

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 21/1993

DATE OF DECISION :

18-6-83

K.P.George, S/o. P.T.Philip,
No.29/627 Vyttila P.O., Sinai Bhavan,
Cochin - 19. Applicant

Mr. M.Rajagopalan Advocate for applicant

V/s

1. Divisional Personnel Officer,
Divisional Officer,
Personnel Branch,
Southern Railway, Trivandrum.
2. Financial Advisor & Chief
Accountant Officers, Park Town,
Southern Railway, Madras-3.
3. Officer I/C, Records,
Air Force Record Office,
Subroto Park, New Delhi. ... Respondents

Mr.Thomas Mathew Nellimoottil ... Counsel for respondents

CORAM : The Hon'ble Mr.N.Dharmadan, Judicial Member

JUDGEMENT

MR. N.DHARMADAN, JUDICIAL MEMBER

The applicant is a re-employed Ex-serviceman. He served in the Air Force from 18.3.1961 to 31.3.1976. He was discharged from the Air Force before getting promotion to the rank of Commissioned Officer and before attaining the age of superannuation. His last pay in the Air Force was Rs.347/- (332 + 15). On his discharge from the Air Force he was getting amonthly pension of Rs.137/-. He was re-employed in the Southern Railway as a Commercial Clerk in the pay scale of Rs.260-430. On re-employment, he submitted a representation before the 1st respondent requesting him to fix his pay by protecting his last pay

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which he was receiving in the Air Force. But the 1st respondent has not taken any steps to fix his pay in accordance with the Government orders, Annexure-A2 & A3. The 1st respondent refused to give proper fixation of pay on the ground that there is no hardship. The applicant submitted that the denial of correct fixation of pay is against the law laid down by the Full Bench of this Tribunal in OA 3/89. The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 with the following prayers:-

- "(a) To direct the respondents 1 & 2 to fix the pay of the applicant, protecting his last pay, ignoring his entire pension and other retirement benefits and grant him all consequential benefits including the arrears, from the date of his re-employment.
- (b) To direct the 3rd respondent to send applicant's pay particulars to the 1st respondent, for the purpose of pay fixation.
- (c) To declare that the applicant is entitled to get his pay fixed, protecting his last pay, ignoring the entire retirement benefits.
- (d) To grant such other relief deem fit to this Hon'ble Tribunal.

2. The application was admitted after hearing the learned counsel for the respondents. Even in the admission stage the learned counsel for the applicant submitted that the case is squarely covered by the Full Bench decision of the Tribunal in OA 3/89. But the learned counsel for the respondents prayed for some time for getting instructions and filing reply. Accordingly, the respondents were given sufficient time by posting the case for filing reply. In spite of sufficient opportunity having been given to the respondents, no reply has been filed.

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3. Since the respondents have not filed any reply and the case is squarely covered by the Full Bench decision of this Tribunal, I am satisfied that the Original Application can be disposed of following the judgment in OA 3/89.

4. In a number of similar cases, this Tribunal has allowed applications following the judgment in OA 3/89. The operative portion of the judgment in OA 3/89 is extracted below:-

"21. In the light of the foregoing discussions, the questions posed to the Full Bench in OA 3/89, OA 15/89 and OAK 288/88, are answered as follows:-

- (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 3/89), 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 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."

Having considered the case of the applicant, in detail, I am satisfied that it can be allowed applying the law laid down by the Full Bench of this Tribunal in OA 3/89. The respondents have no case that the Full Bench judgment has been set aside by the Supreme Court. Respondents have also no case that the facts of this case are distinguishable and a different view can be taken than the view that has been taken by the Full Bench in OA 3/89. In this view of the matter, I allow the application and direct the respondents

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1 & 2 to fix the pay of the applicant by protecting the last pay drawn by him in the Air Force and ignoring his entire pension and other retirement benefits. I further direct the the applicant is entitled to all consequential benefits due to him in accordance with law and decision^y in O.A.3/89.

5. The application is allowed. There will be no order as to costs.


(N.DHARMADAN)
JUDICIAL MEMBER

18.6.93

v/-