

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXX

260 of 1991

DATE OF DECISION 16.12.1991

Off
Recd
As per Order
16.12.1991

A.G.John

Applicant (s)

Mr. M.R.Rajendran Nair

Advocate for the Applicant (s)

Versus

Senior Superintendent of Respondent (s)

Post Offices, Pathanamthitta and others

Mr. Mathews J Nedumpara, ACGSC

Advocate for the Respondent (s)

CORAM:

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 11.2.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman and was reemployed under the Chief Post Master General, Kerala Circle, Trivandrum has prayed as follows:

" i) Direct the respondents to fix the pay of the applicant granting him one increment each for every year of complete service in military service.

ii) Direct the respondents to grant relief on pension drawn by the applicant.

iii) Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant, and original

iv) Grant the cost of this/application."

(X)

2. The admitted facts of the case are as follows. The applicant retired from the Indian Air Force as Sergeant with effect from 1.2.82 with a military pension of Rs.172/- per month. After his retirement from the Air Force he was selected and after training appointed as a Postal Assistant with effect from 12.10.1988 in the revised scale of Rs.975-1600. At the time of his retirement from the Air Force he was drawing a pay of Rs.399/- with a good conduct pay of Rs.15/-. His pension was increased to Rs.399/- with effect from 1988. His pay on his reemployment in the Postal Department has been fixed at the minimum of Rs.975/- in the pay scale of Rs.975-1600, and in the main application it is also averred that vide the O.M. of 8.2.83 the entire amount of military pension for the purpose of reemployment has been ignored.

3. The applicant has argued that he should be given advance increments in the scale of Postal Assistant at the rate of ^{one} increment for each completed year of service in the Air Force. The question of ignoring military pension for the purpose of grant of advance increments becomes relevant in view of the fact that the Department of Personnel and Training issued a clarification as follows:

"When a re-employed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments arises only if there is any hardship. Hardship is seen from the point whether pay plus pension plus equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no hardship, no advance increment can be granted."

Whether the ignorable part of military pension should also be taken into account in assessing hardship as contemplated

in the aforesaid clarification was considered by a Full Bench of the Tribunal in its Judgment dated 13.3.1990 in O.A.3/89 and other cases. The Full Bench gave their finding as follows:

"A. 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 the 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 (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."

4. In the instant case even if we ignore the military pension of the applicant in its entirety the minimum of the reemployment pay of Rs.975/- itself exceeds the last military pay drawn by the applicant at Rs.399/- plus the good conduct pay of Rs.15/-. The applicant has not come out to show that the allowances received by him in the Air Force added to the pay would exceed Rs.975/- per month. Accordingly we see no hardship caused to the applicant in being allowed the minimum pay scale of Postal Assistant at Rs.975/-. Hence he is not entitled to any advance increments. (C)

5. As regards the grant of relief on pension to be allowed to re-employed ex-servicemen whose military pension is to be ignored in full or part, a Full Bench of the Tribunal presided over by the then Hon'ble Chairman in their Judgment dated 20.7.1989 to which one of us (Shri SP Mukerji) was a party by a majority judgment 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, 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 13.2.1976, 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 SP Mukerji, Vice Chairman.)"

We, therefore, direct that in case full or part of military pension of the applicant is to be ignored, the relief on the ignorable portion whether in full or part as the case may be shall be continued to be paid to the applicant during the course of his reemployment. The respondents' plea that Full Bench decision of the Tribunal is under appeal before the Hon'ble Supreme Court which has in some cases stayed the orders of the Tribunal based on the aforesaid decision does not prevent us from giving relief as due to the applicant in this case. 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.184/1990 (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 Rasilaram. The Full Bench observed that the interim order passed by the Supreme Court in the S.L.P. 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 unambiguous finding of the Full Bench of the Tribunal, we have no hesitation in following the dicta of our judgments in this case also so long as those judgments have not been set aside, modified or reversed by the Hon'ble Supreme Court.

6. In the conspectus of facts and circumstances we allow this application in part to the extent of directing the respondents that the applicant shall be paid relief on such portion of his military pension full or part which is to be ignored for the purposes of fixation of his re-employment pay, during the period of his re-employment. If respondent No.3 has not paid relief on his military pension to which he was thus entitled during the period of his re-employment, the same shall be paid to him within a period of three months from the date of communication of this judgment. There will be no order as to costs.



16/12/91

(A.V.HARIDASAN)
JUDICIAL MEMBER



16.XII.91

(S.P.MUKERJI)
VICE CHAIRMAN

Ks/1012.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 260/91 1991

DATE OF DECISION 21-4-93

Shri A.G. John _____ Applicant (s)

Shri MR Rajendran Nair _____ Advocate for the Applicant (s)

Versus

The Senior Superintendent of Respondent (s)
Post Offices, Pathanamthitta & others.

Shri Mathews J Nedumpara, Advocate for the Respondent (s)

CORAM :

ACGSC

The Hon'ble Mr. SP Mukerji - Vice Chairman

&

The Hon'ble Mr. AV 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? N
3. Whether their Lordships wish to see the fair copy of the Judgement? W
4. To be circulated to all Benches of the Tribunal? N

JUDGEMENT

(Hon'ble Shri SP Mukerji, VC)

In this application dated 11.2.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman and was re-employed under the Chief Post Master General, Kerala Circle, Trivandrum has prayed as follows:-

- i. Direct the respondents to fix the pay of the applicant granting him one increment each for every year of complete service in military service;

- ii. Direct the respondents to grant relief on pension drawn by the applicant;
- iii. Grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant; and
- iv. Grant the cost of this Original Application.

This application was heard and decided by our judgement dated 16.12.1991, but the same was recalled on a Review Application filed by the applicant and the case was heard again with the following results.

2. The admitted facts of the case are as follows. The applicant retired from the Indian Air Force as Sergeant with effect from 1.2.1982 with a military pension of Rs.172/- per month. After his retirement from the Air Force, he was selected and after training appointed as a Postal Assistant with effect from 12.10.1988 in the revised scale of Rs.975-1600/-. At the time of his retirement from the Air Force, he was drawing a pay of Rs.399/- with a good conduct pay of Rs.15/-. His pension was increased to Rs.399/- with effect from 1988. His pay on his re-employment in the Postal Department has been fixed at the minimum of Rs.975/- in the pay scale of Rs.975-1600/-, and in the main application it is also averred that vide the OM of 8.2.1983 the entire amount of military pension for the purpose of re-employment has been ignored.

3. The applicant has argued that he should be given advance increments in the scale of Postal Assistant at the rate of one increment for each completed year of service in the Air Force. The question of ignoring military pension for the purpose of grant of advance increments becomes relevant in view of the fact that the Department

of Personnel and Training issued a clarification as follows:-

"When a re-employed pensioner asks for refixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments arises only if there is any hardship. Hardship is seen from the point whether pay plus pension plus equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no hardship, no advance increment can be granted."

Whether the ignorable part of military pension should also be taken into account in assessing hardship as contemplated in the aforesaid clarification was considered by a Full Bench of the Tribunal in its judgement dated 13.3.1990 in OA 3/89 and other cases. The Full Bench gave their finding as follows:-

"A. 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 the 1958 instructions (Annexure 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."

4. In the instant case even if we ignore the military pension of the applicant in its entirety, the minimum of the re-employment pay of Rs.975/- itself exceeds the last military pay drawn by the applicant at Rs.399/- plus the good conduct pay of Rs.15/-. The applicant has not come out to show that the allowances received by him in the Air Force added to the pay would exceed Rs.975/- per month. Accordingly, we see no hardship caused to the applicant in being allowed the minimum pay scale of Postal Assistant at Rs.975/-. Hence he is not entitled to any advance increments. The contention of the applicant that his military pay scale should be relatable to the ^{brev-} revised pay scale of the post to

which he is re-employed may appear at the first ^{blush} ~~first~~ to be reasonable, but the same cannot be accepted. The normal rule is that re-employed ^{men} ~~men~~ pay should start from the minimum of the pay scale of the re-employed post. Advance increments are given as an exceptional measure to remove financial hardship. Since with the revision of pay scale with effect from 1.1.1986, the applicant's pay at the minimum of the scale ^{of} ~~of~~ Rs.975/- is more than double the last military pay drawn by him at Rs.414/-, no case of financial hardship can be made out.

5. As regards the grant of relief on pension to be allowed to re-employed ex-servicemen whose military pension is to be ignored in full or part, a Full Bench of the Tribunal presided over by the then Hon'ble Chairman in their judgement dated 20.7.1989 to which one of us (Shri SP Mukerji) was a party by a majority judgement 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, 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 13.2.1976, 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 Eernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri SP Mukerji, Vice Chairman)."

6. We, therefore, direct that in case full or part of military pension of the applicant is to be ignored, the relief on the ignorable portion whether in full or part as the case may be, shall be continued to be paid to the applicant during the course of his re-employment. The

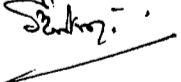
respondents' plea that Full Bench decision of the Tribunal is under appeal before the Hon'ble Supreme Court which has in some cases stayed the orders of the Tribunal based on the aforesaid decision does not prevent us from giving relief as due to the applicant in this case. In Roshan Jagdish Lal Duggal 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 judgement of that High Court on the basis of which the Writ Petition has 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 judgement dated 13th February, 1991 in OA 184/1990 (Shri Ganga Ram & another v. Union of India) and 3 other OAs. In those cases the issue before the Full Bench was whether the judgement 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 judgement of the Full Bench or its effect was to be confined only in respect of the judgement pronounced in the case of Rasila Ram. The Full Bench observed that the interim order passed by the Supreme Court in the SLP 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, ^{the Full Bench and the} we have no hesitation in following the dicta of ~~our~~ judgements in this case also so long as those judgements have not been set aside, modified or reversed by the Honible Supreme Court.

7. In the conspectus of facts and circumstances, we allow this application in part to the extent of directing the respondents that the applicant shall be paid relief on such portion of his military pension full or part which is to be ignored for the purpose of fixation of his re-employment pay during the period of his re-employment. If respondent No.3 has not paid relief on his military pension to which ^{applicant} he was thus entitled during the period of his re-employment, the same shall be paid to him within a period of three months from the date of communication of this judgement.

8. There will be no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(SP MUKERJI)
VICE CHAIRMAN

ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

M.G. Road
Kochi-11.

FRIDAY, THE 14TH DAY OF FEBRUARY, 1992

PRESENT

Hon'ble Mr. S.P.Mukerji - Vice Chairman
and
Hon'ble Mr. A.V.Haridasan - Judicial Member

in
RA 8&12/92/ORIGINAL APPLICATION NO: 260/91

A.G.John	... Applicant(s)/Respondents
VERSUS	
Sr.Supdt. of POs, Pathanamthitta	... Respondents / Applicants
Mr.M.R.Rajendran Nair	... Counsel for applicant(s)/ respondents
Mr.Mathews J Nedumpara, ACGSC	... Counsel for respondents/ applicants

O R D E R

Heard the learned counsel for the parties on the RA-8/91 filed by the original applicant as also on RA Dy.No.1193/JI/92 filed by the original respondents in OA-260/91. The point raised by the original applicant about parity of the revised pay scale with the military pay drawn by the applicant needs serious consideration.

The points raised by the original respondents in the other RA file for impleading Ministry of Finance and Controller of Defence Accounts ^{who} ~~also~~ ^{been} ~~been~~ should have been heard in the OA as ~~as~~ necessary party is also, according to us quite valid.

In the facts and circumstances, we allow both the RAs and recall our order dated 16.12.91 in OA-260/91 and direct restore the OA to its original number. ~~in the interest of justice~~ We direct the original applicant to implead Ministry of Finance and the Controller of Defence Accounts as additional respondents. It should be done within a week.

List for further direction on 26.2.92

RAs are disposed of as above.

M.P-218/91 for condonation of delay is allowed.

CERTIFIED TRUE COPY
Date19.....2.92.....

To.

1. Mr.M.R.Rajendran Nair, Advocate, Kochi- for applicants/respondents
2. Mr.Mathews J Nedumpara, ACGSC, Kochi- for respondents/applicants



Issued
19/2/92

P. 19/2/92