

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 234 of 1990.
~~T. A. No.~~
~~xxxxxx~~

DATE OF DECISION 19.7.1991

E. Bhaskaran & 9 others Applicant (s)

M/s M.V.Bose & P.J.Mathew Advocate for the Applicant (s)

Versus

Union of India represented through Respondent (s)
M/o Telecom and others

Mr.NN Sugunapalan,SCGSC Advocate for the Respondent (s)
through proxy counsel.

CORAM :

The Hon'ble Mr. S.P. MUKERJI - VICE CHAIRMAN

The Hon'ble Mr. A.V. HARIDASAN - JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? N
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Mr. S.P.Mukerji, Vice Chairman)

In this joint application dated 23rd March, 1990 filed under Section 19 of the Administrative Tribunals Act, the 10 applicants who are ex-servicemen having retired from the military before attaining the age of 55 years and reemployed in various capacities under the Dy. General Manager, Telecommunication, have prayed that the impugned order dated 9.3.1990, a typical copy of which is at Annexure-VI, should be set aside and the respondents directed to protect their scale of pay as fixed in 1983 and not to revise it downward and to desist from recovery in excess amounts.

2. The material facts of the case are as follows. Taking for example the case of the first applicant, having retired from the Army he was reemployed as Technician in the Department of Telecommunications with effect from 11.10.83 in the pay scale of Rs. 260-480 prescribed for the post. At the time of his retirement from

the military his pay was Rs. 277.50 and he was granted a military pension of Rs. 165.25. On the basis of his equivalent service rendered in the military his initial reemployment pay was fixed not at the minimum of the pay scale of Rs. 260/- but at Rs. 276/- by giving him some advance increments. A copy of the order dated 8.8.85 fixing his pay accordingly is at Annexure-I. By the impugned order dated 9.3.90 (Annexure VI), however, his initial pay on reemployment was revised and over-payment of pay and allowances proposed to be recovered. This was done on the basis of the order issued by the Department of Personnel in which it was stated that advance increments on reemployment can be given only when there is hardship and hardship will be presumed when reemployment pay at the minimum of the pay scale plus pension at the time of retirement from the military is less than the last pay drawn by the reemployed ex-service-men before retirement. In cases of the applicants it was decided later that since the minimum of the pay scale of the post to which they were appointed ie., Rs.260/- in case of the first applicant plus the military pension ie. Rs. 166.25 with a total of Rs. 426.25 was more than the pre-retirement military pay of Rs. 277.50, there is no hardship and the applicants were not entitled to get any advance increments on the basis of their equivalent military service at the time of their reemployment.

3. The respondents ^{have} ~~are~~ conceded that in cases of the applicants the military pension for the purpose of reemployment pay was to be ignored to the extent of Rs. 50/- between 1964 and 1978, to the extent of Rs. 125/- from 19.7.78 to 24.1.83 and the whole amount of military pension was to be ignored after that. They have also indicated that ^{since} ~~the~~ order of ignoring the total amount of pension was to take effect from 25.1.83 all the applicants who were reemployed during 1982 cannot get the benefit of the same. Their initial pay was fixed erroneously ^(by ignoring military pension) and there is nothing wrong according to the respondents in correcting it with retrospective effect. They have also argued that even though as urged by the applicants the Full Bench of this Tribunal has allowed advance increments in similar

cases, since the applicants were not a party in that case, they cannot claim similar benefits. They have also argued that the decision of this Tribunal is pending consideration by the Hon'ble Supreme Court of India in S.L.P. and the Supreme Court has stayed these orders.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The question of refixation of pay of ex-servicemen for granting advance increments over and above the minimum of the pay scale was considered by a Full Bench of the Tribunal in O.A.3/89 and other cases by their judgment dated 13.3.1990. The Full Bench held 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.

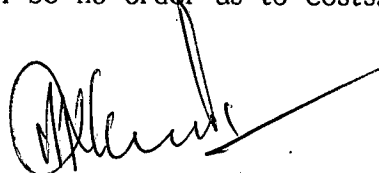
(b) The orders issued by the respondents in 1985 or 1987 contrary to the administrative instructions of 1964, 1978 and 1983, cannot be given retrospective effect to adversely affect the initial pay of ex-servicemen who were re-employed prior to the issue of these instructions."

In the light of the above decision of the Full Bench, the application before us will have to be allowed. The contention of the respondents that the Tribunal's decisions are pending before the Hon'ble Supreme Court and some of the decisions had been stayed cannot be accepted for ignoring the binding nature of the decision. In Roshan Jagdish Lal Duggal and others Vs. Punjab State Electricity Board, Patiala and others, 1984(2) SLR 731, the High court of Punjab and Haryana observed that pendency of an appeal before the Supreme Court does not render an order of the High Court 'non est' even where the High Court's order in appeal had been stayed by the Supreme Court. The order of the High Court was still to be treated as a binding precedent. The Delhi High Court also in Jagmohan Vs. State, 1980 Criminal Law

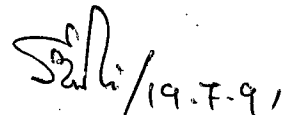
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Journal 742 observed that mere pendency of appeal before the Hon'ble Supreme Court does not take away the binding nature of the High Court's decision unless and until it is set aside by the Hon'ble Supreme Court. In *Alpana V. Mehta Vs. Maharashtra State Board of Secondary Education* and another, AIR 1984 SC 1827 the Supreme Court upheld the contention of the appellant that the Bombay High Court was not justified in dismissing her writ petition on the sole ground that operation of the earlier judgment of that High Court on the basis of which the writ petition had been filed, had been stayed by the Supreme Court. The above view has been upheld by the Full Bench of the Principal Bench of the Tribunal in its judgment dated 13th February, 1991 in O.A. 184/1990 (*Shri Ganga Ram & Another V. Union of India*) and 3 other O.As. In those cases the issue before the Full Bench was whether the judgment delivered by another Full Bench in *Rasila Ram's* case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an S.L.P. filed by the Government, remains valid as a binding precedent or whether the interim order passed by the Supreme Court nullified the judgment of the Full Bench or its effect was to be confined only in respect of the judgment pronounced in the case of *Rasila Ram*. The Full Bench observed that the interim order passed by the Supreme Court in the S.L.P. in *Rasila Ram's* case not being a speaking order does not make any declaration of law and "consequently, it is not a binding order under Article 141 of the Constitution." The Full Bench further observed that until the decision of the Full Bench in *Rasila Ram's* case is set aside, reversed or modified by the Supreme Court it remains effective. In view of unambiguous finding of the Full Bench of the Tribunal, we have no hesitation in following the dicta of our ^{earlier} judgments in this case also so long as those judgments have not been set aside, modified or reversed by the Hon'ble Supreme Court. Further, revision of pay where justified can be given effect to adversely to any of the applicants only with prospective and not with retrospective effect. This is because vested rights cannot be taken away retrospectively.

5. Accordingly we allow the application, set aside the impugned order dated 9.3.90 at Annexure-VI and similar orders passed in respect of the applicants and direct that the ignorable part of their military pension should not be added to their re-employment pay for the purpose of reckoning ~~where~~^{for} the minimum of the pay scale plus the military pension is less than the last military pay drawn by them. We also direct that in case for any of the applicants the minimum of the pay scale to which reemployment has taken place ^{plus} ~~but~~ ^{non-} the ^{ignorable} part of pension is more than the last military pay drawn by them, the revision of the reemployment pay should be given effect to only prospectively. The recoveries if any made from the applicants on the basis of the impugned orders should be refunded to them within a period of three months from the date of communication of this order. There will be no order as to costs.



(A.V. HARIDASAN)
JUDICIAL MEMBER



(S.P. MUKERJI)
VICE CHAIRMAN

19.7.91

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