

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 362 of 1991
L. A. No.

DATE OF DECISION 8-10-1992

Mr TV Nair Applicant (s)

Mr MR Rajendran Nair Advocate for the Applicant (s)

Versus

UOI, represented by Secretary Respondent (s)
M/o Finance, New Delhi & 2 others

Mrs KB Subhagamani, ACCSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV HARIDASAN, JUDICIAL MEMBER

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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

The applicant is a pensioner. After serving the Indian Army for a fairly long period, he retired from service on 13.5.1971 before attaining the age of 55 years and was re-employed in the BSF on 21.7.1971 as Inspector Cipher in the scale of Rs.550-25-800 and a special pay of Rs.60/-. His initial pay was revised to Rs.490/- ignoring Rs.50/- out of 170/- pf his pension in accordance with the rules then prevailing. While continuing as Inspector Cipher on an year to year basis, the applicant joined the Customs Department on deputation on 1.8.1975 and was regularly absorbed there w.e.f. 20.7.1976 as Cipher Assistant Telecommunication Wing. On re-employment in the Customs Department, in terms of the Government of India order dated 3.2.1977, the applicant is entitled for the pay protection of

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fixation. His pay/^{was}fixed ~~fixed~~ in the Customs Department as on 20.7.1976 at Rs.510/- plus Rs.60/- as special pay. He was also given periodical increments thereafter. While so by order dated 20.8.1981 at Annexure-III, the applicant's pay was re-fixed w.e.f. 20.7.1976 at Rs.305/- protecting his total pay at Rs.510/- granting personal pay of Rs.205/-/^{adjustable} towards future increments in purported compliance with the order dated 3.2.1977 on the ground that the original fixation made in the year on 3.6.1978 suffered from a mistake. The Annexure-III order was implemented in 1981 itself. The applicant thereafter retired on superannuation in the Customs Department on 30.6.1984. Since he was not given any pension on the ground that he was not confirmed in the Department, the applicant had filed OA-639/89. That O.A. was disposed of directing that the applicant should be confirmed in the post and he should be granted pensionary benefits. Pursuant to the above directions of this Tribunal in the order in OA-639/89, the applicant was given confirmation and consequential benefits. Coming to know that this Tribunal has in TAK-404/87 and connected cases held that re-employed Ex-Servicemen who retired from Defence Service while holding the post lower than a commissioned officer were entitled to have their pay fixed, ignoring the entire service pension w.e.f. 25.1.1983 and that such pensioners are entitled to get relief on pension, the applicant has filed this application under Section 19 of the A.T.Act praying for fixation of pay and consequential benefits in accordance with law and the orders dated 16.1.1964, 19.7.1978 and 8.2.1983.

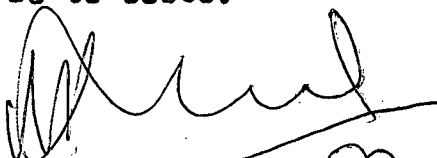
2. The respondents opposed the claim of the applicant on the following grounds: i) The refixation of pay made in the year 1981 was made in accordance with the O.M. dated 3.2.1977 finding that while fixing the pay of the applicant in the year 1978, the instruction contained in the above O.M. was overlooked. ii) The applicant has not raised any dispute regarding the refixation for the last many years and at this distance of time, he cannot be allowed to rake up the question and (iii) The applicant has not made any option for fixation of pay as required under the different O.Ms relied on him in the application.

3. When the application came up for final hearing, the learned counsel for the applicant argued that he is claiming the benefit of the judgement of the Full Bench of the Tribunal in TAK-404/87 and connected cases and that pension being of a recurring nature, the cause of action in the case of pensioners arises every month. While relief is sought on the basis of the judgement of the Tribunal in TAK-404/87, it is conceded by the applicant that he did not make any representation on the basis of the above judgement. I am of the view that the applicant should have first made a representation requesting for extension of the benefits given to similarly situated persons by the judgement of the Tribunal in TAK-404/87 and should have resorted to litigation only if he did not get redress at the hands of the respondents. Therefore, I am of the view that the proper course to be adopted in this case is to direct the applicant to make a representation to the



concerned authority for the reliefs which he has claimed in this application and the authority to dispose of the representation in accordance with law and in the light of the judicial pronouncement on the point. In the result, the application is disposed of with the following directions:

- i) The applicant is directed to make a representation to the second respondent /for the relief which he has claimed in the O.A. within a period of two weeks from the date of receipt of this order.
- ii) The second respondent is directed to consider and dispose of the representation, if any, so made by the applicant within the aforesaid period, in accordance with law and in the light of the judicial pronouncement in TAK-404/87 and connected cases, within a period of three months from the date of receipt of the representation by the applicant. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER
8-10-1992

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