

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
T.A. No.

403/90 199

DATE OF DECISION 16.8.91

V.M.Mathews _____ Applicant (s)

Mrs. H.Subhalakshmi _____ Advocate for the Applicant (s)

Versus

The Director General, _____ Respondent (s)
Employees State Insurance Corp. and 2 others

Mr.C.S.Rajan _____ 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?
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

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

In this application dated 18.5.1990 filed under Section 19 of the Administrative Tribunals Act, the applicant who is an ex-serviceman reemployed as an L.D.C in the Employees State Insurance Corporation(ESIC) Local Office at Thripunithara has prayed that the impugned order dated 16.10.89 at Annexure A1 upholding fixing his pay as an L.D.C at the minimum of the pay scale with effect from 29.1.85 and the earlier order dated 20th January, 1989 at Annexure-A2 / fixing the pay on those lines should be set aside and the applicant be declared to be entitled to get his initial pay fixed as an L.D.C in the scale of Rs.260-400 at Rs.331/- by allowing one increment for each year of service rendered by him in the military. The brief facts of the case are as follows.

2. Having retired from the military on 31st October 1978 with a basic pay of Rs.331/- the applicant was reemployed in the ESIC as an L.D.C in the scale of Rs.260-400 with effect from 29.1.85. He immediately thereafter on 27.3.85 represented (Annexure-A3) for fixing his pay as an L.D.C by taking into account his former 15 years of service in the Air Force. There was no response. He reminded the respondents and ultimately received a copy of the communication dated 3.2.88(Annexure-A4) with an endorsement that in accordance with the Headquarters letter dated 19.9.85 the reemployed ex-servicemen are to get the minimum of the pay scale of reemployment post along with full pension. ✓
Thereafter the applicant represented again on 4.7.89 (Annexure-A5) pointing out that the existing limit of military pension to be ignored for fixing pay on reemployment which was Rs.125/- had been removed and that the military pension is not to be taken into account at all while fixing reemployment pay with effect from 25.1.83. He also mentioned three other cases of reemployed ex-servicemen who were given pay higher than the minimum of the pay scale of the clerical post of Rs.260-400. Finally the applicant received the rejection communication dated 16.10.89 at Annexure-A1.

3. The respondents without denying any of the averments or grounds taken by the applicant have simply referred to the order dated 19.9.85 at Annexure -R2(a) from the ESIC to the Regional Director that the reemployment pay of ex-servicemen reemployed on 25.1.83 or thereafter has to be fixed at the minimum of the pay scale under the Government of India order dated 25.11.58. The communication also refers to the Ministry of Defence's

O.M of 8.2.83 by which those ex-servicemen who were reemployed prior to that date, ^{after} exercising option to come under that order will be entitled to get the minimum of the scale of pay with full pension.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Though the ESIC is a Corporation the ESIC's letter dated 19.9.85 at Annexure -R2(a) addressed to the Regional Director etc. clearly shows that in the matter of fixation of pay of reemployed ex-servicemen they are governed by the orders issued by the Govt. of India like those dated 25.11.58, 8.2.83 etc. Therefore the case of the applicant for fixing of reemployment pay has to be decided like the case of any other ex-servicemen reemployed in any Central Govt. departments.

5. The question before us is whether the applicant is entitled to get his reemployment pay fixed at a stage higher than the minimum of the pay scale of an L.D.C by taking into account the equivalent military service. The Government of India's O.M dated 25.11.58 which has been referred to by the respondents themselves in Annexure-R2(a) is the key order governing fixation of pay of reemployed pensioners. The relevant portion from this O.M is quoted by the applicant and not opposed by the respondents, reads as follows.

"(a) Re-employed pensioners should be allowed only the prescribed scales of pay, that is, no protected time scales such as those available to pre-1931 entrants should be extended to them;

(b) That initial pay, on re-employment, should be fixed at the minimum stage of the scale of pay prescribed for the post in which an individual is re-employed.

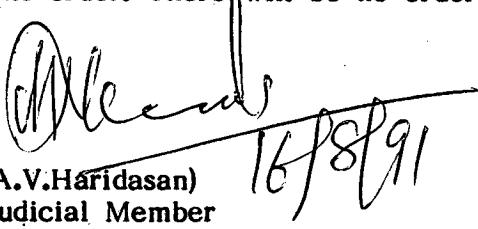
In cases where it is felt that the fixation of initial pay of re-employed officer at the minimum of the prescribed pay scale will cause undue hardship, the pay may be fixed at a higher stage by allowing one increment for each year of service which the officer has rendered before retirement in a post not lower than that in which he is re-employed".(emphasis added)

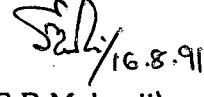
The above will show that when there is hardship the pay of the reemployed pensioner can be fixed at higher stage by giving one increment for each year of equivalent or higher service rendered by him before retirement. It appears that the Government issued some clarifications to define the hardship referred to in the O.M. of 1958. According to the clarification there would be a case of hardship if the reemployment pay at the minimum of the pay scale plus pension and pension equivalent of gratuity, whether ignorable or not, is less than the last pay drawn at the time of the retirement. If there is no hardship no advance increment can be granted. Now, by the order of 8.2.83 the entire military pension of Non-Commissioned ex-servicemen was directed to be ignored for the purposes of pay fixation. The issue whether for reemployed ex-servicemen the ignorable military pension can be added to the minimum of the pay scale for determining the hardship element fell for consideration by a Full Bench of this Tribunal in O.A 3/89, OA 15/89 and OAK 288/88. The Full Bench in its judgment dated 13.3.1990 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."

2

Following the above ruling which has not so far been set aside by the Hon'ble Supreme Court, this Bench of the Tribunal has been consistently holding that re-employed ex-servicemen whose total military pension is to be ignored, cannot be denied increments on the basis of their equivalent military service on the ground that even the minimum of the pay scale of the post to which they are re-employed plus the military pension which they have been allowed, even though to be ignored, is more than the last pay drawn by them in the military. Accordingly we allow this application, set aside the impugned orders at Annexures A1 and A2 and direct that the applicant's initial pay at the time of his reemployment should be fixed by giving him one increment for each completed year of military service equivalent to that of the L.D.C in the ESIC. Since the applicant has not been sleeping over his rights but has been agitating the matter with the respondents and moved this Tribunal within time, he is entitled to arrears of pay and allowances on the basis of his reemployment pay fixed from the date of re-employment with effect from 29.1.85 on the above lines. Action on the above lines should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

n.j.j