supreme Court we are bound to follow the decision in disposing of identical issues coming up for consideration. We have considered this issue in a similar case by the same bench OA-46/90 and held as follows:

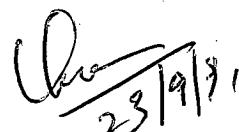
"But the counsel for the respondents submitted that they have filed SLP against the judgement of the Tribunal in the above case and the Supreme Court has stayed the operation of the above judgement as per order in SLP (Civil) No.117 of 1990 dated 31.8.89. We have disposed of number of similar cases following the above Full Bench Judgement. The stay operates only against the parties in the case and we are bound by the Full Bench decision till it is reversed or over-ruled, by another pronouncement by a competent forum."

6. In the result, we allow this application and direct the respondents not to recover or withhold from the applicant the DA payable to them on their defence pension. We further direct them to pay to the applicants the amount of DA and other allowances due to them on their defence pension, with all arrears in accordance with law for a period of 3 years prior to the date of filing of the representations claiming the benefits from the respondents.

7. The application is accordingly allowed as indicated above. There will be no order as to costs.


23-10-91.

(N.DHARMADAN)
JUDICIAL MEMBER


23/10/91

(N.V. KRISHNAN)
ADMINISTRATIVE MEMBER