

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~

177

1991

DATE OF DECISION 15.10.1991

T. Manikunju & Applicant (s)
K Anandan Nair

Mr. MR Rajendran Nair Advocate for the Applicant (s)

Versus

Divisional Personnel Officer, Respondent (s)
Divisional Office, Personnel Branch,
Southern Railway, Thiruvananthapuram & 2 others

Smt. Sumathi Dandapani Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. A. V. Haridasan - Judicial Member

The Hon'ble Mr.

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

JUDGEMENT

The applicants who are re-employed ex-servicemen in Southern Railway have prayed that the respondents may be directed to fix their pay protecting their last pay and ignoring their pension and other retirement benefits. The facts can be briefly stated as follows.

2. The first applicant after serving the Indian Air Force for 15 years from 16.10.1963 to 31.10.1978 retired earning a monthly pension of Rs.153/- and got re-employed as a Commercial clerk in the Southern Railway with effect from 26.11.1981 in the scale of pay of Rs.260-430. At the time of retirement from Air Force he was drawing a basic pay of Rs.368/- per ..

...2/-


month. The second applicant after serving 16 years in the Army retired on 27.11.1979 and got reemployed as a Commercial Clerk in the Southern Railway in the scale of Rs.260-430 on 30.12.1981. His salary on the date of his retirement from Army was Rs.317.50/- and an Army service pension of Rs.175/- was granted to him. Both the applicants made representations to the respondents claiming fixation of their pay protecting the last pay drawn by them ignoring the pension and retirement benefits. The applicants ~~xxx~~ were informed that they would be given pay fixation only if the fixation of their pay in the minimum of the scale worked out undue hardship to them. The applicants have averred in the application that ex-servicemen re-employed in service are entitled to have their pay fixed protecting their last drawn pay ignoring the pension and other retirement benefits and that the stand of the respondents that the benefit of the fixation would be given only if there is undue hardship i.e. only if the total amount of pay in the minimum of the scale and the gross pension fell lower than the last drawn pay by the incumbent while in defence service is against the rules and instructions and also is against the decision of the Tribunal in OA 3/89. The applicants therefore pray that the respondents may be directed to fix their re-employment pay protecting their last drawn pay ignoring their pension and other retirement

benefits.

3. In the reply statement the respondents have contended that as the first applicant was getting Rs.153 as pension on account of his defence service his pay at Rs.260 + Rs.155 having exceeded Rs.367/- which was his pay while he retired from defence service, ^{that} there is no hardship and therefore he is not entitled to any fixation of pay. Regarding the second applicant also it has been contended that as the second applicant was getting Rs.175/- as military pension, the total of his pension and re-employment pay at Rs.260/- having exceeded his last drawn salary of Rs.380.50 in the defence service, there is no hardship and therefore he also is not entitled to any refixation of pay. In support of this stand they have quoted the Railway Board Circulars dated 31.3.1959 and the Railway Board's letters dated 8/16.6.1983. According to the respondents as there is no hardship to the applicants since their re-employment pay in the minimum of the scale and their military pension exceeded their last drawn pay in the defence services the applicants are not entitled to refixation of pay.

4. We have heard the counsel on either side and have also gone through the pleadings and the documents produced.

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5. The learned counsel for the applicants argued that in considering the question of hardship for the purpose of fixation of pay of the ex-servicemen the ignorable portion of the pension in accordance with the instructions issued in 1964, 1978 and 1983 by the Govt. of India had to be completely ignored, and that the stand taken by the Railway Administration that the gross pension has to be added to the minimum of the pay in the re-employed post for ascertaining whether there is hardship or not is not sustainable. In this connection he invited our attention to the ruling of the Larger Bench of the Tribunal in OA 3/89 and connected cases. In the above said judgement the Larger Bench had considered the question whether ~~the last pay down~~ for deciding the hardship ignorable part of the pension should be taken into account or not while fixing the re-employ^{ment} pay of the ex-serviceman. The Full Bench has observed in that as follows:

"a) 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 in 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 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

...5/-

drawn by the re-employed ex-servicemen."

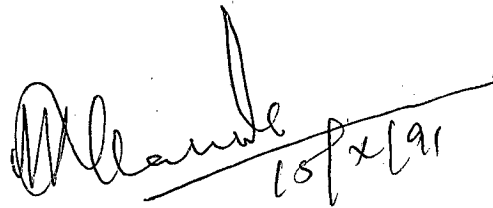
We are in respectful agreement with the above conclusion of the Larger Bench and ~~we~~ also bound to follow the same. In a case similar to this, DA 1159/90 filed by other Railway employees working in the Southern Railways identical question was considered by this Bench of the Tribunal and by the judgement dated 30.8.1991 this Bench has following the conclusion of the Full Bench directed that, if the minimum of the pay scale on re-employment of the re-employment post plus the non-ignorable portion of the pension and pension equivalent of gratuity in the case of the applicants therein were less than their last drawn pay in the defence Forces, the applicants should be allowed one increment for each year of service in the military post equivalent in the re-employment post from the date of their re-employment. It was also directed that arrears of revised pay with allowances should also be disbursed to them. The applicants herein are identically situated as in the applicants in DA 1159/90 and the ratio of the above decision applies to the facts in this case.

6. In the result, the application is allowed.

The respondents are directed to refix the pay of the applicants 1 and 2 in their re-employed post, giving them one increment for each year of service in the defence forces in posts equivalent or to higher than

the re-employment post if the minimum of the pay scale of the re-employment post plus the non-ignorable part of their military pension and pension equivalent of the gratuity are less than the last drawn pay of the applicants in the defence service to make up the difference. Arrears of the revised pay with allowances also be disbursed to the applicants. Action on the above lines should be completed within a period of three months from the date of communication of this order.

7. There is no order as to costs.

A handwritten signature in dark ink, appearing to read 'A.V. Haridasan', is written over a horizontal line. To the right of the signature, the date '15/10/91' is handwritten.

(A.V. HARIDASAN)
JUDICIAL MEMBER
15.10.1991