

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 1 of 199 3.

DATE OF DECISION 31-3-1993

P. Unnikumaran Nair Applicant (s) ✓

Mr. P. Sivan Pillai Advocate for the Applicant (s) ✓

Versus

Union of India through Sec- Respondent (s)
retary to Govt. M/o Personnel, Public
Grievances and Pension and others

Mr. Poly Mathai rep. SCGSC Advocate for the Respondent(s)
for R.1 to 3.

CORAM : Mr. Ramakrishnan rep. Smt. Dandapani for R.4.

The Hon'ble Mr. S. P. Mukerji, Vice Chairman
and

The Hon'ble Mr. A. V. Haridasan, Judicial Member

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

JUDGEMENT

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

In this application dated 28.12.92 the applicant a retired Loco Khalasi Helper who had been re-employed as an ex-serviceman by the Southern Railway in 1979 has prayed that the relief/adhoc relief on the ignorable part of his military pension which had been withheld or recovered by the respondents during the period of his re-employment under the Southern Railway should be directed to be refunded by the respondents. He has based his claim on the judgment of the Larger Bench of this Tribunal dated 20.7.89 in T.A.K.732/87.

2. Despite several opportunities given to the respondents and an undertaking given by them to file reply they have not filed any reply to this O.A..

Arguments of the learned counsel for both the parties were ^{accordingly} heard with the following results.

3. When it was brought to the notice of the learned counsel for the applicant that the applicant has not made any representation seeking the relief from the respondents, he indicated that since the respondents have filed an SLP against the aforesaid judgment of the Larger Bench before the Hon'ble Supreme Court it will be an exercise ⁱⁿ futility to submit a representation to them with the expectation that the representation will be granted. Since the applicant is a retired low paid ^{ex-Serviceman} we would not like him to go through the inconsequential formality of filing a representation when the outcome thereof according to him is a foregone conclusion.

4. From the application it appears that the applicant was discharged from the military on 2.6.74. He was in receipt of a military pension of Rs.60/- He was re-employed on 19.12.79 with a basic re-employment pay of Rs.196/- per month.

5. At the time of his re-employment on 19.12.79 the Ministry of Finance vide their O.M. of 19.7.78 ^{had} increased the ignorable limit of military pension of

re-employed ex-servicemen from Rs.50/- to Rs.125/- for the purpose of fixation of pay on re-employment. Accordingly the entire military pension of the applicant of Rs.60/- has to be ignored for his pay fixation.

6. The question whether during the period of re-employment ^{the} re-employed ex-servicemen whose part or full military pension is to be ignored, should be given relief including adhoc relief on the ignorable part of the pension also or not was considered by a Full Bench of this Tribunal in their common Judgment dated 20.7.89 in T.A.K.732/87 and other cases. By a majority opinion to which one of us (Shri S.P.Mukerji) was a party, the Full Bench decided as follows:-

"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, relating 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 13.2.1976, O.M.No.F.10(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.23013/152/79/MF/CGA/VI(Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P.Mukerji, Vice Chairman)."

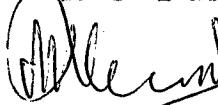
7. In the above light, the applicant if he was in receipt of a military pension of Rs.60/- per month at the time of his re-employment on 19.12.79 is entitled to get relief including adhoc relief during his entire period of re-employment and any amount withheld or recovered from him in this regard has to be refunded to him.

8. As regards pendency of SLP before the Supreme Court and stay order issued by them in other cases, we feel that unless the decision of the Larger Bench is set aside the same is binding on us and the stay ordered in ^{that or} other individual cases will not act as a bar to our granting relief in the case before us. 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 V. State, 1980 Criminal Law 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.184/90 (*Shri Ganga Ram and another v. Union of India*) and 3 other OAs. 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 SLP 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 *Rasilaram*. The Full Bench observed that the interim order passed by the Supreme Court in the SLP in *Rasilaram'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 Rasilaram's case is set aside, reversed or modified by the Supreme Court it remains effective. In view of the unambiguous finding of the Full Bench of the Tribunal we have no hesitation in following the decision of the Full Bench in this case also so long as that finding is not set aside, modified or reversed by the Hon'ble Supreme Court.

9. In the above light, we allow this application and direct the respondents collectively and individually to refund to the applicant the relief including adhoc relief on his military pension during his entire period of re-employment in the Southern Railway to the extent the same was withheld or recovered from him. Action on the above lines should be completed within a period of three months from the date of communication of a copy of this order. There is no order as to costs.


31.3.93
(A.V. Haridasan)
Judicial Member


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(S.P. Mukerji)
Vice Chairman

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