

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.189/2001.

Thursday this the 18th day of April 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

K.S.Sivan, Security Guard,
Cochin Economic Processing Zone,
Kakkanad.

Applicant

(By Advocate Shri T.C.Govindaswamy)

Vs.

1. Union of India, represented by
the Secretary to the Government of India,
Ministry of Defence, New Delhi.
2. The Secretary to the Government of India,
Ministry of Finance, New Delhi.
3. The Controller of Defence Accounts,
(Pension), Allahabad. Respondents

(By Advocate Smt.S.Chitra, ACGSC)

The application having been heard on 18th April 2002
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant is a re-employed Ex-serviceman. When relief on defence pension was denied to the applicant during reemployment the applicant along with eight others filed O.A.1813/92 for a direction to the respondents to pay to the applicant the relief on pension. That O.A. was disposed of with the following directions:


"In the light of what has been discussed above, I allow the application with the direction to the respondents that the relief including adhoc relief relating to the ignorable part of the Military pension of the applicants shall not be suspended or withheld during the period of re-employment and any amount so withheld shall be paid to them with retrospective effect from the date of their re-employment. Action of the above lines should be completed within a period of three months from the date of communication of a copy of this judgement."

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2. On the basis of the above direction the relief on pension was paid to the applicant. As the respondents did not file any appeal against the above order, the order became final and binding between the parties. While so, in the year 1996, the respondents started recovering relief on defence pension paid to the applicant and stopped payment of relief thereafter. The applicant has therefore, filed this application for a declaration that the recovery of relief on pension paid to the applicant in terms of Annexure A1 is arbitrary, discriminatory and unconstitutional and that the refusal on the part of the respondents to continue to pay the relief on pension as directed in Annexure A1, is arbitrary and illegal and for a direction to the respondents to refund the amount of defence pension/relief on pension hitherto with-held/recovered (on account of payment of relief on pension), with 12% interest to be calculated from the date of such deduction/recovery and to continue to pay the relief on pension in terms of Annexure A-1 during the period of the applicant's reemployment.

3. The respondents seek to justify the impugned action on the ground that the Hon'ble Supreme Court has in its judgement dated 8.12.94 (Annexure R-1) held that denial of Dearness Relief on pension/family pension to re-employed Ex-servicemen during reemployment is justified. The recovery as also the stoppage is perfectly in order, contend the respondents.

4. I have heard the learned counsel on either side and perused the material placed on record. The fact that the respondents have not filed any appeal against Annexure A-1 and the same has become final between the parties, is not in dispute.



In identical circumstances, nine applicants filed O.A.989/98 challenging the recovery as also stoppage of payment of Dearness relief to the re-employed Ex-servicemen. The Bench considered the rival contentions and held as follows.

I have heard the learned counsel on either side and have perused the pleadings as also the other materials placed on record. That the applicants were paid relief on defence pension during the currency of their employment on the basis of the judgements interparties ie., in OAs, 1813/92, 52/92 and 1815/91 and that the respondents have not filed any appeal against these orders are facts not disputed. A subsequent ruling of the Apex Court in a similar case in a different way would not affect the binding nature of the judgment interparties which has not been appealed against and they became final. This position is well settled. But since the Apex court has in Union of India Vs. G.Vasudevan Pillai declared the law that the denial of relief on defence pension to re-employed ex-servicemen is justified, the respondents cannot be faulted for not making payment of relief on defence pension to the re-employed ex-servicemen including the applicants from the date of judgement of the Apex Court till they remain re-employed in Government. However, there is no justification to recover payments made to the applicants on the basis of judgements interparties which has become final having not been appealed against. This Bench of the Tribunal has taken the above view in O.A.1114/97 and this was followed in the order in O.A.623/98. I therefore, do not find any reason to deviate from the view taken in these two cases. However, as the reliefs as prayed for in this application cannot be granted to the applicant in view of the fact that the Apex Court has declared that the denial of relief on defence pension to the reemployed ex-servicemen is justified. As stated supra the respondents are justified in denying the payment of relief on defence pension to the applicants from the date of judgment of the Apex court in Vasudevan Pillai's case because the law laid down in that case is binding on all Courts under Article 141 of the Constitution. However, since the respondents have not filed any appeal against the three judgements copies of which are Annexures A1, A2 and A3, the action on the part of the respondents to recover the relief on defence pension paid to the applicants on the basis of the above judgements cannot be sustained."

5. On the basis of the above discussion, the O.A.989/98 was disposed of with the following declarations and directions.

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- (a) The action on the part of the respondents to recover the relief on defence pension paid to the applicants on the basis of the judgments in OAs. 1815/91, 1813/92 and 52/92 which has become final is unjustified and the respondents are directed not to make any recovery from the pay or pension of the applicants on the ground of payment of relief on pension made to them on the basis of those judgments.
- (b) If any amount has been recovered from the applicants, the same shall be refunded to them within a period of two months from the date of receipt of a copy of this order.
- (c) The prayer for declaration that the applicants are entitled to receive the relief on defence pension continuously is not granted.
- (d) No order as to costs."

6. Since the facts and circumstances of the case are identical, this O.A. is disposed of following the ruling in O.A.989/98 declaring that the recovery of relief on pension paid to the applicant in terms of A-1 is arbitrary, discriminatory and illegal and directing the respondents to refund to the applicant the defence pension/relief on pension which was already paid to him on the basis of A-1 judgement and recovered from his pension and reliefs within a period of two months from the date of receipt of a copy of this order. Since the Apex court has laid down the law that the denial of relief on pension to Ex-servicemen during reemployment is justified, the applicant is not entitled to the relief of a direction to the respondents to continue to give the relief on pension in terms of A-1 order. However, the respondents shall continue to pay the relief on pension to the applicant w.e.f. 18.7.97 in terms of Annexure R-2. No costs.

Dated the 18th April, 2002.


A.V. HARIDASAN
VICE CHAIRMAN

A P P E N D I X

Applicant's Annexures:

1. A-1: A true copy of the order in OA No.1813/92 rendered by this Hon'ble Tribunal dt.18.12.92.
2. A-2: True copy of the order in S.No.989/98 dated 27.4.2000 passed by this Hon'ble Tribunal.
3. A-3: True copy of the representation dated 25.5.2000 submitted by the applicant to the 3rd respondent.

Respondents' Annexures:

1. R-1: True copy of the judgement of the Supreme Court dated 8.12.94.
2. R-2: True copy of notification issued by Govt. of India, Dept. of Pension & PW O.M.No.45/73/97 - P & PW dated 2.7.99.
3. R-3: True copy of the Govt. of India, Ministry of Defence letter No.7(1)/95/D/(Pen/SERS) dated 30.11.2000.

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