

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. O.A.183/90 199-
T.A. No.

DATE OF DECISION 31.8.90

M.T.Abraham _____ Applicant (s)

Mr. M.Rajagopalan _____ Advocate for the Applicant (s)

Versus

Divisional Manager, Southern _____ Respondent (s)
Railway, Trivandrum & 2 others.

Mrs. Sumathi Dandapani _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji, Vice Chairman

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

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 3.3.90, the applicant who is an ex-serviceman re-employed as Senior Commercial Clerk in the Southern Railway, has prayed that his re-employment pay in the scale of Rs. 260-430 should be re-fixed with effect from the date of his re-employment, i.e. 13.4.83, by giving him 15 increments ignoring his entire military pension. The brief facts of the case are as follows:

2. The applicant after rendering 21 years of service in the Air Force retired therefrom on 31.7.81 with a military pension of Rs. 273/- per month. The last pay drawn by him was Rs.445/-. Subsequently, he was re-employed as Commercial Clerk in the scale of Rs. 260-430 on 13.4.83. On the basis of the relevant orders, the entire military pension of a re-employed ex-serviceman who retired from the Defence

Services before attaining the age of 55 years was to be ignored. The instructions further provided that such re-employed ex-serviceman, on re-employment, should be given the minimum of the pay scale of the re-employment post, but in case of hardship, he can be given advance increments at the rate of one increment for each year of equivalent service in the Defence Service in posts equivalent to the post to which he is re-employed. Still further, it was clarified that the case can be deemed to be of hardship where the minimum of the pay scale of the re-employment post plus the military pension including the ignorable part of the pension is less than the last pay drawn. Based on these instructions, it appears that the respondents fixed the pay of the applicant vide the order dated 10.12.87 at Rs.390/- in the scale of Rs. 260-430 with effect from 13.4.83 by giving him 15 increments on the basis of his equivalent service in the Air Force. While doing so, they had ignored the entire amount of the military pension. However, he was not granted these advance increments on the ground that his pay at the minimum of the pay scale, i.e. Rs. 260, plus his military pension without ignoring the same was not less than the last pay drawn in the Air Force. The applicant's claim is that since he was re-employed on 13.4.83 and the orders ignoring the entire amount of military pension for non-commissioned ex-servicemen like him had been issued on 8.2.83, his entire military pension should have been ignored for reckoning hardship or comparing his emoluments on re-employment including the military pension with the last pay drawn by him in the Air Force. He has also referred to a number of decisions taken on this issue by the Tribunal by which the ignorable part of the pension has been declared to be ignored for all purposes of pay fixation including reckoning of hardship for the purpose of giving advance increments.

3. The respondents have stated that the Railway Board had clarified that even ignorable part of the pension has to be taken into account for reckoning undue hardship. They, however, conceded that those who were re-employed before 30.6.86 will be governed by the hardship clause but for others who were re-employed after that date, the question

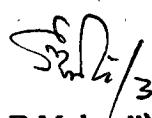
of hardship for grant of advance increments would not arise. They have conceded that the applicant was granted, at the time of his re-employment, initial pay of Rs. 390/- with advance increments on the basis of the number of years of equivalent service rendered by him in the Defence Forces, but the same ~~had~~ to be corrected ~~as~~ there was no hardship. They have also argued that since the applicant has not challenged within one year ~~of~~ the order by which he is aggrieved, his application is time barred.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since reduction of pay is a recurring grievance, we do not find this application to be time barred. As regards ignoring the military pension for the purpose of giving advance increments in case of hardship, this matter was considered by a Larger Bench of this Tribunal in OA 3/89 and other cases. By a common judgement dated 13.3.90, the Larger Bench 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 (Annexure 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 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. In view of the above finding of the Larger Bench, we allow this application, set aside the impugned order dated 21.4.88 at Annexure-A4, and direct that the ~~applicant's~~ re-employment pay as fixed vide the memorandum dated 10.12.87 (Annexure-A3) should be granted to him with effect from the date of his re-employment. Arrears of pay and allowances should be made good to him within a period of three months from the date of communication of this order. There will be no order as to costs.


(N. Dharmadan) 31.8.90
Judicial Member


S.P. Mukerji
31.8.90
Vice Chairman