

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 16.8.93

O.A. 264/93

Antony Poulose
S/o V. Poulose
Kumbalam P.O. Mulavana Via
Quilon

Applicant

vs.

1. Divisional Personnel Officer
Divisional Office, Personal Branch
Southern Railway, Trivandrum

2. Financial Advisor and Chief
Accounts Officer, Park Town
Southern Railway, Madras-3

3. Officer I/C of Records,
Air Force Record Office,
Subroto Park, New Delhi

Respondents

Mr. M. Rajagopalan

Counsel for
applicant

Mr. Thomas Mathew Nellimoottil

Counsel for
respondents

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THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The learned counsel for applicant submitted that this case is covered by the Full Bench judgment of this Tribunal in O.A.3/89 and connected cases and following the said judgment, the original application can be allowed.

2. According to applicant he is an ex-serviceman re-employed in the Railways under the first respondent w.e.f. 14.6.83 in the pay scale of Rs. 260-430. Since the re-employment is after the Govt. order, the entire pension is to be ignored and the pay is to be fixed according to the O.M. No. 2(1)/83/D(civ-1). The last basic pay including Good Conduct Pay (GCP) is Rs. 323/- as per Annexure-A-1 salary certificate. The applicant is aggrieved by the decision of the first respondent in Annexure A-2 stating that the principle of hardship is to be applied in the matter of fixation of minimum pay on the re-employed post.

3. The issue regarding fixation of pay of the re-employed ex-serviceman in the light of the relevant orders was considered by the Full Bench in O.A. 3/89 and connected case. The relevant portion is extracted below:

- "a) We hold that for the purpose of granting advance increments over and above the minimum of the pay scale of 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."

4. Respondents in their reply sought to support the decision of the DPO only on the basis of the principle of hardship which was negatived by the Full Bench after elaborate consideration in the light of the Govt. orders issued in this behalf. Hence, there is no substance in the contentions raised by the respondents and accordingly it is not sustainable.

5. Respondents have no case that the facts of this case in, the instant case, are distinguishable from the facts in O.A. 3/89.

6. Accordingly, having regard to the facts and circumstances of the case, I follow the Full Bench decision in O.A. 3/89 and direct respondents 1 & 2 to fix the pay of the applicant ignoring the entire pension, on the basis of the Full Bench decision in O.A. 3/89. w.e.f. the date of re-employment in the Railways protecting the last pay drawn by him in the military service. This shall be done within

a period of four months from the date of receipt of the copy of the judgment.

7. The application is allowed as indicated above.
8. There shall be no order as to costs.



16.8.93

(N. DHARMADAN)
JUDICIAL MEMBER
16.8.93

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List of Annexures

1. Annexure A-1 : Salary certificate of the applicant
2. Annexure A-2 : Order of DPO dated 9.1.91