

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A.No.272/93

Monday, this the third day of January, 1994.

SHRI N DHARMADAN, MEMBER(J)
AND
SHRI S KASIPANDIAN, MEMBER(A)

N Ravindranathan Nair,
s/o MP Neelakanda Pillai,
Aged 48, Panachil House,
PO Chathuthiakary, Alleppey.
Now employed as Head Booking Clerk,
Southern Railway, Tirur. - Applicant

By Advocate Shri M Rajagopalan

Vs.

1. Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Southern Railway, Palghat.
2. Financial Advisor and Chief Accounts
Officer, Park Town,
Southern Railway, Madras-3.
3. Officer-in-Charge,
Air Force Records,
Air Force Record Office,
Subroto Park, New Delhi. - Respondents

By Advocate Shri TA Rajan(for R-1&2)

By Advocate Shri CN Radhakrishnan, ACGSC(for R-3)

O R D E R

N DHARMADAN, MEMBER(J)

The applicant is a re-employed Ex-serviceman. After serving a period of 15 years in the Air Force he was discharged from service before attaining commissioned rank. His last pay in the Air Force was Rs.313(298+15). At the time of discharge he was getting a pension of Rs.97/-. He was re-employed on 15.7.1980 in the Southern Railway as a Commercial Clerk in the pay scale of Rs.260-430. According to the applicant, based on the Government orders, the pension upto 125 is to be ignored while fixing his pay in the re-employed post. He is also entitled to protect his last pay ignoring the entire pension in the light of Annexure-A1 order dated 19.7.1978. Since the entire pension was not ignored while fixing the pay of the applicant in the

re-employed post, he filed representations. They were not disposed of. Under these circumstances, he ~~has~~^{has} filed this application with the following prayers:

"(a) To direct the respondents 1&2 to fix the pay of the applicant, protecting his last pay, ignoring his entire pension and other retirement benefits and grant him all consequential benefits including the arrears, from the date of his re-employment.

(b) To direct the 3rd respondent to send applicant's Air Force pay particulars to the 1st respondent, for the purpose of pay fixation."

2. The respondents have filed a detailed reply in which all the basic facts have been admitted. But they have stated that the representation filed by the applicant was not received by the Railway. They also submitted that the SLP has been filed against the Full Bench judgement in OA-3/89 and it is pending before the Supreme Court. According to them, the OA is liable to be dismissed on the above ground.

3. We have allowed a number of similar cases following the law laid down by the Full Bench of this Tribunal in OA-3/89. The operative portion of the judgement is extracted below:

(i) We declare that the applicant is entitled to be granted one advance increment for each completed year of his military service in equivalent grade in fixing his pay in the post of Postal Assistant with effect from 29.11.1983 if the minimum of Rs.260/- in the pay scale of Postal Assistant together with unignorable part of his pension does not exceed the last pay drawn by him in the Armed Force. The ignorable part of his pension as indicated in the instructions in 1964, 1978 and 1983(Annexures-V, V-A and VI respectively) has to be excluded to reckon whether any 'undue hardship' is caused to the applicant by fixing his re-employment pay at the minimum of the pay scale of the post of Postal Assistant as contemplated in the sub-para(b) of the first para of the Office Memorandum of Ministry of Finance dated 25th November 1958. The impugned orders at Annexures A2 dated 8.9.1986, A-7 dated 30.12.1988, A-11 dated 5th July 1988 and also the clarificatory U.O. notes of the Department of Personnel and Training, No.1627-Estt.(Pay-II)/85 dated 17.9.1985 and 21.7.1986 are set aside to the extent they are contrary to the aforesaid declaration.

(ii) We direct that the pay of the applicant should be refixed on the above basis within a period of three months from the date of communication of this order."


4. We have also held in similar cases that the decision of the Full Bench is binding on this Tribunal notwithstanding the pendency of the SLP filed by the Government against the same.

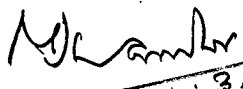
5. In this view of the matter, we follow the Full Bench judgement in OA-3/89 and allow the application with a direction to respondents 1&2 to fix

the pay of the applicant protecting his last pay ignoring his entire pension and other retirement benefits legally due to him in accordance with law.

It is further directed that the respondents shall implement the direction and disburse to the applicant all arrears as per the ^{above} fixation within a period of four months from the date of receipt of a copy of this order.

6. The OA is allowed as above. No costs.


(S KASIPANDIAN)
MEMBER(A)


(N DHARMADAN)
MEMBER(J)
3.1.24

TRS