

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 195 of 199 3.

DATE OF DECISION 29.4.1993

Ramakrishnan and 4 others Applicant (s)

Mr. TCG Swamy rep. Sivan Pillai Advocate for the Applicant (s)

Versus

Union of India through Secre Respondent (s)  
tary to Govt. Ministry of Personnel, Public  
Grievances and others

Mr. M. Gopalan, ACGSC (R.1-3) Advocate for the Respondent (s)  
Mr. Shefiq rep. TPM Ibrahim Khan for R.4.

CORAM :

The Hon'ble Mr. N. DHARMADAN, 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

All the applicants in this case are Ex-service-men who were discharged from the military service before getting promotion as Commissioned Officers and attaining the age of 55 years. After their discharge they have been re-employed in the Southern Railway at Palghat Divn. They were getting their pension from the military even after discharge but in fixing their salary in the re-employed post on the basis of the Government Orders issued in this behalf, they are entitled to get the full salary after ignoring the relief on pension and the ignorable part thereof. They have relied on the Full Bench decision of this Tribunal in T.A.K.732/87 in support of their claim. Annexure-I is the Government Order on which the applicants place reliance.

2. Since the applicants were not given the benefit of the Government Order as interpreted by this Tribunal in T.A.K.732/87, they have approached this Tribunal by filing the O.A. with an M.P. 238/93 permitting to join together and prosecute this matter. That M.P. has been allowed after hearing both parties. In this application they have prayed for the following reliefs:-

- "(a) To declare that the applicants are entitled to receive relief/adhoc relief on the ignorable part of their military pension from the date of their employment in the Railways/Department.
- (b) To direct the respondents to refund the dearness relief/adhoc relief so withheld/recovered so far from their date of re-employment and to continue payment of the dearness relief/adhoc relief etc. on the ignorable part of the pension.
- (c) To issue such other orders or directions as deemed fit and necessary by this Hon'ble Tribunal in the facts and circumstances of this case."

3. The application was admitted on 4.2.93 after hearing the learned counsel for both parties. Even after a number of postings, the respondents 1 to 3 have not filed any reply. The 4th respondent has filed a reply statement.

4. The learned counsel for the applicant submitted that this case is squarely covered by the judgment of this Tribunal in T.A.K.732/87. The respondents have no case that the facts of this case are distinguishable and a different view can be taken. Under these circumstances, I am of the view that this application can be allowed following the law laid down by the Full Bench of this Tribunal in T.A.K.732/87. The operative portion of the judgment is extracted below:-

"Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed ex-servicemen who retired from military service before attaining the age of 55 years, the relief including adhoc relief, relatable to the ignorable part of the pension cannot be suspended, withheld or recovered so long as the dearness allowance received by such re-employed pensioner has been determined on the basis of pay which has been reckoned without consideration of the ignorable part of the pension. The impugned orders viz. O.M.No.F.22(87-EV(A)/75 dated 13.2.1976, O.M.No.F.10(26)-B/(TR)/76 dated 29.12.76, O.M.No.F.13(8)/EV(A)/76 dated 11.2.77 and O.M.No.M.23013/152/79/MF/CGA/VI(Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines."

5. In a number of similar cases, we have taken the view that so long as the law laid down by the Full Bench has not been set aside or modified by the Supreme Court, this Tribunal is bound by the decision in T.A.K. 732/87.

6. In this view of the matter, I allow this application and direct the respondents to pay the applicants pension relief ~~while disbursing their salary~~ <sup>Military pension</sup> while disbursing their ~~salary~~ <sup>their</sup> in terms of Annexure-I order as interpreted by the Full Bench in T.A.K. 732/87. I further direct that the respondents shall disburse to the applicants the pension relief already suspended or recovered ~~while disbursing their salary~~ <sup>up to this date</sup> <sup>their</sup> <sup>4</sup> <sup>4</sup> <sup>military pension</sup> prior to filing this O.A. This shall be done within a period of three months from the date of communication of a copy of this judgment. There is no order as to costs.

  
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(N.DHARMADAN)  
JUDICIAL MEMBER  
29.4.93

5. In this view of the matter, I allow this application and direct the respondents to pay the applicants pension relief while disbursing their Military Pension in terms of Annexure-I order as interpreted by the Full Bench in T.A.K.

732/87. I further direct that the respondents shall disburse to the applicants the pension relief already suspended or recovered when they disburse their Military pension up to this date. This shall be done within a period of three months from the date of communication of a copy of this judgement. There is no order as to costs.

Corrections  
carried out as  
per order dated  
19-7-93 in MP No.  
1125/93.

Sd/-  
Member

Sd/-  
(N.DHARMA DAN)  
JUDICIAL MEMBER  
29-4-93