

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 199 of 1996

Tuesday, this the 29th day of April, 1997

CORAM

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

1. S.K. Narayanan,
S/o Kannan Nair,
Telephone Operator,
Telephone Auto Exchange,
Telephone Bhavan, Kannur
(A/D-85, Annayidukcum Thana,
Kannur). .. Applicant

By Advocate Mr. E.V. Nayanar

Versus

1. Union of India represented by
Secretary to Government of India,
Ministry of Communications,
New Delhi.
2. The Chief General Manager,
Telecom, Kerala Circle,
Trivandrum.
3. The General Manager,
Telecom District, Kannur. .. Respondents


By Advocate Mr. George Joseph, ACGSC

The application having been heard on 29.4.1997,
the Tribunal on the same day delivered the
following:

ORDER

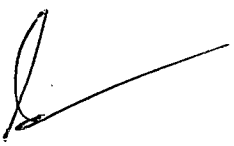
The applicant seeks to declare that the fixation of his pay as per A1 order is in accordance with the then existing rules and the same is not liable to be varied to his detriment, and to quash A-13 order and to direct the respondents to continue payment of salary to him as per A-1 and A-11 orders and also to disburse the arrears of pay and allowances withheld as per A-3, A-4, A-8 and A-13 orders.

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2. The applicant retired from Air Force after serving 15 years and 9 months on 14-10-1981. He was working in the category of Sergeant as Telest Radio Telephone Operator which had been equated to the category of Monitor (Telephone) and Supervisor (Telephone) in civil post. His basic pay was Rs.324/- while serving in the Air Force. He was re-employed in the Telecommunication Department with effect from 2-5-1983 as Telephone Operator in the scale of pay of Rs.260-480. On such re-employment he was entitled to have his pay fixed by granting 15 additional increments subject however that the pay thus fixed should not exceed the basic pay last drawn or the next stage thereof. As per order dated 18-10-1985 issued by the Department of Telecommunication, the applicant was informed that his pay was fixed at Rs.332/- with date of next increment on 1-5-1984 (A-1). As per A-2, his pay was refixed with effect from 1-1-1986 at Rs.1210/- with date of increment raising his pay to Rs.1240/- as on 1-5-1986. As per A-3 dated 25-1-1988, behind the back of the applicant, his pay was fixed as on 2-5-1983 at Rs.260/- in the scale of Rs.260-480. Based on A-3, A-4 order was issued by the 3rd respondent fixing the pay of the applicant at Rs.260/- with effect from 2-5-1983. The applicant submitted A-5 representation to the 2nd respondent against A-3 and A-4 orders. Another representation (A-7) was also made by the applicant to the 3rd respondent. As per A-8, A-7 representation was rejected. The applicant filed O.A. No.618/94 before this Tribunal since his grievances were not redressed by the department in spite of

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several representations submitted. As per order dated 2-9-1994 this Tribunal allowed the OA quashing A-3, A-4 and A-8 orders in the said OA and directed the department to consider any representation that may be made by the applicant without being influenced by the stand taken by them in the reply statement in the OA and to dispose of representation in accordance with law within a period of four months from the date of receipt of the representation. Subsequently, A-11 order was passed by the department refixing the pay of the applicant. Since it was stated in A-11 that the fixation is only provisional and subject to final orders to be passed, the applicant submitted A-12 representation. As per A-13, the pay of the applicant was refixed to his detriment. From a reading of A-13 it is seen that no reason is stated how the fixation of the pay of the applicant detrimental to his interests was reached.

3. In the reply statement the stand taken by the respondents is that re-fixation of pay as per A-13 was done and communicated to the applicant only after considering the representation of the applicant and that it was done in conformity with the orders of this Tribunal in OA No. 618/94.

4. A-11 order about which the applicant has no grievance was passed in pursuance of the order in O.A. No.618/94 of this Bench. Though in A-11 it is stated that it is only provisional, in A-13 which is the final order no reason is stated how the pay of the applicant is fixed at a lower rate than shown in A-11. The reply

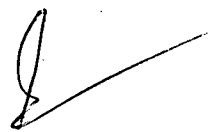
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statement also does not contain on what basis the pay has been fixed at a lesser rate as per A-13 compared to A-11. But, what is stated in the reply statement is that it was so done after considering the representation of the applicant. Neither from A-13, nor from the reply statement it is possible to decipher what sort of consideration was made by the respondents in arriving at the fixation of pay of the applicant as per A-13. I am at a loss to understand on what reason and on what basis or based on what provision of rule it has been done. A-1 dated 15-11-1985 says that the President of India was pleased to decide that the pay of the applicant on his re-employment on 2-5-1983 as Telephone Operator in the scale of Rs.260-480 be fixed at Rs.332/- with date of next increment on 1-5-1984 if otherwise admissible under normal rules and the same has been given a go by as per A-13 without assigning any reason by an authority who is much lower than the authority who decided that the pay of the applicant be fixed at Rs.332/- as on 2-5-1983.

5. Learned counsel appearing for the applicant submitted that an identical issue was decided by this Bench of the Tribunal in OA No. 3/89 and connected cases. On going through the same it is seen that the question involved herein is identical to the question involved in OA No.3/89 and connected cases. Against the order in OA No.3/89 and connected cases the matter was taken up before the Apex Court by filing a Special Leave Petition by the department and the Apex Court as per judgment in

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Civil Appeal Nos.4077-78 of 1992 dismissed the appeals. In Civil Appeal Nos.4077-78 of 1992 the Apex Court has held that:

"The subsequent orders issued in 1978 and 1983 were supplementary in nature and did have a binding force. Under these circumstances, the Government could not have, under the guise of a clarificatory order, taken away the right which had accrued to such re-employed pensioners with retrospective effect by declaring that while considering hardship the last pay drawn at the time of retirement was to be compared with the initial pay plus pension whether ignorable or not. The 1985 clarificatory instructions were not only in consistent with the relevant provisions of the Civil Service Regulations and the 1978 and 1983 orders cut its effect was to supersede the said provision and the orders. The Tribunal was, therefore, right in holding the said instructions in so far as it directed to take into consideration the ignorable part of the pension also while considering hardship invalid and without any authority of law. These appeals are, therefore, dismissed".

So, the position is that the finding of the Full Bench of this Tribunal in OA No.3/89 and connected OAs has been approved by the Apex Court. The Full Bench of this Tribunal in the order in OA No.3/89 and connected OAs, it was held thus:

"(a) 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 (Annexures IV in OA No.3 of 1989), 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

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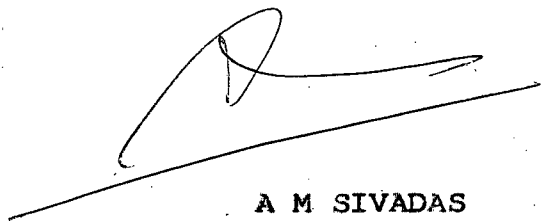
instructions issued in 1964, 1978 and 1983 (Annexures V, V-a and VI respectively), cannot be taken into account to reckon whether the minimum of the pay scale of the re-employed post plus pension is more or less than the last military pay drawn by the re-employed ex-servicemen.

(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions."

Viewed in the light of the finding in OA No.3/89 and connected cases, confirmed by the Apex Court, it is only to be held that the applicant is entitled to the reliefs prayed for.

6. Accordingly, the original application is allowed declaring that the fixation of pay of the applicant as per A-1 order is in accordance with the then existing rules and is not liable to be varied to the detriment of the applicant and quashing A-13 order and directing respondents to continue payment of salary to the applicant as per A-1 and A-11 orders and also to disburse arrears of pay and allowances withheld as per A-3, A-4, A-8 and A-13 orders. The arrears of pay and allowances due to the applicant shall be disbursed within a period of four months from today. No costs.

Dated the 29th of April, 1997



A M SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A1: True copy of the letter No.45-192/85-PAT dated 18.10.1985 issued by the 1st respondent to the applicant.
2. Annexure A2: True copy of the statement of fixation of pay dated 7.10.1986 issued by the Divisional Engineer, Telegraphs to the applicant.
3. Annexure A3: True copy of the letter No.AP/90-902/85 dated 25.1.1988 issued by the 2nd respondent to the applicant.
4. Annexure A4: True copy of the Memo No.Q-1246/35 dated 29.2.1988 issued by the 3rd respondent to the applicant.
5. Annexure A5: True copy of the representation dated 5.6.1989 submitted by the applicant to the 2nd respondent.
6. Annexure A7: True copy of the representation dated 21.1.1994 submitted by the applicant to the third respondent.
7. Annexure A8: True copy of the order No.Q-1246/63 dated 18.3.1994 issued by the 3rd respondent to the applicant.
8. Annexure A11: True copy of Memo No.OA/618/94/10 dated 11.1.1995 of the 3rd respondent to the applicant.
9. Annexure A12: True copy of representation dated 17.4.1995 of the applicant to the 3rd respondent.
10. Annexure A13: True copy of Memo No.Q-1246/76 dated 29.5.95 of the 3rd respondent issued to the applicant.

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