

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XXXXXX

3

1991

DATE OF DECISION 27.6.91

T.H.Kunhikrishna Kurup & 2 Ors Applicant (s)

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

Versus

The Superintendent of Post Offices, Badakara & 2 others Respondent (s)

Mr.V.Krishnakumar, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan - Administrative Member
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

(Mr.A.V.Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicants who are Ex-servicemen re-employed as Extra Departmental Agents in the Postal Department pray for a declaration that they are entitled to get relief of their Military pension as well as Dearness Allowance on the allowance payable to them as ED Agents and for direction to the respondents to pay them the relief on pension as well as Dearness Allowance on the allowance due to them as ED Agents and to refund the amount recovered from them pursuant to the order of the Post Master General, Kerala

dated 8.7.1988 at Annexure-II.

2. The first applicant ~~had~~ retired from ~~service and~~ Army got re-employed as Extra Departmental Branch Post Master, Onchilam on 15.11.1971. The applicant No.2 retired from ~~service and~~ Kolakkad Army Service on 31.10.1978 joined as EDBPM on 26.6.1981 and the third applicant retired from Army service on 31.10.1978 and joined as EDBPM, Eravattur on 16.7.1979. All of them were drawing Army pension of Rs.375/- per mensem. They were given relief on the pension also. As EDBPMs the applicants were paid a consolidated allowance of Rs.440/- per month. In 1987 the allowance payable to ED Agents were revised and Dearness Allowance was made payable to them on the fixed allowance in the same pattern as applicable to the regular employees. The applicants thus started receiving dearness allowance on the fixed allowance of Rs.440/- and also the relief on their Military pension. The Chief Post Master General, Kerala Circle on 22.2.1988 issued a memo to the SSPD's/ SPO's etc., directing recovery of dearness allowance already paid to such ED Agents. In the order dated 23.2.1988 the second respondent clarified that the order was dated 22.2.1988 applicable in the case of pensioners working as ED Agents also. Thereafter on 30.5.1988 another memo was issued by the second respondent directing that the dearness allowance already paid to the ED Agents may be recovered in convenient instalments not exceeding Rs.50/- per month. On 8.7.1988 the Department

of Posts issued another memo enclosing a copy of the DGP&T's letter No.14-26/87/PAP dated 14.4.1988 in which it was clarified that a pensioner who has been re-employed as ED Agent is to opt for either the relief of pension or dearness allowance on basic allowance. As insisted on by the department, the applicants opted to draw relief on pension and as a result they are not being paid dearness allowance on their monthly allowance. One Mr.Kannan Nair and 10 others who were Ex-servicemen re-employed as ED Agents approached this Tribunal praying for declaration that relief on pension and dearness allowance payable to them are not liable to be denied and for a direction to the respondents to pay them Dearness Allowance as well as relief on pension in OA K-610/88. This application was allowed by order dated 31.8.1989 setting aside the order dated 23.2.1988 and 8.7.1988 and directing the respondents to pay back the amount recovered from them on the basis of the above said orders. The applicants inviting attention to the decision of this Tribunal in OA K-610/88 submitted representation to the first respondent/claiming that the benefit of the judgement of the Tribunal in OA K-610/88 should be extended to them also. To this representation, the first applicant was given a reply dated 17.9.1990, Annexure-IV stating that the judgement in OA K-610/88 is applicable to the parties to that application only. Since the SLP filed by the department against the order in OA K-610/88 has been dismissed and

has been as the order fully implemented by the respondents, the applicants have filed this application claiming that they should also be given the same benefit.

3. In the reply filed to this application, the respondents have contended that in view of the letter No.14-26/87/PAP dated 14.2.1988 of the Director General of Department of Posts, New Delhi, communicated by letter No.EST/11-4/84 dated 22.2.1988, the payment of Dearness Allowance to the Ex-servicemen re-employed as ED Agents was stopped and the amount of DA already paid to them with effect from 1.7.1986 have been recovered. It has also been contended that, since the applicants have opted to receive relief on pension, they are not entitled to get the Dearness Allowance on the fixed allowance paid to them. The respondents have further contended that, since the SLP filed against the order in OA K-610/88 was not admitted on account of the delay and since the Supreme Court has issued order of stay of further payment of DA in SLPs' filed against similar orders of the Tribunal in OA 441/89 and OA 679/89, the benefit of the orders in OA K-610/88 cannot be extended to the applicants till the final disposal of the above said Special Leave Petitions. The respondents have thus contended that the applicants are not entitled to the relief claimed in this application.

4. We have gone through the pleadings and documents produced in this case, and have also heard the arguments

of the counsel on either side. In TA K-732/87 the Principal Bench has in its final order dated 20.7.1989 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. OM No.F.22(87-EV(A) /75 dated 13.2.1976. OM No.F.10(26)-B (TR)/76 dated 29.12.76. OM No.F13(8)-EV(A)76 dated 11.2.77 and OM No.23013/ 152/79/MF/CGA/VI (Pt)/1118 dated 26.3.1984 for suspension and recovery of relief and ad-hoc relief on pension will stand modified and interpreted on the above lines."

Relying on the above order in OA K-610/88 to which both of us are parties, it was held that as the pension received by them/Ex-servicemen were not taken into account in giving allowances to them as ED Agents, the applicants in those cases were entitled to receive both the relief on their military pension as and the Dearness Allowance on the basic allowance they received as ED Agents. We had also quashed the order dated 22.3.1988 and the order dated 14.4.1988 of the department of posts which were impugned in that application. It is not disputed

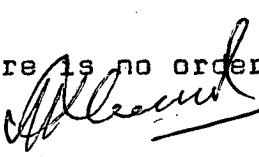
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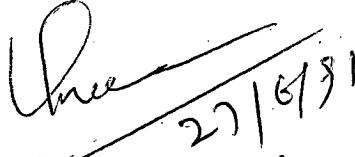
(2)

that the SLP filed against our judgement in OA K-610/88 has been dismissed, and that the respondents have implemented the judgement in full. The fact that the SLPs filed against two similar applications have been admitted and an interim stay has been issued in those cases, does not appear to us to be a sufficient reason to deviate from the view that we have taken in that case. Since the applicants did not get any benefit of fixation of pay which would be available to re-employed Ex-service-men had they been ~~regular~~ ⁱⁿ employment and as the applicants are paid only a fixed allowance, the fact that the applicants get a military pension and relief on that pension cannot be a reason to deny them the Dearness Allowance which they are entitled to get on the fixed allowance. Therefore, we are of the view that the applicants are entitled to succeed in this application.

5. In the conspectus of facts and circumstances we allow this application, declare that the applicants are entitled to get relief on pension as well as Dearness Allowance ~~on~~ ^{the basic} allowance payable to them as ED Agents and we direct the respondents to pay them the Dearness Allowance and also the relief on pension and to refund to them the amount recovered from them pursuant to the order dated 8.7.1988 at Annexure-II within a period of 2 months from the date of communication of this order.

There is no order as to costs.


(A.V.HARIDASAN)
JUDICIAL MEMBER


27/6/81
(M.V.KRISHNAN)
ADMINISTRATIVE MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

C.P(C) No. 66/91 in
OA No. 3/91.

Thursday this the 25th day of August, 1994.

CORAM

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

O. Madhavankutty Nair,
E.D.B.P.M. Eravattur,
Perambra.

... Petitioner/Applicant

(By Advocate Mr. M.R. Rajendran Nair)

Vs.

1. K.M. Shankaran, S/o V. Narayana Panicker,
aged 50 years, Superintendent of
Post Offices, Vadakara. Respondent/Respondent

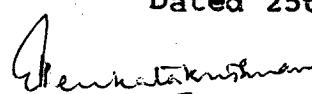
(By Advocate Mr. Mathews J Nedumpara, ACGSC)

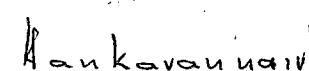
ORDER

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Since the orders in O.A. 3/91 have been stayed
by the Supreme Court of India, it is not proper to
proceed with this Contempt Petition. It is accordingly
dismissed without expressing any opinion on the merits.
No costs.

Dated 25th August, 1994.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR(J)
VICE CHAIRMAN