

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 216
T. A. No.

1991

DATE OF DECISION 29.7.91

T. L. Madhavan Applicant (s)

Mr. M Rajagopalan Advocate for the Applicant (s)

Versus

The Regional Director, ESI Corp Respondent (s)
Kerala Region, Trichur-20 and others

Mr. TPM Ibrahim Khan For R-3 Advocate for the Respondent (s)

CORAM: Mr. C S Rajan for R 1 & 2

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

The Hon'ble Mr.

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

The applicant's grievance is against Annexure A-6 order passed by the Dy. Regional Director of the Employees' State Insurance Corporation (ESI) Trivandrum refusing to grant him re-fixation of ^{pay ignoring} pensionary benefits as ordered in O.A. 697/89 by this Tribunal in an identical case.

2. The applicant is a re-employed ex-serviceman. He served in the Army from 12.2.1954 to 31.10.1977 for a period of 23 years. At the time of discharge, his last pay in the Army was Rs. 470/- per month. He was reemployed as LDC in the ESI Corporation under the first respondent in the pay scale of Rs. 260-6-290-EB-6-326-8-366-EB-8-390-10-400. His basic pay was fixed at Rs. 298 p.m. from

1.2.1978 to 19.8.78 and at Rs. 358 per month w.e.f.

19.8.78 as per Annexure A-1 order. Thus, he was allowed to draw all allowances for Rs. 400/- which was maximum of the scale. But the applicant contended that he is entitled to get his pay fixed at Rs. 400/- the maximum of the scale because he has served more than 20 years in the higher position and the last pay drawn by him was more than Rs. 400/- He submitted Annexure A-2 representation dated 3.10.1983 requesting reconsideration of the matter and for fixing his basic ^{pay} At Rs. 400/- in the cadre of LDC. This, according to the applicant has not been disposed of. On promotion to UDC in the scale of Rs. 330-560 his pay was fixed at Rs. 370/- only as per Annexure-III order. He was not given increments taking into consideration his service in the Army. After taking into consideration the IV Pay Commission Recommendations, the applicant's pay was revised to Rs. 1388/- w.e.f. 1.1.86 proportionate to the basic pay of Rs. 416/- drawn by him the pre-revised scale.

According to the applicant his pre-revised pay should have been fixed at Rs. 452/- Annexure A-4 is the order dated 27.3.87 passed by the first respondent re-fixing the pay of the applicant. The applicant again represented the matter before the authorities for getting correct fixation of his pay. In the meanwhile, a colleague of the applicant who was working in the same office

approached this Tribunal by filing O.A. 697/89 for getting similar relief which was heard and allowed by this Tribunal by judgment dated 28.8.90. Without taking into consideration the observations in the judgment and re-fixing his pay the impugned order at Annexure A-6 dated 11.12.90 has been passed. In this application filed on 7.2.91 the applicant is challenging the aforesaid order. The impugned order reads as follows:

"With reference to the above, you are informed that the decision taken by the CAT, Ernakulam vide O.A. No. 697/89 dated 28.8.90 is applicable to the petitioner only and cannot be made applicable universally. Hence, your request for re-fixation of pay is not considered."

This indicates that the judgment relied on by the applicant is applicable to the facts of this case but the respondent is not willing to apply/since he was not a party in that case. This stand appears to be incorrect. The first respondent may distinguish the facts and take a stand that because of the difference in the facts in the O.A. 697/89 the judgment rendered by the Tribunal cannot be made applicable to the applicant in the present case. Even in the counter affidavit filed by the first respondent, no such stand is taken. Under these circumstances there is no legal justification to deny the benefit that has been granted ~~xx~~ by the Tribunal to the applicant in O.A. 697/89 to the applicant in this case also.

3. The learned counsel for the applicant submitted that the applicant in O.A. 697/89 is also a similarly

placed ex-serviceman working under the first respondent. Since his pay on the re-employment post was not fixed in accordance with law he has approached this Tribunal.

4. Having gone through the judgment I find that the findings and conclusions in the judgment applies to the facts of this case also. The operative portion of the judgment reads as follows:

"We are amply fortified in our aforesaid opinion by the Department of Personnel & Training O.M. No. 3/1/85-Estt. (PEII) dated 31st July, 1986. By that O.M. the Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986 were promulgated. A copy of these orders is available in Swamy's Compilation on Re-employment of Pensioners (Civilians and Ex-Servicemen) (second edition) at pages 17 to 26. Para 9 of the Annexure (page 22 *ibid*) reads as follows:


"9. Promotion/transfer:

On regular promotion/transfer to another post pay of the re-employed pensioner shall be fixed under the provisions of Fundamental Rules with reference to the pay in the previous re-employment post (before adjustment). Adjustment from the pay so fixed, on account of pension and pension equivalent of retirement benefits shall be continued to be made to the same extent as was being made earlier. This will, however, remain subject to the condition that the pay plus pension and pension equivalent of gratuity/other forms of retirement benefits shall not exceed Rs. 8000/- per month at any time."

From the above, it is crystal clear that in the instant case before us, the pay of the applicant as UDC has to be fixed under Fundamental Rules taking into account his notional pay as an LDC before adjustment. The pay of UDC so fixed should be adjusted by reducing it by the unignorable part of the pension."

6. In the facts and circumstances, we allow this application to the extent of directing the respondents to fix the applicant's notional pay as a UDC between 15.4.81 and 1.1.86 on the basis of his notional pay of Rs. 400 as LDC and re-fix his pay from 1.1.86 on the basis of that notional pay. Thereafter, only the unignorable part of the military pension should be deducted from the notional pay so as to determine his adjusted pay as a UDC. Arrearsof his adjusted pay and allowances so fixed should be paid to the applicant within a period of three months from the date of communication of this order. His pension and other reiral benefits should also be re-fixed on the basis of his revised adjusted pay and allowances within that period.."

5. I follow the directions in the above said judgment and allow the application to the extent of directing the respondents to fix the pay of the applicant on the re-employed post taking into consideration the observations in the aforesaid judgment. The application is thus allowed. There will be no order as to costs.


(N. DHARMADAN) 29.7.91
JUDICIAL MEMBER
29.7.91

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