

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 368/ 1990
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DATE OF DECISION 23.11.1990

P.Kunhi Raman Nambiar Applicant (s)

M.R Rajendran Nair Advocate for the Applicant (s)

Versus

Union of India, represented by Respondent (s)
Secretary to Government, Ministry
of Defence, New Delhi.

Mr N.N Sugunapalan, SCGSC 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? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. To be circulated to all Benches of the Tribunal? Yes

JUDGEMENT

(Hon'ble Shri S.P Mukerji, Vice-Chairman)

In this application dated 9.5.1990 filed under Section 19 of the Administrative Tribunals Act the applicant who is an ex-serviceman re-employed under the Controller General of Defence Accounts and now working as Senior Auditor in the Pay and Accounts Office, Cannanore has challenged the impugned orders dated 31.7.89, 26.9.89 and 13.2.90 by which his representations about re-fixation of his pay on re-employment by granting increments for equivalent service in the Army were rejected. He has prayed that the respondents be directed to grant him relief on the ignorable part of military pension and on the full military pension after 8.2.83. The brief facts of the case are as follows.

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2. The applicant retired from the Army Service on 11.9.1979 at the age of 39 years, when he was drawing a pay of Rs.388.50. The military pension and pension equivalent of gratuity was Rs.212.99. He was re-employed under the Controller of Defence Accounts on 30.4.1981. At that time in accordance with the Ministry of Finance's O.M of 19.7.78, Rs.125/- of military pension of re-employed ex-servicemen who had been retired from the Army before attaining the age of 55 years was to be ignored in fixing the re-employment pay. By an earlier order dated 25.11.58 the re-employed pensioners were entitled to get their initial pay on re-employment fixed at the minimum of the pay scale of the post subject to the condition that pay plus pension did not exceed the last pay drawn. Where, however, the pay plus pension was less than the last pay drawn in the military, they were entitled to be allowed one increment in the re-employment pay scale for each completed year of equivalent service in the military. By a further order dated 8.2.83 those ex-servicemen who retired from the military below the rank of a Commissioned Officer got their entire military pension ignored for pay fixation on re-employment if they were re-employed after 25.1.83. Those who were re-employed before that date were given the option to come over to the benefits of that order provided their pay

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fixation was to be done as if they were re-employed for the first time with effect from 25.1.83. This meant that the increments earned by them before 25.1.83 were to be given up by them. The applicant's grievance are threefold . His first grievance is that relief on the ignorable part of the pension was stopped during the period of his re-employment. His second grievance is that the ignorable part of pension, i.e, Rs.125/- from the date of re-employment till 24.1.83 and the entire military pension from 25.1.83 ^{was} ~~were~~ not ignored ^{for} for the purposes of his pay fixation, on the ground that he did not exercise his option to get his pay re-fixed under the orders of 1978 and 1983 within six months. His third grievance is that he was not allowed to draw increments on re-employment. His representations to the competent authorities drew blank. The applicant has also referred to the judgment of this Tribunal in TAK 404/87 whereby the benefits of getting the entire military pension ^{ignored} in accordance with the order of 8.2.83 [^] was extended to ex-servicemen who were re-employed before 25.1.83 even though they had not exercised any option.

3. The respondents have stated that when the applicant was re-employed on 30.4.1981 his pay was correctly fixed at the minimum of the pay scale at Rs.330/- by ignoring Rs.125/- of his military pension. His full military pension could not be ignored by the

order dated 8.2.83 as the applicant had failed to exercise his option within six months from 24.10.83. They have cited some orders by which dearness relief on pension is to be withheld during the period re-employment. As regards increments at the time of his initial re-employment they have stated that in fixing his initial pay Rs.125/- of his military pension has been ignored and since there was no hardship to him he was not entitled to advance increments.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The reliefs claimed by him are already covered by a catena of decisions taken by this Tribunal. So far as the first grievance of the applicant that he was not allowed relief on pension during the period of re-employment is concerned, we have to advert to the decision of the Larger Bench of this Tribunal dated 20.7.1989, in TAK 732/87 etc. The Larger Bench by its majority judgment 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

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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)/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)."

The learned counsel for the respondents conceded that even though an SLP has been filed and the order has been stayed, the ruling of the Larger Bench will still be binding on this Tribunal till the aforesaid judgment of the Larger Bench is set aside. Accordingly we find that the applicant before us is entitled to get the relief and adhoc relief on the ignorable part of the pension during the period of re-employment restored back to him. If any recovery has been made or the relief has been suspended, the amount recovered or suspended should be refunded.

5. As regards getting the benefit of the O.Ms of 1978 and 1983, even though the applicant had not opted for the same the issue was decided in favour of the re-employed pensioners in the judgment of this Tribunal dated 31.10.89 in TAK 404/87 (to which ^{judgment} one of us was a party). It was held that merely because these ex-service-men had been re-employed before certain date, they could

not be deprived of the benefits of these orders or forced to forego the increments earned by them. Relying upon the dictum of the Supreme Court in Nakara's case (D.S Nakara vs. Union of India, AIR 1983 SC 130), it was held that there should be no discrimination amongst re-employed ex-servicemen on the basis of a cut off date of re-employment. The following observations from the judgment of this Tribunal would be relevant.

"From the above it is clear that the Supreme Court were keen that no discrimination should be made between the pensioners based on the date of retirement. It was also felt that notional fixation of pension on the date of retirement even though it may be anterior to the promulgation of Liberalised Pension Scheme without giving them arrears for the past period (between the date of retirement and date of promulgation) will not be giving retrospective effect to the Scheme and will not violate its prospective nature. In the case of revision of pay scale from a particular date even old entrants are allowed revision of pay scale from a particular date and the benefit of increments which they had earned during the past period is also duly accounted for. It therefore seems to us inequitable that the re-employed pensioners who had been re-employed prior to February, 1983 should be forced to lose the benefit of their past service by exercising option on a "take it or leave it basis".

10. We feel that for those ex-servicemen who had been re-employed prior to the issue of the O.M their re-employment pay should be determined notionally on the date of their re-employment by applying the enhanced limit of ignorable pension and their pay as on 8th February, 1983 reckoned by giving them the

benefit of earning increments over and above the notional pay so fixed. Their actual pay will be revised accordingly with effect from the date of issue of the relevant O.M without any arrears based on notional pay fixation for the past period."

6. So far as the applicant before us is concerned since he was re-employed on 30.4.81 , i.e, long after the 1978 order was issued, he is fully entitled to get Rs.125/- of his pension ignored for the purposes of his initial pay fixation. The 1983 order ignoring his entire military pension should be ^{applied} ~~ignored~~ to fix his initial pay notionally from the date of his re-employment and on that basis, his re-employment pay should be re-fixed as on ^{25th January} ~~8th February~~, 1983 by giving him the benefit of earning increments over and above the notional pay so fixed. But no arrears of pay prior to ^{25th January} ~~8th February~~ 1983 would be given.

7. So far as the third relief of getting advance increments at the time of initial appointment on 30.4.81 is concerned, a Larger Bench of this Tribunal in its judgment dated 13.3.1990 in O.A 3/89 and others held as follows:-

" 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 (Annexures 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."

As stated earlier in accordance with the 1958 instructions advance increments over the minimum of the prescribed pay scale can be given to re-employed pensioners where granting them the minimum of the pay scale will cause undue hardship. The Department of Personnel and Training in 1985 had issued instructions to define 'hardship' contemplated in the 1958 instructions and indicated that hardship would be seen from the point where pay plus pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no hardship they indicated that no advance increments can be granted. By the ruling of the Larger Bench of this Tribunal, only the non-ignorable part of the pension is to be added to the minimum of the pay scale to compare it with the last pay drawn in the Army to determine whether there is any hardship or not. The ignorable part of the pension cannot be taken into account for such purpose. From Annexure-II to the O.A of this case, the following particulars are revealed.

" Pension + PEG	:	188
		<u>24.99</u>
		212.99
Less ignorable Pension		<u>125</u>
		87.99
Pay in re-employed Scale (Minimum)		<u>330.00</u>
Pay + unignorable pension =		417.99

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Pay last drawn

388.50 "

From the above it is clear that the minimum (Rs.330) of the pay scale of the post to which the applicant was re-employed plus the non-ignorable part (Rs.87.99) of the military pension and pension equivalent of gratuity comes to Rs.417.99 which is more than the last military pay of Rs.388.50 drawn by him. Thus there is no hardship to entitle the applicant to advance increments.

8. In the facts and circumstances we allow the application in part to the following extent:

- (a) The applicant will be entitled to relief including ad hoc relief on the ignorable part of the pension, i.e, Rs.125/- till 24.1.83 and entire military pension with effect from 25.1.83 during the period of re-employment. Any amount of relief or ad hoc relief on such pension recovered, withheld or suspended during the period of his re-employment should be refunded or restored to the applicant within a period of three months from the date of communication of this order.
- (b) The applicant would be entitled to get Rs.125/- of his pension ignored till 24.1.83 and the entire military pension ignored after 25.1.83 even though he had not opted to come over to the O.Ms of 1978 or 1983. His re-employment pay with effect from 25.1.83 should be re-fixed by notionally fixing his pay with effect from 30.4.81 by ignoring his entire military pension and giving him notional increments till 25.1.83 without however arrears of increased pay during 30.4.81 and 24.1.83. The arrears of increased pay so fixed with effect from 25.1.83 should be paid to him within a period of three months from the date of communication of this order.

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9. We make it clear that the aforesaid order will be without prejudice to the applicant's claim of revised re-employment pay and revised military pension with effect from 1.1.86 which have not been touched in this O.A.

There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

23/11/90


(S.P. MUKERJI)
VICE CHAIRMAN

23.11.90

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