

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No.  
XXXXXX No.

176/91

199

DATE OF DECISION 30.1.92

Jayapalan.A and another \_\_\_\_\_ Applicant (s)

Mr.M.Rajagopalan \_\_\_\_\_ Advocate for the Applicant (s)

Versus

Senior Divisional Personnel Officer, Respondent (s)  
Palghat Division, Southern Railway, Palghat and 2 others.

Mr.M.C.Cherian(R1 & 2) \_\_\_\_\_ Advocate for the Respondent (s)

CORAM : Mr.N.N.Sugunapalan,SCGSC (R3)

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? N
3. Whether their Lordships wish to see the fair copy of the Judgement ? N
4. To be circulated to all Benches of the Tribunal ? N

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 23.1.91 the two applicants who are ex-servicemen re-employed in the Southern Railway have prayed that the respondents be directed to re-fix their pay with effect from the date of their re-employment ignoring their pension and other retirement benefits with protection of their last pay ignoring their pension. The first applicant was re-employed on 20.4.1978 under the 1st respondent as Clerk in the scale of Rs.260-400. Before his re-employment he had served in the Air Force from 1961 to 1976. At the time of his retirement from the Air Force his pay was Rs.450/- per month and his pension was Rs.148/-. The second applicant was re-employed on 24.2.1983 as Assistant Station Master in the Railways in the scale of Rs.330-560. Before his re-employment he was in the Air Force from 1964 to 1981. At the time of his retirement he was drawing a pay of Rs.430/- per month. Their grievance is that the last pay drawn by them in the Air Force was not protected by giving them increments in the pay scale and ignoring

the military pension.

2. The respondents have stated that as fresh entrants their initial pay was fixed at the minimum of the pay scale of the post to which they were re-employed. They had not made any representation against the fixation of their pay till 15.1.1989 when the first applicant represented. The military authorities were asked to give the details of his military service but the military authorities have informed that the pension particulars are not available with them and the same may be obtained from the Pension Disbursing Office. The first applicant submitted his Pension Payment Order on 10.11.91 and the refixation of his pay is being examined. In regard to the second applicant it is stated that he submitted an application in the prescribed form regarding fixation of his pay only in September 1987 and the respondents have initiated steps to ascertain the details of his military service from the Defence authorities. On receipt of the said details, the matter has been referred to the Headquarters' office at Madras. Respondent No.3 has stated that the first applicant at the time of his discharge from the Air Force was drawing a basic pay of Rs.450/- in the scale of Rs.420-520 and the second applicant was drawing a pay of Rs.430/- in the scale of Rs.420-520. They have stated that the pension equivalent of gratuity is to be deducted in fixing the pay of the applicants and as they were re-employed before 14.1.83 in accordance with the O.M dated 8.2.83, the pension equivalent of gratuity is to be totally ignored.

3. The question of fixation of pay of re-employed military pensioners whose part or whole of military pension had been directed by the Government to be ignored for the purpose of fixation of re-employment pay, has been under consideration of this Tribunal in a number of cases. The ignorable part of the military pension was Rs.50/- which was increased to R.125/- in 1978 and by the O.M. of 8th February, 1983 at Annexure R3(a), the total military pension including pension equivalent of gratuity was to be ignored in case of ex-servicemen below the

Commissioned Officer's rank. Normally, in accordance with Article 526 of the Civil Service Regulations and the Government of India's instructions notably the Ministry of Finance's O.M of 25.11.1958 re-employed pensioners will get their initial pay on re-employment fixed at the minimum stage of the scale of pay prescribed for the post in which he is reemployed. In cases where it is felt that the fixation of initial pay at the minimum of the prescribed pay scale will cause undue hardship(i.e. where pay plus pension is less than the pre-retirement pay), the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer had rendered before retirement in a post not lower than that in which he is reemployed. In addition to the pay as fixed the reemployed pensioner is permitted to draw separately any pension sanctioned to him provided that the total amount of initial pay as fixed above plus the gross amount of pension or pension equivalent of other forms of retirement gratuity does not exceed the last pay drawn by him before retirement. In case this limit is exceeded the reemployment pay is reduced by the amount of the excess. Simply stated it only means that the re-employment pay is adjusted so that the adjusted pay plus pension and pension equivalent of gratuity does not exceed the last pay drawn before retirement. As stated earlier in case of ex-servicemen who retired before attaining the age of 55 years part or full of their military pension is ignored for fixing their re-employment pay, i.e, the ignorable part of the pension is not added to the re-employment pay to compare the total with the last pay drawn before retirement.

4. A Larger Bench of this Tribunal in the judgment dated 13.3.90 in O.A. 3/89 etc. decided 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 (Annexures IV on OA-3/89), 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

82

issued in 1964, 1978 and 1983 (Annexures V, V-a, and VI, respectively), 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 first applicant before us was admittedly re-employed on 20.4.1978 in the scale of Rs.260-400. His military pension excluding pension equivalent of gratuity is stated to be Rs.148/- of which Rs.50/- had to be ignored till 18th July 1978 and Rs.125/- to be ignored from 19th July 1978 to 25th January, 1983 after which the entire military pension will have to be ignored vide Annexure R3(a). This Tribunal has decided in the judgment dated 31.10.89 in TAK 404/87 etc. as follows:-

"If the petitioners have opted for the O.M. of 19.7.78 and/or 8.2.83 indicating enhanced limits of ignorable pension, their re-employment pay on the date of their re-employment should be notionally fixed on the basis of the enhanced limits and their revised re-employment pay with effect from the date of issue of the O.M will be determined by giving them the benefits of notional increments over and above the notional pay so fixed on the date of their re-employment. No arrears of pay on the basis of notional pay fixation would be given for the period prior to the date of issue of the O.M. Those petitioners, if any, who have not opted for these O.Ms, should be given an opportunity to opt for the same and if they do so, their actual pay from the date of issue of the O.M, should be determined on the above lines."

Since at least from July 1978 the minimum of the pay scale of the post of Clerk, i.e, Rs.260/- to which the applicant was re-employed plus the non-ignorable part of his military pension and pension equivalent of gratuity was less than the last pay drawn of Rs.450/- by him as Sergeant , the applicant will be entitled to get his initial pay fixed at a stage higher than Rs.260/- by having one advance increment for each year of <sup>military</sup> service rendered by him equivalent or higher than that of a Clerk subject to the condition that his initial pay plus the non-ignorable part of his military pension and pension equivalent of gratuity

does not exceed Rs.450/- per month.

6. Likewise the second applicant who was re-employed from 24.2.1983 will have his entire military pension and pension equivalent of gratuity ignored for the purpose of pay fixation in the scale of Rs.330-560 as Assistant Station Master. He should thus be allowed advance increments in that scale at the rate of one increment for each year of equivalent or higher ranking military service subject to the condition that his initial pay does not exceed the last military pay of Rs.430/- per month. The arrears of revised pay fixation, however, will be admissible to the applicants for a period of three years from the date of filing of this application and thereafter. Since none of the decisions of this Tribunal, referred to above, has been set aside by the Hon'ble Supreme Court, the ratio of those decisions can be applied to the case before us also.

7. In the facts and circumstances, we allow the application with the directions to the respondents to revise the initial re-employment pay of the applicants ~~as above~~ on the lines indicated in the preceding paragraphs and pay arrears as above. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

  
A.V. Haridasan  
30.1.92

(A.V. Haridasan)  
Judicial Member

  
S.P. Mukerji  
30.1.92

(S.P. Mukerji)  
Vice Chairman

CCP-97/92 in OA-176/91

6-8-92  
(9)

Mr. Rajagopalan for petitioners.  
Mr. MC Cherian for respondents

The Learned Counsel for the respondents undertakes to file reply to the CCP within 2 weeks with a copy to the petitioner.

List for further direction

on 24.8.92

Shr.  
(SPM)

(AVH)

6-8-92

24-8-92  
(23)

None for the petitioner  
Mr. TA Rajan for respondents

The learned counsel for the respondents seeks 3 weeks' time to file a reply to the CCP. He may do so with a copy to the petitioner.

List for further direction on 23.9.92

✓  
(AVH)

✓  
(SPM)

24-8-92

23-9-92  
(18)

Mr. M Rajagopalan  
Mr. MC Cherian

At the request of the learned counsel for the respondents, he is directed either to implement the order within 4 weeks or to obtain a stay order by then failing both of which, the contemnor Shri Dharmalingam, Senior Divisional Personnel Officer, Palghat Division should appear in person to explain why proceedings under the Contempt of Courts Act be not initiated against him for non-compliance of our order dated 30.1.92 in OA-176/92.

List for further direction on 2.11.92

✓  
(AVH)

✓  
(SPM)

23-9-92

Recd. on 27/9/92  
Rao, today N  
BFS  
MRM  
Rao, today N  
25/9/92  
N.S. 2

Recd. on 27/9/92  
Rao, today N  
BFS  
MRM  
Rao, today N  
25/9/92  
N.S. 2

CP(e) 97/92

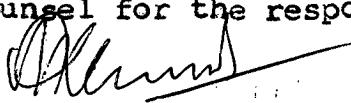
2.11.92

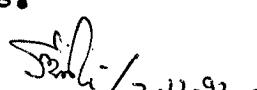
(28)

Mr. Rajagopalan for applicant  
Mr. M C Cherian-for respondents.

Shri T.P.Kelappan who, according to him, <sup>has</sup> taken over as D.P.O. Palghat Division from Shri M.Dharmalingam who was working previously as Sr.DPO, Palghat Division, appeared before us today and has filed a statement stating that he took over on 24.7.92 and thereafter he has taken expeditious action to file an SLP in this case. He has not, however, indicated the particulars of the SLP filed and admits that no stay order has been obtained from the Hon'ble Supreme Court staying our judgment dated 30.1.92 in O.A. 176/91. We make it absolutely clear that the stay order obtained in another case does <sup>not</sup> and cannot give any liberty to the <sup>alleged</sup> Contemner not to implement the judgment of the Tribunal in another case. The reason given for non-compliance of our judgment is entirely unacceptable to us. We were inclined to serve a charge of Contempt on Shri T.P.Kelappan but considering that he in the statement <sup>has</sup> stated that he shall comply with any direction of this Tribunal issued in this regard, before proceeding further we give him the last opportunity to comply with the directions in the aforesaid judgment within a period of one month from today unless <sup>before that time & expiring</sup> he obtains a stay order from the Hon'ble Supreme Court. List for further directions on 4.12.92. Shri Kelappan, DPO should appear before us on that day in case the directions remains uncomplied with and no stay is obtained.

Copy of the above order be given to the learned counsel for the respondents.

  
(AV Haridasan)

  
SP Mukerji  
2.11.92

J.M. 2. 11. 92 V.C.

(15)

Mr M Rajagopalan

M M C Cherian

A  
3/11/92  
mcsl  
order issued on  
3/11/92  
88

(15) Mr. M Rajagopalan  
Mr. MC Cherian

Learned counsel for the respondents has filed a statement enclosing copies of the orders issued in respect of the applicants in compliance of the judgment of this Tribunal. Learned counsel for the applicant challenges the statement of pay fixation indicating that the pay fixed is not in consonance with the directions of the Tribunal. Learned counsel for the respondents seeks some more time to either correct the pay fixation or to produce details of calculations of the pay fixed in compliance of the judgment of this Tribunal. He may do so within 10 days with copy to the learned counsel for the petitioner.

List for further directions on 28.12.92.

Copy by hand.

SJL

SPM

AVH

4.12.92

19.1.1993      Mr. Rajagopalan th. proxy  
                  (2d)      Mr. MC Cherian

The learned counsel for the respondents states that there was an error in the order implementing the judgment and the error has since been corrected in regard to one of the applicants. He is directed to produce the revised order and make a copy available to the learned counsel for the petitioner. List for further directions on CP(C) on 9.2.93.

ND

19.1.93

SPM

John  
Compliance statement  
filed on 4/12/93

9-2-93

-4-

(18)

Mr M Rajagopalan  
Mr TA Rajan

Respondents have filed a statement producing a copy of the order rectifying the mistake in the original order. In view of the statement, the CP(C) is closed and the notice discharged. It is made clear that if the petitioners <sup>are</sup> dissatisfied in regard to fixation of pay, it is open for them to resort to appropriate proceedings in that behalf.

  
(R Rangarajan)  
A.M.

9-2-93

  
(AV Haridasan)  
J.M.

16  
91/1  
F.O  
A2  
10/2  
m KRM