

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 19 of 1993.

DATE OF DECISION 22-2-1993

Mr J Gopinathan & 6 others Applicant (s)

Mr M Rajagopalan Advocate for the Applicant (s)

Versus

UOI represented by Secretary, Respondent (s)
M/o Defence, New Delhi & 5 others

Mr MVS Nampoothiri, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

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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?

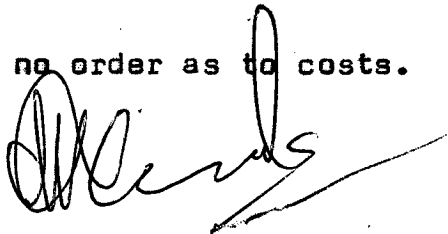
JUDGEMENT

The grievance of the applicants 7 in number who are Ex-Servicemen re-employed in the Naval Physical Oceanographic Laboratory (NPOL) under the Ministry of Defence is that even after the declaration by the Larger Bench of this Tribunal in TAK-732/87, that when pension is ignored wholly or in part the relief on the ignorable part of the pension shall not be withheld or suspended during the currency of re-employment, the respondents are going on denying to the applicants the relief on the ignorable part of their Military Pension. All the applicants retired from Military service before attaining the age of 55 years and while ~~xxxxxx~~ serving below the ^{rank of} commissioned

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officers. According to the instructions contained in the various memorandum of the Ministry of Defence, the pay of the re-employed ex-Servicemen were to be fixed ignoring upto Rs.50/- till July 1978, upto Rs.125/- till 25.1.1983 and the entire pension in the case of persons below the rank of commissioned officers after 25.1.1983. According to the dictum of the Larger Bench in TAK-732/87 the pension either, whole or in part according to the status of the official and applicability of the instructions depending on the date of their re-employment is ignored, ^{relatable to the ignorable part of the} the relief and adhoc relief/pension shall not be withheld or suspended during the currency of re-employment. The learned counsel for the respondents argued that since the decision of the Larger Bench in TAK-732/87 is under appeal before the Hon'ble Supreme Court and since the Hon'ble Supreme Court has stayed the operation of the order in that case, the above ruling cannot be followed. I do not agree with this argument. The effect of granting a stay of the operation of the order in TAK-732/87 does not amount to overruling the decision. ~~xxxxxx~~
~~xxxxxx~~ The effect is only that the parties to the above application cannot enforce the relief granted therein till the stay is vacated. It does not preclude the Tribunal from following the dictum. On an anxious consideration of the rules position and the contentions raised, I am in respectful agreement with the dictum laid down by the Larger Bench in TAK-732/87. Therefore I am of the view that the applicants are entitled to get the relief which they have sought in this application.

2. In the result the application is allowed in part. I declared that the applicants are entitled to get the relief on the ignorable part of their Military Pension along with the pension during the period of their re-employment ~~xxx~~ and I direct the respondents to disburse to the applicants the relief on the ignorable part of their Military Pension so far withheld or suspended, within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.



(AV HARIDASAN)
JUDICIAL MEMBER
22-2-1993

trs