

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 164 of 1993

DATE OF DECISION 29-1-1993

Janaky and others Applicant (s)

Mr M Rajagopalan Advocate for the Applicant (s)

^{Versus}
Union of India rep. by the
Secretary, Ministry of Defence Respondent (s)
New Delhi and others

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

CORAM :

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

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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

The applicants are widows of persons who worked in the Military. After the death of their husbands, they were given employment on compassionate ground. It is stated that they are in receipt of family pension, but the respondents refused to pay the pension relief on family pension to the applicants on the ground they are not eligible on account of ~~of their~~ employment. The applicants submitted that this is illegal and against rule 54 of the CCS (Pension) Rules. It is further submitted that their claim for getting relief alongwith family pension is covered by the decision of the Tribunal in TAK 732/87 and other connected cases. Since the respondents denied relief on family pension to the applicants

they have filed this application with the following reliefs:

- "(a) To direct the respondents to pay the pension relief of applicants' family pension during the period of their employment.
- (b) To pay back the entire pension relief suspended so far.
- (c) To declare that the applicants are entitled to get the relief on their family pension during the period of their employment."

2 At the time when the case came up for admission, learned counsel for the respondents submitted that the applicant was not represented the matter before the respondents after pronouncement of the judgment in TAK 732/87. He further submitted that the department has filed an SLP before the Supreme Court against the decision of the Full Bench in TAK 732/87 and the said decision has been stayed by the Supreme Court and hence this application be dismissed.

3 Having heard the counsel on both sides, I am of the view that in spite of the fact that an SLP has been admitted against the Full Bench decision rendered in TAK 732/87, this Tribunal is consistently taking the view that the Full Bench decision is binding till it is set aside or modified and the pendency of the case in appeal against the decision will not prevent this Tribunal from following the law laid down by the Full Bench.

4 Accordingly, I am of the view that this application can be disposed of following the Full Bench judgment in TAK 732/87 and connected cases, the operative portion of which is extracted in page-3.

" 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, relating 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. D.M. No.F 22(87)-EV(A)/75 dated 13.2.1976, DM.No. F 10(26)-B(TR)/76 dated 29.12.76, DM No.F. 13(8)-EV(A)/76 dated 11.2.77 and DM 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 and interpreted on the above line."

It is also pertinent to note that similar issue was considered by the Madras Bench of the Tribunal in OA 801 of 1991 which reads as follows:

" It acts like a stabilizer to keep the pension intact in spite of the change in the purchasing power of the rupee. If the Dearness Relief is not paid, the persons concerned will get a diminished pension in terms of real value and pension being a right cannot be diminished indirectly. Pensioners are getting Dearness Relief against price rise as per sub clause(i) of Rule 55-A; sub clause (ii) of the same Rule which denies Dearness Relief on pension to a category of pensioners, namely the re-employed, is an unreasonable discrimination since the price rise is the same for all pensioners. So sub clause (ii) of Rule 55-A is violative of Article 14 of the Constitution and hence not enforceable.


" In the result, the respondents are directed to continue to pay D.R. on pension to the applicants. The application is allowed. No costs."

5 In the light of these decisions, I allow the application and direct the respondents to pay pension relief to the applicants alongwith family pension during the period of their employment. I further direct that the respondents will disburse to the applicants the

respective amounts which has already been suspended
so far from the family pension.

6 The application is allowed as indicated above.

There will be no order as to costs.


(N Dharmadan)
Judicial Member
29-1-1993

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