

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 185 of 1996

Monday, this the 11th day of August, 1997

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. M.V. Kuriakose,  
Menachery House,  
Koonamavu, Ernakulam Dist. . . . . Applicant

By Advocate Mr. M. Rajagopalan

Versus

1. Chief General Manager,  
Telecommunication,  
Trivandrum.

2. Defence Pension Disbursing Officer,  
Temple Road, Cochin-20

3. Union of India represented by  
the Secretary,  
Ministry of Defence, New Delhi. . . . Respondents

By Advocate Mr. Varghese P Thomas, ACGSC

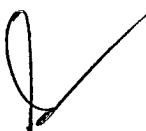
The application having been heard on 11.8.1997,  
the Tribunal on the same day delivered the  
following:

O R D E R

The applicant seeks to quash A-3 order dated  
22-5-1995 and A-5 order dated 1-12-1995 and also to  
declare that the 1st respondent has no authority to  
recover the pension relief paid to him.

2. The applicant is an ex-serviceman. He was  
discharged from the Army on 31-10-1979 and was drawing  
his military pension from the 2nd respondent. Subsequently,  
he was re-employed in the Telecommunication Department

contd...2.



with effect from 8-9-1983 under the 1st respondent. Just before his superannuation on 30-9-1995, as per A-3, he was informed that his pension relief already paid so far will be recovered from him by the 1st respondent.

3. A reply statement has been filed, verified and signed by the Sub Divisional Engineer (Legal), Telecom, Ernakulam, purporting to be the reply statement jointly filed by respondents 1 and 3. In the said reply statement it is stated thus:

"I am filing this reply statement for and on behalf of respondents 1 and 3 as I am duly authorised for the same".

The learned counsel appearing for the respondents submitted that though such a statement is made in the reply statement, in fact, there is no authorisation for filing a reply statement on behalf of the 3rd respondent. So, the position is that there is no reply statement filed by respondents 2 and 3.

4. The stand taken by the 1st respondent in the reply statement is that the Apex Court by its judgment in Civil Appeal No.3543/1990 and in connected cases decided that the ex-servicemen who are re-employed are not entitled to get dearness relief on pension from the date of their re-employment and hence, the total amount of dearness relief paid to the applicant from the date of his re-employment, as intimated by Defence Pension Disbursing Officer, Ernakulam to the Accounts Officer, Office of the General Manager Telecom, Ernakulam, was recovered from the official as directed by the Chief General Manager Telecom,

contd...3.

Trivandrum. Copy of letter dated 26-9-1995 of the Defence Pension Disbursing Officer, Ernakulam addressed to the Accounts Officer, Office of the General Manager Telecom, Ernakulam is produced as R-1. R-1 is in pursuance of a communication addressed by the Accounts Officer, Office of the General Manager Telecom, Ernakulam to the Defence Pension Disbursing Officer, Ernakulam. Copy of that communication is not produced. There is no case for the 1st respondent that dearness relief on pension was paid to the applicant by the 1st respondent. It is the undisputed fact that the dearness relief on pension to the applicant was paid by respondents 2 and 3. Under such circumstances, it is not known under what authority the Accounts Officer, Office of the General Manager Telecom, Ernakulam addressed the Defence Pension Disbursing Officer, the 2nd respondent, for the purpose of recovery of dearness relief paid to the applicant. Since admittedly dearness relief on pension is paid to the applicant by respondents 2 and 3, if the question of recovery of the same arises, the right is only for respondents 2 and 3 and not for the 1st respondent.

5. A-3 dated 22-5-1995 is an order fixing the pay of the applicant, an ex-serviceman, who is re-employed under the 1st respondent with effect from 8-9-1983 in the scale of Rs.196-232. It is not known what prompted the 1st respondent to issue A-3 order on 22-5-1995 when the applicant was re-employed under the 1st respondent with effect from 8-9-1983. There could not have been payment of the pay of the applicant unless his pay was fixed in accordance with rules immediately on his re-employment

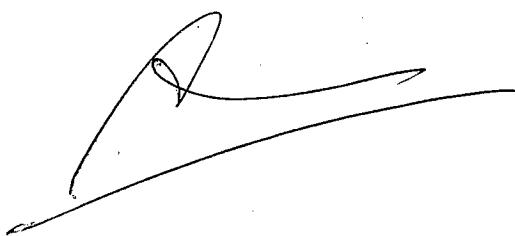
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under the 1st respondent. Even as per A-3, his pay is fixed only at the minimum.

6. As per A-5 dated 1-12-1995 an amount of Rs.20116/- has been recovered from the leave encashment of the applicant by the 1st respondent. As already stated, the 1st respondent has no authority to do so.

7. Accordingly, the original application is allowed, quashing A-3 and A-5 orders. It is declared that the 1st respondent has no authority to recover the pension relief paid to the applicant. The 1st respondent is directed to pay the leave encashment recovered from the applicant within two months from today. This will not stand in the way of respondents 2 and 3 to recover the dearness relief paid by them to the applicant, if the same is legally recoverable from him. No costs.

Dated the 11th of August, 1997



A.M. SIVADAS  
JUDICIAL MEMBER

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LIST OF ANNEXURES

1. Annexure A3: (Impugned Order) : A true copy of the Order No.AP/90-1235/93 dated at Trivandrum-33, the 22.5.95 served on the applicant on 25.9.1995.
2. Annexure A5: True copy of the order No.EII/2/40/MVK/22 dated 1.12.95 of the Telecommunication Department.
3. Annexure R1: The copy of the letter No.DP00/EKM/T5-4664/ALY dated 26.9.95 of Defence Pension Disbursing Officer, Ernakulam addressed to Accounts Officer(Estt.), Office of the General Manager, Telecom, Ernakulam.

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