

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 321 1993.

DATE OF DECISION 27.4.93

PR Sukumaran Nair and others Applicant (s)

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

Versus

Union of India represented by Secretary, Ministry of Defence, New Delhi and others Respondent (s)

Mr. T.K. Venugopalan, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

The Hon'ble Mr.

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

JUDGEMENT

MR. N. DHARMADAN JUDICIAL MEMBER

All the applicants are ex-servicemen re-employed in various departments of the Government of India. They were discharged from military service before they attained promotion as Commissioned Officer and before attaining 55 years. After their discharge from military service they were getting pension with relief on pension. Respondents fixed their salary on re-employment post without taking into account the ignorable part of the military pension in terms of executive orders issued by the Government. Since applicants were denied the benefit of executive orders as interpreted

by this Tribunal in TAK 732/87, applicant filed representations and approached this Tribunal with the following reliefs:

- "a) to direct respondents to pay relief payable to the applicants on their military pension during the period of their employment.
- b) to direct respondents to return the entire pension relief of the applicants suspended so far.
- c) to grant such other relief deemed fit to the Hon'ble Tribunal."

2. At the time of admission it was submitted by learned counsel for applicant that this case is covered by the Full Bench decision of this Tribunal in TAK 732/87 and number of cases have been allowed by this Tribunal following the Full Bench decision. However, we granted sufficient time to the respondents to file their reply. Even after three postings they have not filed reply.

3. Today when the case was taken up for final hearing, learned counsel for respondents sought further time for filing reply. Having regard to the facts that this is covered by the Full Bench decision of this Tribunal, I am not inclined to grant any further time for filing reply.

4. Learned counsel for respondents has no case that the facts of this case are distinguishable and that a different view can be taken in this case. However, he submitted that the decision in TAK 732/87 is pending before the Supreme Court and the same has been stayed.

5. In a number of similar cases we followed the Full Bench decision taking the view that so long as the Full

Bench decision is not reversed or set aside, this Tribunal is bound to follow the same. The law laid down by the Full Bench is extracted below:

"Where pension is ignored in part or in its entirety for consideration in fixing the pay of re-employed exservicemen who retired from military service before attaining the age of 55 years the relief including adhoc relief, ~~re~~latable 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. F22(87-EV(A)/75 dated 13.2.76 O.M.No. F10(26)-B(TR)/76 dated 29.12.76, OM No.F 13 (8)EV(A)/76 dated 11.2.77 and OM No. M-23013/152 /7/MF/CGA VI (Pt/1118 dated 26.3.84 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines..."

6. In the light of the law laid down by the Full Bench, this application is to be allowed. Accordingly, I allow the application with the direction to respondents to pay relief ~~on ignorable part of the military pension of the applicants~~ (which was Rs. 50 upto 1964, Rs. 125 upto 19.7.78 and the entire pension upto 25.1.83). I also direct that the relief on pension withheld/suspended from the date of their re-employment shall be disbursed to them. Action on the above lines shall be taken ~~as~~ ^{within} within a period of 3 months from the date of receipt of a copy of this judgment.

7. There will be no order as to costs.


(N. DHARMADA) 27.4.93
JUDICIAL MEMBER

27.4.93

kmm