

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 168/90 199
XXXXXX

DATE OF DECISION 6.11.90

Sasidharan.S. Applicant (s)

Mr. M. Rajagopal Advocate for the Applicant (s)

Versus
Divisional Manager, Respondent (s)
S.Railway, Trivandrum &
2 others.

Smt. Sumathy Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Administrative Member

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

N.V.Krishnan, AM

The applicant is a re-employed ex-serviceman. He was discharged from the Air Force on 31.1.81. His last pay was Rs. 381/- in the scale of Rs. 310-396. He was granted a pension of Rs. 172/- from 1.2.81. These details are available in Annexure-A1.

2. He was re-employed as a Commercial Clerk in the Railways in the pay scale of Rs. 260-430 on 11.4.83 and his pay has been fixed at the minimum of the pay scale of Rs 260-430 i.e. at Rs. 260/-. The applicant's claim is that he is entitled to have his pay fixed by ignoring the

entire amount of his pension in terms of the O.M. dated 8.2.83 of the Ministry of Defence (Ann. A2), in which case he claims that he would be entitled to increments above the minimum of the pay scale as, otherwise, if his pay is fixed at the minimum only, as has been done now, he would be suffering 'hardship'.

3. It is submitted that in regard to his representation that his hardship should be neutralised by granting additional increments, Annexure-A4 letter has been received asking him to explain whether undue hardship is caused to him.

4. The respondents have submitted a counter affidavit denying the claim of the applicant on the ground that in order to state that the pay at the minimum of the re-employed post causes hardship it is necessary to take into account the pension also. In this case, the minimum of the pay scale plus the pension exceeds the last pay drawn and hence there is no hardship. It is, therefore, contended that the applicant is not entitled to any relief.

5. When the case came up for final hearing on 6.11.90 the counsel for the applicant submitted that a similar matter concerning the Railways has already been decided by another Bench of this Tribunal in DA 183/90.

The counsel for the respondents conceded this fact, reserving the right of the respondents to challenge that decision, if so advised, in the appropriate forum.

6. We have perused that judgement and we notice that in regard to the question whether the pension should be taken into account to reckon hardship reliance has been placed on a decision of a Larger Bench of this Tribunal in OA 3/89 which held as follows:

"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."

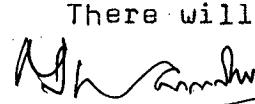
7. As the pension in the case of the applicant has to be fully ignored in terms of the Ann.A2 order, it cannot be taken into account for considering the question of hardship. Admittedly, the minimum of the pay scale i.e. Rs. 260/-, being less than the last pay of Rs. 381/- drawn by the applicant, he is entitled to fixation of his pay by granting him increments in terms of the Railway Board's letter dated 31.3.59 referred to by the respondents in para 5 of their reply.

(Signature)

8. The same provisions are contained in para 117 of the Railway Establishment Manual in Section G of Chapter I thereof. The Manual also clarifies in para 117 (b)(ii) that "a military pensioner who retired as a J CO or NCO or OR will be deemed to have held a post not lower than that in which he is re-employed, if the pay of the military post comprising of the emoluments is equal or more." The last pay of the applicant, as well as the minimum of the pay scale on which he was working before retirement, are higher than the minimum of the scale applicable to the re-employed post. We hold, therefore, that this clarification fully applies to this case and entitles the applicant to increments.

9. For these reasons, we allow this application and quash the Ann.A4 letter. We direct the respondents to fix the pay of the applicant on re-employment in accordance with law, after noting that for the purpose of reckoning 'hardship', ignorable portion of the pension specified in Ann.A2 order, should not be taken into account. The pay of the applicant should be fixed in accordance with these directions and the financial benefits given to him within a period of three months from the date of receipt of this order.

10. There will be no order as to costs.


(N.Dharmadan)
Judicial Member

6.11.90


(N.V.Krishnan)
Administrative Member