

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 16/93 199

DATE OF DECISION 24.5.93

Mr. M.C.Narayanan _____ Applicant (s)

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

Versus

Divisional Personnel Officer, Respondent (s)
S.Rly. Tvm. & 2 others.

Mr. Thomas Mathew Nellimootil Advocate for the Respondent (s)
(R1, 2)

CORAM :

The Hon'ble Mr. N.Dharmadan, Judicial Member

The Hon'ble Mr.R.Rangarajan, Administrative 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

N.Dharmadan, JM

The applicant is a re-employed ex-serviceman who has served the Army for 15 years and retired from the Army service on 31.3.78. The last pay received by the applicant from the Army was Rs 235/-. The Annexure-A1 statement filed by the applicant indicating the last pay ~~as~~ as Rs 235/-. After the discharge from the service, he has been re-employed as Gangman in the Southern Rly. in the pay scale of Rs 200-3-206-4-250. According to the applicant he is eligible to get his re-employed pay fixed protecting his last pay as shown in Annexure-A1. He ~~has~~ submitted a representation along with Annexure-A1 pay certificate before the first respondent for proper fixation of the pay in the re-employed post. The said representation has not been disposed of so far. Thus he has filed this application under section 19 of the Administrative Tribunals Act with the following prayers:

" i) To direct the respondents 1 & 2 to fix the pay of the applicant protecting his last pay, ignoring his entire pension and other retirement benefits and grant him all consequential benefits including the arrears from the date of the re-employment.

ii) To direct the 3rd respondent to send applicant's pay particulars to the 1st respondent, for the purpose of pay fixation.

iii) To declare that the applicant is entitled to get his pay fixed, protecting his last pay ignoring the entire retirement benefits.

iv) To grant such other relief deemed fit to this Hon'ble Tribunal."

2. Respondents 1 & 2 have filed a reply statement admitting the facts that this case is covered by a full Bench judgement of this Tribunal in OA 3/89, but they have stated that the judgement of the Full Bench has been stayed by the Supreme Court. Hence the OA has to be dismissed.

3. The facts regarding the last pay received by the applicant from the Army and the fixation made by the respondents ^{without adverting to the last pay} at Annexure-A1 have been admitted by the respondents. They contended that since there is no hardship the applicant is not eligible to get the protection of the last pay as shown in Annexure-A1 and as contended by him in the OA.

4. Having heard the counsel on both sides we are of the view that this application can be allowed following the Full Bench judgement in OA 3/89. The relevant portion of the Full Bench judgement is extracted below:

"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, 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 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."

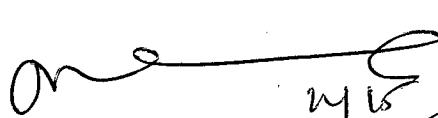
5. The learned counsel for the respondents has no case that the case of the applicant is distinguishable from the facts in the Full Bench judgement and a different view is

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possible. He has also no case that the Full Bench judgement of this Tribunal has been set aside or modified by the Supreme Court. In a number of similar cases we have taken a view that notwithstanding the stay of the Supreme Court of the OA 3/89, the law laid down by the Full Bench is binding on the Tribunal. We have followed the same in a number of cases and allowed the OAs.

6. Under these circumstances, we ~~are~~^{are} inclined to follow the judgement of the Full Bench in this case also. Accordingly we direct the Respondents 1 and 2 to re-fix the pay protecting the last pay as shown in Annexure-A1 ignoring his entire suspension and other retirement benefits and grant him all consequential benefits including the arrears from the date of the re-employment. This shall be done within a period of 3 months from the date of receipt of a copy of this judgement.

7. The application is disposed of as above. There will be no order as to costs.



R. Rangarajan

Administrative Member



N. Dharmadan

Judicial Member

24.5.93

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