

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 291 of 1993.

DATE OF DECISION 4-3-1993

Mr Viswambaran N.K. & 26 others Applicant (s)

Mr M Rajagopalan Advocate for the Applicant (s)

Versus

UOI through Secretary, M/o Respondent (s)
Defence, New Delhi & 9 others

Mr Mathew G Vadakkal, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr.AV HARIDASAN, JUDICIAL MEMBER

~~XXXXXXXXXX~~

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *no*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? *no*

JUDGEMENT

The grievance of the applicants who are re-employed ex-Servicemen is that inspite of the ~~XXXXXXXXXX~~ declaration by this Tribunal in TAK-732/87 that the relief on the ignored pension of the re-employed ex-Servicemen should not be withheld or suspended during the currency of the re-employment, the respondents are going on withholding the relief of their pension.

2. All the applicants after serving the Defence Force in the rank below that of commissioned officer were discharged from service before attaining of 55 years, earning service pension and got re-employment after 25.1.1983. According to the applicants their entire Defence Pension is liable to be ignored in fixing

their pay in accordance with the Government O.M. dated 8.2.1983 at Annexure-A1 and they are entitled to receive the entire relief on the pension that was ignored. But on re-employment, the pension disbursing authorities have withheld the relief on their pension on the ground that they are getting D.A. on their re-employment pay. After the decision of the Full Bench of this Tribunal in TAK-732/87, the Association on behalf of the applicants made representation for extension of the benefit of the judgement to them. But it was not done. It is in these circumstances that the applicants have filed this application praying that the respondents may be directed to pay the relief on their Military Pension and to refund to them the entire amount of relief on Military Pension so far withheld from them.

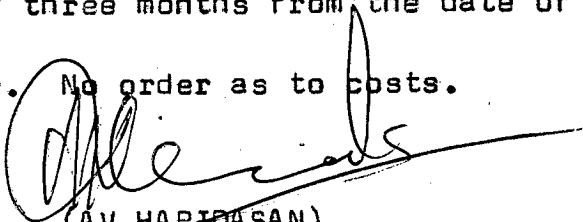
3. The application is opposed by the respondents

4. The learned counsel for the respondents argued that the applicants who are in receipt of D.A. on their basic pay in the re-employed posts are not entitled to get relief on the Military Pension, that decision in TAK-732/87 is pending appeal before the Hon'ble Supreme Court and that an order of stay has been issued in the matter staying the operation of that judgement. The learned counsel argued that under these circumstances, the applicants are not entitled to the reliefs claimed.

5. Having heard the counsel on either side, I am of the view that the mere pendency of an appeal against a decision or even an order of stay against the execution of the judgement will not operate as a bar in following the dictum laid down in the judgement

as long as the same has not been modified or set aside by the Hon'ble Supreme Court. The Larger Bench of the Tribunal in TAK-732/87 has held that when pension is ignored either whole or in part, the relief on the ignored part of the pension shall not be suspended or withheld during the course of re-employment. Since in fixing the pay of the applicant, their pension was not at all considered as a relevant factor the D.A. on the basic pay on re-employment has absolutely no connection with the relief on the ignored pension because the relief on the ignored pension is an adjunct ^{which} to that pension, ^{I am,} cannot be considered, separate from it. / therefore in respectful agreement with the view expressed by the Larger Bench of the Tribunal in TAK-732/87 and am bound to follow the dictum laid down in that case. Therefore, I am of the view that the applicants are entitled to succeed in this application.

6. In the result the application is allowed. It is declared that the applicants are entitled to get relief on the ignorable part of their pension during the period of their re-employment. I direct therespondents to pay to the applicants the relief on their Military Pension during the period of their re-employment also and to disburse to them the entire amount of relief on the Military Pension which has been so far withleld or recovered, within a period of three months from the date of receipt of a copy of this order. No order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER
4-3-1993