

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 179 of 1993.

DATE OF DECISION 30-3-1993

V N Somasekhara Panicker & Applicant (s)
21 others

Mr M Rajagopalan Advocate for the Applicant (s)

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

Mr PS Krishna Pillai, ACGSC Advocate for the Respondent (s) 1-6

CORAM :

The Hon'ble Mr. AV Haridasan, Judicial Member
and

The Hon'ble Mr. R Rangarajan, Administrative 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

Mr R Rangarajan, A.M.

Admittedly, this case is covered by the Full Bench decision of this Tribunal in TAK 732/87 and connected cases.

2 The applicants numbering twenty two are all ex-servicemen re-employed in Vikram Sarabhai Space Centre, Trivandrum except applicant No.18 who is re-employed in the Office of Defence Pension Disbursing Officer, Trivandrum. They are aggrieved by the denial of relief on military pension.

3 All the applicants have been retired from military service on various dates and got re-employment in the aforesaid departments after 25.1.83. They were all working below the rank of commissioned

commissioned officers in military service and retired before attaining the age of 55. They were denied relief on military pension from the date of their re-employment. Learned counsel for the applicants submitted that since they are ex-servicemen who retired before getting promotion as Commissioned Officers, their case is covered by the orders issued in this behalf for ignoring the pension drawn by the applicants in the matter of fixation of pay in the re-employed post as per Annexure A-1. As the relief on the ignorable part of the pension was not paid to them, they approached this Tribunal under Section 19 of the Administrative Tribunal Act of 1985 seeking the following reliefs:-

- "(a) To direct the respondents to pay the relief payable to the applicants on their military pension, during the period of their employment.
- (b) To direct the respondents to return the entire pension relief of the applicants suspended so far."

4 When the case was admitted, we directed respondents to file reply statement if any, before 16.3.93.

5 When the case was taken up to-day for final hearing, learned counsel for the respondents prayed that he may be given further time to file reply statement. But he has no case that the case of the applicants are distinguishable and is not covered by the Full Bench decision of the Tribunal in TAK 732/87 and connected cases. But he submitted that an SLP has been filed against the Full Bench decision of the Tribunal and the Supreme Court

has stayed that decision. The learned counsel for the respondents submitted that as identical questions are considered in similar cases he may be allowed to argue on the same line though reply statement was not filed. The contention of the respondents is that as the re-employed ex-servicemen are already getting relief in their re-employment pay, to grant them relief on pension will result in double benefit which is not intended and that is why instructions are issued by the Government not to pay relief on the ignorable part of the pension. Similar question came up for consideration in the larger Bench of the Tribunal in TAK 732/87 and the Tribunal held that if pension is ignored wholly or in part the relief on pension which is an adjunct part of that pension should also be ignored for all purposes. It was therefore held that re-employed ex-servicemen are entitled to receive the relief on their ignorable part of the military pension during re-employment.

6. We have considered similar contentions in a number of cases and allowed such cases following the judgement of the Full Bench of this Tribunal in TAK 732/87. Respondents have no case that the judgement of this Tribunal has either been reversed or set aside by the Supreme Court so far. Similar question was considered in OA 270/92 and held as follows:

"In those cases the issue before the Full Bench was whether the judgement delivered by another Full Bench in Rasila Ram's case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an SLP filed by the Govt. remains valid as a binding precedent or whether the interim order passed by the Supreme Court nullified the judgement of the Full Bench or its effect was to be confined only in respect of the judgement pronounced in the case of Rasila Ram.

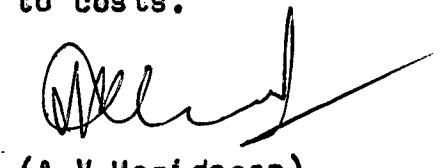
contd..

The Full Bench observed that the interim order passed by the Supreme Court in the SLP in Rasila Ram's case not being a speaking order does not make any declaration of law and "consequently it is not a binding order under Article 141 of the Constitution". The Full Bench further observed that until the decision of the Full Bench in Rasila Ram's case is set aside, reversed or modified by the Supreme Court, it remains effective. In view of the unambiguous finding of the Full Bench of the Tribunal, we have no hesitation in following the dicta of the Full Bench judgements of this Bench in this case also so long as those judgements are not set aside, modified or reversed by the Hon'ble Supreme Court."

7. We are satisfied that interest of justice will be met if we follow the Full Bench decision of this Tribunal in this case also. Accordingly, we declare that the applicants are entitled to relief on the ignorable part of the military pension during the period of their re-employment. We also declare that the same should be restored to them during the period of their re-employment and the amount withheld/suspended should be paid back to them within a period of three months from the date of communication of this judgement.

8. There will be no order as to costs.


(R. Rangarajan)
Administrative Member


(A.V. Haridasan)
Judicial Member

30.3.93