

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 213  
C. A. No.

1992

DATE OF DECISION 14-8-92

O.K. Xavier Applicant (s)

Mr. P. V. Mohanan Advocate for the Applicant (s)

Versus

Director General, Indian Respondent (s)  
Council of Agricultural Research,  
Krishi Bhavan, New Delhi-1 and another

Mr. P.V. Madhavan Nambiar, Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.S. Habeeb Mohamed, Administrative Member

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

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

Mr. N. Dharmadan, Judicial Member

In this application filed under section 19 of the Administrative Tribunals' Act, 1985, the applicant, an Ex-serviceman who is re-employed in the Central Institute of Fisheries Technology as a supporting staff grade-I, seeks for a direction to re-fix his pay by granting 20 advance increments towards his military service.

2. The applicant served 20 years in the Indian Army as Driver and on retirement from the army on 28.2.77 at the age of 41 years, he was re-employed in the Central Institute of Fisheries Technology as a supporting staff grade-I w.e.f. 26.12.77, in the scale of pay of Rs. 196-232. He was confirmed in the said post on 1.1.84. He was appointed as Driver on 11.8.90. It is alleged that his pay has not been fixed granting weightage of 20 years of

service in the Indian Army.

3. The case of the applicant is that he ~~xxx~~ retired from Indian Army on fulfilling the terms of enrolment and before attaining the age of 55 years. It is also alleged that letter No. 45-29/86-PAT dated 10.8.87 of the Ministry of Communications referred to in the Annexure-II, impugned order, has since been set aside by the Larger Bench of this Tribunal in O.A. 3/89, O.A. 15/89 respectively. Hence, he seeks for the benefit of the Larger Bench decision.

4. In the reply filed by respondents it is contended that as per the rules applicable for fixation of pay of re-employed pensioners prior to 1.7.86, the initial pay of the re-employed pensioner on re-employment should be fixed at the minimum stage of the scale of pay prescribed for the post in which the individual is re-employed and in case where it is felt that fixation of initial pay at the minimum of the prescribed pay scale caused undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which he had rendered before retirement in a post not lower than <sup>the same</sup> in which he is re-employed. It is ~~xxxx~~ stated that in the case of the applicant, there is no hardship caused to him and as such his request for grant of benefits of past service rendered in Indian Army cannot be agreed to. It is also stated that order dated 13.3.90 of this Hon'ble Tribunal in O.A. 3/89 and 15/89 is not applicable in the case of the applicant as neither the applicant nor respondents were parties to the aforesaid OAs.

5. After hearing arguments of learned counsel for both parties, we are satisfied that the decision in O.A. 3/89 and connected cases will squarely apply to the facts of this case. Larger Bench decided the issue of re-fixation of pay of ex-servicemen who got re-employment in Govt.

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service and observed as follows:

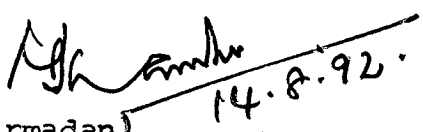
"... We hold that for the purpose of granting advance increments over and above the minimum of pay scale of the re-employed post in accordance with 1958 instructions (Annexures-IV in O.A. 3/89 .... the whole or part of the military pension of ex-servicemen which are to be ignored for the purpose of pay fixation in accordance with the instructions issued in 1964, 1978 and 1983, cannot be taken into account to reckon whether the minimum of the pay scale of the re-employed ex-servicemen..."

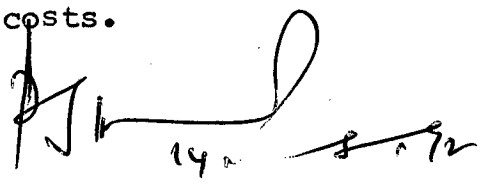
Since the same question of law raised before the Larger Bench comes up before us in this case, we are bound to follow the dictum laid down in O.A. 3/89 and connected cases in this case also. The objections raised in the counter affidavit cannot be sustained particularly when the facts are not distinguishable.

6. Hence, we follow the decisions rendered by this Tribunal in O.A. 3/89 and connected cases and quash Annexure-II order and direct respondents to re-fix the pay of the applicant in accordance with law with all attendant benefits.

7. The application is accordingly allowed.

8. There will be no order as to costs.

  
(N. Dharmadan)  
Judicial Member

  
(P.S. Habeeb Mohamed)  
Administrative Member