

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No.
~~XXXXXX~~

301

1990

DATE OF DECISION 30.7.90

S.Ramachandran Applicant (s)

Mr. M.Rajagopalan Advocate for the Applicant (s)

Versus

Chief General Manager, Respondent (s)
Telecom., Trivandrum & 3 others.

Mr. P.K.Sureshkumar, ACGSC Advocate for the Respondent (s)

CORAM:

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

The Hon'ble Mr. A.V.Haridasan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. To be circulated to all Benches of the Tribunal? M

JUDGEMENT

(Shri S.P.Mukerji, Vice Chairman)

In this application dated 12.4.90 the applicant who is an ex-serviceman re-employed as Telecom Office Assistant under the Chief General Manager, Telecom, Kerala Circle, has prayed that the impugned order dated 12.6.87 fixing his pay on re-employment at the minimum of Rs 260 in the scale of Rs 260-480 should be set aside and that the respondents be directed to re-fix his pay from 1.5.83 by giving him 7 increments. He has also prayed that his last pay in the Army should be protected ignoring his entire pension. The

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application was admitted on 19.4.90 in presence of representative of the ~~Additional~~ Central Government Standing Counsel. On 4.6.90 the learned ~~Additional~~ Central Govt. Standing Counsel undertook to file counter affidavit within four weeks and the next hearing was fixed on 10.7.90. When the case was taken up on 10.7.90, it was found that neither the respondents ~~were~~ represented by any counsel nor any counter affidavit had been filed by them. The learned counsel for the applicant submitted that the circumstances of the case are identical with those of OA 660/89.

2. We have gone through the documents in this case and find that the case is not identical with OA 660/89. On the other hand, as the applicant himself in his application has stated, his case will be governed by the Full Bench decision in OA 3/89. We agree with the applicant and proceed to decide this case accordingly. The brief facts of the case are as follows:

3. According to the applicant, he retired from the Army after 17 years of service from 8.2.65 to 28.2.82. His last pay drawn at the time of his discharge from the Army Signals was Rs 309.50. On 1.5.83 he was re-employed as Telcom Office Assistant in the pay scale of Rs 260-480. He represented on 3.5.84 praying that his pay on re-employment may be fixed in accordance with the rules pertaining to ex-servicemen. His particulars in the Army were called for. When nothing was heard, he moved the Signal Records Office of the Army on 12.11.85 requesting that the details of his Army service should be sent to

the respondents. He was informed by the Signal Records Officer, Jabalpur at Annexure-A3 that the required information had been sent to the Accounts Officer, Telegraphs at Ernakulam in June 1984. His further representation elicited the impugned order dated 12.6.87 at Annexure-A5 fixing his pay as a re-employed Ex-serviceman at Rs 260 per month with effect from 1.5.83 in the scale of Rs 260-480. It was also indicated that his pay fixation had been done on the basis of the Government of India's OM dated 25.11.58 as amended from time to time. The applicant's contention is that his entire military pension should be ignored and since his last pay in the Army was Rs 309.50, he should be given 7 increments in the scale of Rs 260-480 by taking into account the service put in by him in the Army in equivalent and higher grades. He has indicated that he was waiting for a decision in similar cases pending before the Tribunal and has moved this application after the Full Bench decision of this Tribunal was delivered in OA 3/89.

4. The question whether re-employed ex-servicemen should be given increments in the re-employed pay scale by ignoring such military pension which is to be ignored for the purpose of pay fixation on re-employment was considered by this Tribunal in OA 3/89 in the judgement

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(to which one of us was a party) delivered on 30.3.90.

This judgement is based on the decision of the Full Bench of this Tribunal delivered on 13.3.90 on a reference made in OA 3/89 and 3 other cases.

5. The short point in those 4 cases and the instant case before us is this. For re-employed persons the general principle is that pay on re-employment plus gross pension should not exceed the last pay drawn. Where it exceeds the last pay drawn the basic pay on re-employment is reduced so that the reduced pay plus gross pension is equal to the last pay drawn. In certain circumstances the re-employed pensioners are allowed one advance increment for each completed year of service in equivalent or higher grades rendered before retirement. But again the re-employment pay with advance increments plus gross pension should not exceed the last pay drawn and to that extent the advance increments are reduced in full or in part. In case of ex-servicemen who retired before attaining the age of 55 years, in order to compensate them for premature retirement and in recognition of their services in the Armed Forces for the protection of the country, part or the whole of the military pension has been ignored for the purposes of fixation of their pay on re-employment in civilian posts. That is, while reckoning their pay on re-employment with advance increments for their past equivalent service, the ignorable

part of the pension is not added to see whether the total exceeds the last pay drawn before retirement. As a result of part or whole of the pension being ignored, they become entitled to higher pay on re-employment with advance increments than if their pension had not been ignored. The respondents while accepting that, part or the whole of pension of re-employed ex-servicemen has to be ignored for fixing their re-employment pay at the minimum of the pay scale, have decided that for the purposes of granting advance increments on the basis of their military service, the ignorable part of the pension also has to be considered and if the minimum of the pay scale plus the ignorable and non-ignorable part of pension exceed the last pay drawn, they will not be allowed advance increments even though the re-employment pay with advance increments plus the non-ignorable part of pension (which is nil in these cases) is far less than the last pay drawn before retirement. The point at issue is whether the pension which is ignored for purposes of pay fixation on re-employment can be taken into account for denying the ex-servicemen the benefit of advance increments within the limit of last pay drawn.

6. The Full Bench of this Tribunal in its judgement in OA 3/90 and others dated 13.3.90 decided as follows:

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"(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 (Ann. 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."

referred to at Annex A5

7. The basic order of 25th November, 1958 allows the fixation of pay of re-employed pensioners at a higher stage than the minimum in the following terms.

"In case where it is felt that the fixation of initial pay of the re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than in which he is re-employed."

8. Following the ruling of the Full Bench, since the entire military pension of the applicant has to be ignored in accordance with the Ministry of Defence's OM dated 8.2.83 at Annexure-A6, the military pension cannot be added to the minimum of the pay scale of the re-employed post, i.e Rs 260, to compare it with the last pay of Rs 309.50 drawn by him in the Army. Since the minimum of the pay scale of Rs 260 is less than the last pay drawn by him, the applicant before us will be entitled to one increment for each year of service which he had rendered before retirement from the Army in a post not lower than the post in which he is re-employed.

9. In the circumstances, we allow this application with the direction that if the last pay drawn by the applicant in the Army was more than Rs 260 per month, he is entitled to get one advance increment for each completed year of his military service in grades equivalent to that of Office Assistant from the date of his re-employment as such, provided that his pay with advance increments on re-employment together with the non-ignorable part of his pension does not exceed the last pay drawn by him in the Army. Action on the above lines and his pay fixed should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

Admns
(A.V.Haridasan)

Judicial Member

30/7/90

S.P.M.
(S.P.Mukerji)

Vice Chairman

30.7.90

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