

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 393 of 199 3

DATE OF DECISION 21-4-1993

Mr M Appu Vellodi Applicant (s)

Mr M Rajagopalan Advocate for the Applicant (s)

Versus

The DPO, Southern Railway, Respondent (s)  
Palghat & 2 others

Mr Thomas Mathew Nellimoottil Advocate for the Respondent (s) **1&2**  
Mr George CP Tharakan, SCGSC for R-3

CORAM :

The Hon'ble Mr. **AV HARIDASAN, JUDICIAL MEMBER**

~~TOECKTICKET INDEX MM~~

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
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 an Ex-serviceman who got re-employed on 20.10.1982 as Assistant Station Master in the Madras Division of the Southern Railway in the scale of Rs.330-520. His grievance is that inspite of repeated requests by him the respondents are refusing to fix his pay in accordance with the instructions of the Government of India contained in O.M.s at Annexure-A1 & A2. It is alleged that in accordance with the above memoranda he is <sup>last</sup> entitled to have his pay drawn in the Defence Service protected by giving one increment for completed year of service in the Defence Force in an equivalent or higher grade. It is alleged in the application that for more than 10 years the applicant was

working in a higher grade and that therefore he is entitled to the grant of increment for protection of last pay drawn. The last pay drawn by him in the Defence Force was Rs.393.00. Since his representations claiming fixation of pay did not evince any response, the applicant has filed this application praying that for a direction to the respondents 1&2 to fix his pay protecting his last pay ignoring his entire pension and other retirement benefits.

2. The respondents have filed a statement <sup>reply</sup> ~~statement~~ stating that for the purpose of fixation of the pay of the applicant, the first respondent has initiated action and the same is pending with the second respondent. It has also been contended that in view of the Government of India orders issued in the year 1985, the applicant is not entitled to have the Military Pension ignored for the purpose of determining the hardship in fixing the pay.

3. I have heard the arguments of the learned counsel for the parties and have also gone through the pleadings. A Larger Bench of this Tribunal has in OA-3/89 held that in determining ~~whether~~ <sup>whether</sup> ~~whether~~ <sup>whether</sup> whether there is hardship or not in fixing the pay of the re-employed Ex-serviceman the ignorable part of the pension has to be totally ignored, meaning that while considering whether the re-employed Ex-servicemen suffered any hardship, the ignorable part of the pension should be totally left out from consideration. Although ~~the~~ <sup>the</sup> Government of India has filed SLP against the order in OA-3/89 before the Hon'ble Supreme Court, the principle underlining the ruling of the Larger Bench has not yet been set aside or modified. Therefore I am in full agreement with the

view expressed by the Larger Bench. In the light of the ruling of the Larger Bench, I am of the view that the applicant is entitled to get his pay fixed giving increment for service in similar or higher grade in the Defence Force upto the limit of his last drawn pay in the Defence Force; if it is found that there is hardship in his case when his pay is fixed in the lower stage in the re-employed post without considering the ignorable part of his pension. Therefore ~~XXXXXX~~ <sup>2</sup> disposed of directing the respondents to fix his pay in accordance with the instructions of the Government of India at Annexures-A1 and A2 without taking into account the ignorable part of his pension while determining whether there is hardship or not in the light of the judgement in OA-3/89. Action on the above line should be completed and consequential benefits should be given to the applicant within a period of three months from the date of receipt of a copy of this order. No order as to costs.

( AV HARIODASAN )  
JUDICIAL MEMBER  
21-4-1993

trs