

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 270 of 1992.

DATE OF DECISION 8.12.92

T. Arumugham Chettiar Applicant (s)

Mr. M.R. Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India rep. through Respondent (s)  
Secretary, Ministry of Communications  
New Delhi and others

Mr. TPM Ibrahim Khan, ACGSC Advocate for the Respondent (s)  
(R.1to3)

CORAM :

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

The Hon'ble Mr. N. Dharmadan, 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 Shri S.P. Mukerji, Vice Chairman)

In this application dated 10.2.92 filed under Section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman re-employed as Group 'D' employee in the Telephone Exchange in the Kerala Circle has prayed that he should be declared to be entitled to get relief on his entire military pension during the period of re-employment and also to get his re-employment pay fixed by granting one increment for every completed year of service in the Air Force.

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2. Having retired from the Indian Air Force after 15 years of regular service the applicant was re-employed as Group 'D' staff in the scale of Rs.196-232 with effect from 9.9.85. He is aggrieved by the fact <sup>that</sup> during his re-employment the relief on his pension was discontinued. He has referred to the decisions of this Tribunal in T.A.K.404/87 and O.A.3/89 and connected cases in which it was held that ex-servicemen are entitled to get relief on ignorable part of their military pension during the period of their re-employment. Since after 25.1.83 the entire military pension of non-commissioned ex-servicemen is to be ignored the applicant is entitled to get relief on his ignorable entire military pension. He has also referred to the decision of this Tribunal in O.A.3/89 and 15/89 to claim one increment for every completed year of service if the pay on re-employment together with unignorable part of the pension does not exceed the last pay drawn. He has averred that in the Air Force he "was drawing more than Rs.400/-" and since the entire military pension has to be ignored his re-employment pay of Rs.196/- being less than the pay drawn by him in the Air Force he is entitled to get increments for his service in the Air Force. His representations have <sup>not</sup> <sup>responded to</sup> been ~~finalised~~, hence this application.

3. In the counter affidavit the respondents have referred to certain orders by which relief on military

pension <sup>can-</sup>~~could~~ not be given to the applicant during the period of re-employment. They have, however <sup>urged</sup> ~~conceded~~ that the minimum of the pay scale of the re-employment post ie., Rs.196/- plus the applicant's full military pension and pension equivalent of military gratuity ie., Rs.166.80 is more than the last pay drawn by him of Rs.307/- he is not entitled to draw any advance increments.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. So far as the relief on military pension is concerned, a Full Bench of this Tribunal by a majority judgment in T.A.K.732/87 etc. has held 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 S.P:Mukerji, Vice Chairman)."

5. Accordingly we find that the applicant who was re-employed in 1985 when his full military pension had become ignorable has to be given relief including adhoc relief on his full military pension during the

period of his re-employment. As regards grant of advance increments the criterion of hardship has to be satisfied. In accordance with the extant orders as accepted by the respondents also position of hardship is established only when the initial pay fixed on reemployment plus military pension drawn by the re-employed ex-serviceman is less than the last military pay drawn by him before retirement. This criterion of hardship was examined by another Full Bench of this Tribunal in the judgment dated 13.3.90 in O.A.K.3/89 etc. and it was 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 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."

6. Since the entire military pension of the applicant who was re-employed in 1985<sup>has</sup> to be ignored, and since the re-employment pay of Rs.196/- is less than the last military pay of Rs.307/- admittedly drawn by the applicant, the applicant has to be given one increment for each completed year of service rendered in the military equivalent to the post to which he is re-employed.

7. The learned counsel for the respondents stated that the judgments of this Tribunal regarding relief and advance increments referred to above are pending <sup>the</sup> with/Hon'ble Supreme Court in S.L.Ps and stay orders also have been issued in some of them. Accordingly <sup>we</sup> they are not bound by those rulings. We find it difficult to accept this argument.


8. 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 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 the <sup>Full Bench</sup> judgments of the <sup>-this</sup> Bangalore Bench in this case also so long as <sup>those</sup> ~~that~~ judgments <sup>has</sup> ~~are~~ not ~~been~~ set aside, modified or reversed by the Hon'ble Supreme Court."

9. In the light of what has been discussed above we allow this application with the following directions:

- (a) The applicant being entitled to relief including relief on his military pension during the period of his reemployment, the same should be restored to him during the entire period of re-employment and the amount withheld should be paid back to him within a period of two months from the date of communication of a copy of this judgment.;
- (b) The initial pay of the applicant should be fixed by giving one increment for each year of completed service in the military in posts which are equivalent or higher than the post to which he was re-employed;

- (c) Arrears of pay and allowances on the re-fixed pay, however, should be paid to him from the date preceeding three years from the date of filing of this application. This should be done within a period of three months from the date of communication of a copy of this judgment. ;
- (d) There will be no order as to costs.

  
8.12.92  
(N.D. DHARMADAN)  
JUDICIAL MEMBER

  
8.12.92  
(S.P. MUKERJI)  
VICE CHAIRMAN

08.12.92

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