

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 166 of 1993.

DATE OF DECISION 29-1-1993

KK Kunhi Anandan _____ Applicant (s)

Mr EV Nayanar _____ Advocate for the Applicant (s)

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

Mr V Ajit Narayanan, 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
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

The applicant is an Ex-Serviceman. After 15 years¹ of service, he was discharged from the Army with effect from 1.6.1978. At the time of discharge, he was holding the rank below Commissioned Officer. Annexure-I is the certificate of service of the applicant. After his retirement from the Army, he was re-employed as Chowkidar, in the Telecom Department as per Annexure-II order with effect from 6.2.1984. Even after re-employment, he was getting his full service pension with D.A. and relief. However, since January, 1988 Respondent-3 stopped payment of relief on service pension to the applicant. This, according to the applicant is illegal and contrary to the decision of the Tribunal and government orders. He filed

Annexure-IV representation dated 15.2.92 before the Controller of Defence Accounts (Pension) requesting him to pay the D.A and relief on pension which was withheld from 1988 after re-employment. The said representation is not disposed of so far. Under this circumstance, the applicant has filed this application under Section 19 of the Administrative Tribunals' Act of 1985 with the following reliefs:

- "(i) to issue a direction directing the respondents to restore the DA and relief portion of the applicant's service pension and to pay the applicant his full service pension including DA, relief adhoc relief etc. admissible to him.
- (ii) issue a direction directing the respondents to refund to the applicant DA and relief portion of the service pension so far withheld by the respondents immediately.
- (iii) award the petitioner his cost in the proceedings from the contesting respondents."

2 When the case came up for admission, learned counsel for the respondents objected to the admission on the ground that the decision relied on by the applicant in TAK 732/87 is pending/ appeal and the Supreme Court has stayed the operation of the judgment.

3 We have heard the learned counsel on both sides. The matter is squarely covered by the Full Bench judgment rendered in TAK 732/87. The applicant has also filed Annexure IV representation based on the/said judgement. The respondents should/considered whether the applicant in this case is similarly situated like the applicant in TAK 732/87 and decided the issue before filing this application. The fact that the Full Bench judgment is

stayed by the Supreme Court will not deter the Tribunal from following the same judgment. So long as the decision in TAK 732/87 is set aside or modified, it is binding on this Tribunal and accordingly, I follow the same.

4 In this view of the matter, I am satisfied that this application can be disposed of at the admission stage itself following the decision rendered in TAK 732/87.

The operative portion of the judgment 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 13.2.1976, OM No. F 10(26)-B (TR)/76 dated 29.12.76, OM No.F 13(8)-EV(A)/76 dated 11.2.77 and OM No.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."

5 In view of the law laid down by the Full Bench of the Tribunal in the above case, I admit this application and dispose of the same with the following directions. I direct the respondents to restore the D.A. and relief portion of the service pension which is payable to him in accordance with the decision of the Full Bench referred to above. I also direct the respondents to disburse to the applicant D.A. and relief portion of pension withheld

after re-employment.

6 The application is allowed to the extent indicated above. There will be no order as to costs.


(N Dharmadan) 29.1.93
Judicial Member
29-1-1993