

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 1506/92 &  
330/93 / 199

DATE OF DECISION 4.5.1993 ✓

Krishna Rajan and others  
M.K.Paul and 3 others

Applicant(s) in O.A.1506/92  
Applicants in O.A.330/93

Mr.M.Rajagopalan (O.A.1506/92)  
Mr.Abraham Vakkanal (O.A.330/93)  
Versus

Advocate for the Applicant(s)

Union of India represented by \_\_\_\_\_ Respondent(s)  
Secretary, Ministry of Defence (O.A.1506/92) and  
Secretary, Ministry of Finance (OA 330/93) and others

Mr.KV Raju (ACGSC) for R.1-5. \_\_\_\_\_ Advocate for the Respondent(s) (O.A.1506/92)

Mr.Raju Abraham Pulpara (R.7) (not present)

Mr.KK Chandran Pillai (For R.6) (Not present)

Mr.PS Krishna Pillai, ACGSC th.proxy for O.A.330/93.

CORAM

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

THE HON'BLE MR.

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

(S.P.Mukerji, Vice Chairman)

Since common question of facts, law and reliefs are involved in the aforesaid two applications, they are disposed of by a common order as follows.

2. The applicants in these cases are ex-servicemen re-employed in various capacities in the office of the Defence Pension Disbursement Officer, Southern Railway and Accountant General's Office at Trivandrum. They are aggrieved by the fact that during the period of their re-employment relief including adhoc relief on the military pension has been withheld. They have prayed that they should be declared to be entitled to receive relief on that part of the military pension which is ignored for the purpose of fixation of pay and the respondents directed to disburse the amount including arrears.

3. The issue involved in this application was decided by a Full Bench of this Tribunal in T.A.K.732/87 by the Judgment dated 20.7.87. By a majority judgment to which I was a party ~~it was~~ decided 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. O.M.No.F.22(87-EV(A)/75 dated 13.2.1976, O.M.No.F.10(26)-B(TR)/76 dated 29.12.76, O.M.No.F.13(8)-EV(A)/76 dated 11.2.77 and O.M.No.M.23013/152/79/MF/CGA/VI(Pt)/xxxxxxxx 1118 dated 26.3.1984 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines. The cases referred to the Larger Bench are remitted back to the Division Bench of Ernakulam for disposal in details in accordance with law and taking into account the aforesaid interpretation given by one of us (Shri S.P. Mukerji, Vice Chairman)."

4. The learned counsel for the respondents stated that the aforesaid judgment on appeal is pending before the Hon'ble Supreme Court and has been stayed. It is, however, conceded that the judgment has not been set aside. Accordingly, I am still bound by the aforesaid judgment of the Full Bench. In Roshan Jagdish Lal Duggal and others Vs. Punjab State Electricity Board, Patiala and others, 1984(2) SLR 731, the High Court of Punjab and Haryana observed that pendency of an appeal before the Supreme Court does not render an order of the High Court 'non est' even where the High Court's order in appeal had been stayed by the Supreme Court. The order of the High Court was still to be treated as a binding precedent. The Delhi High Court also in Jagmohan v. State, 1980 Criminal Law Journal 742 observed that mere pendency of appeal before the Hon'ble Supreme Court does not take away the binding nature of the High Court's decision

unless and until it is set aside by the Hon'ble Supreme Court. In *Alpana V. Mehta Vs. Maharashtra State Board of Secondary Education and another*, AIR 1984 SC 1827 the Supreme Court upheld the contention of the appellant that the Bombay High Court was not justified in dismissing her writ petition on the sole ground that operation of the earlier judgment of that High Court on the basis of which the writ petition had been filed, had been stayed by the Supreme Court. The above view has been upheld by the Full Bench of the Principal Bench of the Tribunal in its judgment dated 13th February, 1991 in O.A.184/1990 (*Shri Ganga Ram & Another v. Union of India*) and 3 other O.As. In those cases the issue before the Full Bench was whether the judgment delivered by another Full Bench in *Rasila Ram's* case about the jurisdiction of the Tribunal which had been stayed by the Supreme Court in an SLP filed by the Government, remains valid as a binding precedent or whether the interim order passed by the Supreme Court nullified the judgment of the Full Bench or its effect was to be confined only in respect of the judgment pronounced in the case of *Rasilaram*. The Full Bench observed that the interim order passed by the Supreme Court in the S.L.P. in *Rasilaram's* case not being a speaking order does not make any declaration of law and "consequently, it is not a binding order under Article 141 of the Constitution". The Full Bench further observed that until the decision of the Full Bench in *Rasilaram's* case is set aside, reversed or modified by the Supreme Court it remains effective.

5. In the above light I allow both these applications and declare that the applicants are entitled to receive relief including adhoc relief relatable to the ignorable part of their military pension during the entire period of their re-employment and the same cannot be suspended, withheld or recovered so long as the D.A. received by such re-employed pensioners has been determined on the basis of pay which has been reckoned

.4.

without consideration of the ignorable part of the pension. I direct that arrears of relief including adhoc relief on the ignorable part of the military pension of the applicants shall be paid to the applicants throughout their period of re-employment and any amount withheld or suspended shall be restored to them. Action on the above lines should be completed within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.

S.P. Mukerji  
4.5.93

(S.P. Mukerji)  
Vice Chairman  
4.5.1993

ks