

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

DATE: 25.8.93

O.A. 324/93

G. Ramakrishnan  
S/o K. Gopalan  
Puliyanjali House,  
P.C. Parippu, Kottayam

Applicant

vs.

1. Divisional Personnel Officer  
Divisional Office, Personal Branch  
Southern Railway, Trivandrum
2. Financial Advisor and Chief Accounts  
Officer, Park Town, Southern Railway  
Madras-3

Respondents

Mr. M. Rajagopalan

Counsel for the  
applicant

Mr. Thomas Mathew Nellimoottil

Counsel for the  
respondents

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THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

The applicant is an ex-serviceman now re-employed in the Southern Railway and working under the first respondent. His last pay in the military service was Rs.383/- When he was discharged from military service, he was granted pension of Rs. 220/- per month. He was re-employed as a Commercial Clerk on 5.12.91 in the pay scale of Rs. 260-430. Since the applicant was drawing a higher pay in the military service, he requested for fixation of his pay protecting the last pay in the military service in the light of the Govt. orders. The above request was rejected as per the impugned order taking the stand that re-fixation of pay on re-employment on a higher stage by allowing additional increments does not arise on the facts of his case. According to them, the decision relied on by the applicant have no application.

2. The applicant filed earlier O.A. 1035/91 for getting the benefit under the Govt. orders for fixation of his pay protecting the pay drawn by him in the military service

That original application was heard and disposed of by Annexure A-2 judgment. Thereafter, the Railway filed a review which was dismissed as per Annexure A-3 order, in which it has been clarified that fixation of pay of the applicant in the re-employed post have to be done as indicated in para 6 of the Annexure A-2 judgment, w.e.f. 5.12.81.

3. The learned counsel for applicant submitted that the reliefs claimed in this case is different. He has only prayed for a direction to respondents to re-fix the pay of the applicant protecting his last pay drawn ignoring the military pension drawn by him, w.e.f. 25.1.83 with all consequential benefits including arrears. According to the applicant if the pay of the applicant is fixed in the re-employed post w.e.f. 5.12.81, the entire pension cannot be ignored because at that time as per the Govt. orders in existence, only Rs. 125 of the military pension has been exempted from in the fixation of pay in the re-employed post.

4. The respondents also filed a detailed reply.


5. At the time when the case was taken up for final hearing, learned counsel for the applicant submitted that the decision of the Full Bench in O.A. 3/89 is applicable in this case also. The learned counsel also relied on the decision of the Tribunal in O.A. 99/90 filed by exservicemen who were re-employed prior to 25.1.83. The Tribunal held that such employees are also entitled to get their pay fixed ignoring their entire pension w.e.f. 25.1.83.

6. The learned counsel for respondents could not distinguish the facts of this case with that of O.A. 3/89. This Tribunal followed the judgment in a number of cases taking the view that the applicants are entitled to get protection of pay. The respondents have no case

that the decision in O.A. 3/89 has either been modified or set aside by the Supreme Court so far. So much so I am bound by the decision of the Full Bench in O.A. 3/89. Accordingly, I follow the same and allow the application.

7. In the result, I allow the application and direct the respondents to fix the pay of the applicant in the re-employed post protecting his last pay and ignoring the entire pension w.e.f. 25.1.83 with all consequential benefits including arrears. Annexure A-5 impugned order is quashed.

8. There shall be no order as to costs.

  
(N. DHARMADAN) 25.8.93  
JUDICIAL MEMBER  
25.8.93

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LIST OF ANNEXURES

- 1 Annexure A2 Copy of the judgment in OA 1035/91
- 2 Annexure A3 Copy of the order in RA 86/92 dt. 21.10.92.
- 3 Annexure A5 Copy of order No.F/POA 1035/91 dt. 21.12.92 of DPO, Divisional Office, Trivandrum.