

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

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

230 /

1993

DATE OF DECISION 29.3.93 /

Abraham Joseph and others Applicant (s)

Mr. M. Rajagopalan Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)  
the Secretary, Ministry of Defence  
New Delhi and others

Mr. George Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

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? Y
2. To be referred to the Reporter or not? h
3. Whether their Lordships wish to see the fair copy of the Judgement? h
4. To be circulated to all Benches of the Tribunal? h

JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

Applicants are ex-servicemen re-employed in various Central Government organisations. Applicants were discharged from military service before they got promotion as Commissioned Officers and attaining the age of 55 years. They were getting military pension after their discharge. But they were denied the benefit of Govt. orders as interpreted by this Tribunal in TAK 732/87 in the matter of disbursement of relief on military pension. The salary of the applicants have not been fixed in the re-employed post <sup>after h</sup> before taking into consideration the decision of the Tribunal in TAK 732/87. In spite of the Govt. orders and the decision of the Tribunal in TAK 732/87 respondents have

not disbursed relief on pension on the ignorable part of the pension. Hence, aggrieved by the denial of the respondents to pay them relief on pension, applicants filed this application under section 19 of the Administrative Tribunals' Act with the following reliefs:

- "a) to direct the respondents to pay the pension relief of the applicants during the period of their re-employment.
- b) to declare that the applicants are entitled to get pension relief along with their pension during the period of their re-employment.
- c) to direct the respondents to return their pension relief suspended so far.
- d) to grant such other relief deem fit to the Honble Tribunal."

2. The original application was admitted on 10.2.93. A number of opportunities have been given to respondents for filing reply. This Tribunal also warned respondents on 17.3.93 that no further time will be granted for filing reply and the case was adjourned to 12.4.93. On 12.4.93 the case was adjourned to 16.4.93. On 16.4.93 we have reluctantly granted further adjournment so as to enable respondents to file reply and posted the case on 26.4.93. On that day no reply was filed. Even today learned counsel for respondents requested for further time for filing reply. Having regard to the fact this case is covered by Full Bench decision of the Tribunal in TAK 732/87, I am not inclined to grant any further time for filing reply. Learned counsel for respondents has no case that facts of this case are different, ~~are~~ distinguishable so as to take a different

view than one taken by the Full Bench in TAK 732/87. He submitted that the judgment of the Full Bench has been <sup>stayed by</sup> ~~set aside~~ by the Supreme Court and hence the application is to be dismissed.

3. The contention of learned counsel for respondents was rejected in a number of similar cases. This Tribunal has taken the view that so long as the judgment in TAK 732/87 has not been reversed or set aside or modified by the Supreme Court, it is binding on the Tribunal. Respondents have no case that the judgment in TAK 732/87 have been set aside or modified.

4. In this view of the matter, I follow the Full Bench decision of the Tribunal in TAK 732/87. The relevant 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 13.2.76 O.M.No. F10(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-23013/152/7/ME/CGA VI(Pt/1118 dated 26.3.84 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines...."

5. In the result, I allow the application and direct the respondents to pay pension relief to the applicant during the period of their re-employment. I further direct the respondents to disburse to the applicants pension relief suspended/withheld till now. This shall be done within a period of three months from the date of

communication of this judgment.

6. The application is allowed as indicated above.

7. There shall be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER  
29.4.93

kmm

R.A. 90/93 in D.A. 230/93

Central Administrative Tribunal  
Ernakulam Bench

Judicial-I Section

Placed below is a Review Application filed by The Secretary

4/0 Defence

through ~~his~~/their counsel Shri George Joseph  
(Applicants/respondents in DA 230/93) seeking a review of the  
order dated 20.4.93 passed by this Tribunal in D.A. 230/93.

2. Sub Rule 3 of Rule 17 of the Central Administrative Tribunal  
(Procedure) Rules mandates that unless ordered otherwise by the Bench  
concerned, a Review Application shall be disposed of by circulation  
where the Bench may either reject the Review Application or direct notice  
to be issued to the opposite party.

3. Hence, the Review Application No. 90/93 is submitted for  
orders of the Bench consisting of Hon'ble Shri N. Dharmadasa H.T.  
which pronounced the order

sought to be reviewed.

(Applicant has filed an HP for condonation of delay) Pradnatekar  
3/8 3.8.93  
Section Officer(J-I)

The Deputy Registrar(J)

P.S. to Hon'ble Vice Chairman/Member(A/J)

Shon NRP.  
Shon VR. 2  
By Prep  
4/8

DR(J)

May be listed on 9  
5.8.93

Pradnatekar  
3.8.93  
5.0(J.I.)

DR(J)

notice may be issued.

S.O(J.II)

Prep  
4/8

Mr Kan

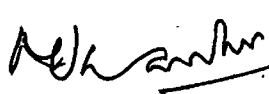
ND

Mr. George Joseph by representative  
Mr. M. Rajagopalan

M.P.1240/93 has been filed by the original respondents  
(review applicants) for condoning the delay in filing the  
R.A.

2. I have gone through the M.P. The only reason for  
delay in filing the R.A. is that since an identical matter  
is pending in the Supreme Court, the judgment in O.A.230/93  
was referred to higher authorities for getting advice, and  
the delay occurred due to exigency of service. After  
going through the statement in the M.P. I am not satisfied  
that the respondents (review applicants) have no  
satisfactory explanation for condonation of the delay.  
Since there is long delay, <sup>for each day</sup> I dismiss the M.P.  
<sup>and the same remains unexplained</sup>

Consequently, the R.A. is dismissed.

  
(N. DHARMADAN)  
JUDICIAL MEMBER  
10.8.93