

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 410 1993.

DATE OF DECISION 23.3.93

K. George Varghese and others Applicant (s)

Mr. Raju Joseph Advocate for the Applicant (s)

Versus

Union of India represented by
Secretary, Ministry of Defence Respondent (s)
New Delhi and others

Mr. Mathews J. Nedumpara, ACGSC
Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

~~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

MR. N. DHARMADAN JUDICIAL MEMBER

M.P.482/93 for joint application heard, allowed.

2. Applicants 1 to 5 are re-employed ex-servicemen pensioners. Applicants 6 to 18 are family pensioners employed after the death of their husbands who were also employed under the first respondent. They are now working in various offices of the Southern Naval Command. They submitted that as per the orders dated 8.2.83 passed by the first respondent, the entire pension and other retirement benefits of re-employed ex-servicemen are to be ignored for pay fixation w.e.f. 23.1.83. Annexure A-1 is the order dated 23.2.83. Applicants 1 to 5 at the time of discharge from military service were holding rank below that of commissioned officer and they were discharged before attaining the age of 55 years. The husbands of the applicants 6 to, 18 were also

similarly situated like the applicants 1 to 5. Hence, their case comes squarely ^{ly} ~~comes~~ within the aforesaid order and all the applicants are entitled to the benefit of the same. Their entire pension is to be ignored while fixing their pay in the re-employed post.

3. Applicants contended that the respondents have not given the benefit of the aforesaid order and withheld portion of the relief on pension without any authority of law. Persons similarly situated in TAK 732/87 and connected cases obtained judgment in their favour. Applicants submitted representations before the respondents stating that they are entitled to the benefit of judgment in TAK 732/87. Since the same was not granted, they have filed this application under section 19 of the Administrative Tribunal's Act with the following reliefs:

- "a) to direct the respondents to pay the relief payable to the applicants on their military pension during the period of their employment.
- "b) to direct the respondents to return the entire pension relief of the applicants suspended so far.
- c) to grant such other relief deem fit to this Hon'ble Tribunal."

4. When the case came up for admission on 9.3.93, after hearing learned counsel for respondents, the Tribunal directed respondents to file reply if any, within two weeks and posted the case for final disposal today. No reply has been filed even today. Learned counsel for respondents sought some more time for filing reply. In view of the fact that this is squarely covered by the Full Bench decision of the Tribunal in TAK 732/87 and ^{another decision in 2} O.A. 1034/92, I am of the view that this case can be disposed of following those judgments.

5. As regards applicants 1 to 5, their case is fully covered by the Full Bench decision of this Tribunal in TAK 732/87. The Full Bench has 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, relating to the ignorable part of the pension cannot be suspended withheld or recovered, as 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 order viz. OM F-22(87)EV(A)/75 dated 13.2.76 O.M.F 10(26)D(TR)/76 dated 20.12.76, O.M. No.P-13(P)-EV(A)/76 dated 11.2.77 and O.M.No.23013/132/70/NR/CCA/VI(Pt)/1118 dated 26.3.84 for suspension and recovery of relief and adhoc relief on pension will stand modified and interpreted on the above lines."

6. As regards applicants 6 to 18, identical question has been considered by this Tribunal in O.A. 1034/92 and following the decisions of the Supreme Court in Deokinandan Prasad vs. State of Bihar, AIR 1971 SC 1409, and that of the Madras Bench of the Tribunal in OA 801/91, and held as follows:

"The Supreme Court has held in Deokinandan Prasad V. State of Bihar, AIR 1971 SC 1409, that "pension is not a bounty payable on the sweet-will and pleasure of the Government and that on the other hand their right to pension is a valuable right vesting in a Government servant." In that case, Tribunal struck down the sub-clause (ii) of Rule 55-A as violative of Article 14 of the Constitution of India and held as follows:

"... It acts like a stabilizer to keep the pension intact in spite of the change in the purchasing power of the rupee. If the Dearness Relief is not paid, persons concerned will get a diminished pension in terms of real value and pension being a right cannot be diminished indirectly. Pensioners are getting Dearness Relief against Price rise as per sub-clause (i) of Rule 55-A; sub clause (ii) of the same Rule which denies Dearness Relief on pension to a category of pensioners, namely the re-employed, is an unreasonable discrimination since the price rise is the same for all pensioners. So sub-clause (ii) of Rule 55-A is violative of Art. 14 of the Constitution and hence not enforceable.

In the result, the respondents are directed to continue to pay Dearness relief on pension to the applicants. The application is allowed. No costs.

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Having regard to the facts and circumstances of the case we are of the view that the decision referred to by the learned counsel for applicants squarely apply to the facts of this case and we allow the application and direct the respondents not to deduct the D.A. portion of the family pension payable to the applicants. They may also disburse to the applicants the D.A. portion of the family pension already deducted from them."

7. In the result, this application can be allowed following the dictum laid down by the Full Bench of this Tribunal in TAK 732/87 and connected cases and the decision of this Tribunal in O.A. 1034/92. Hence, this application is allowed to the extent indicated below:

8. As regards applicants 1 to 5 I declare that they are entitled to relief on military pension during the period of their re-employment. I further direct that the entire pension relief suspended/recovered from the applicants may be disbursed to them without any delay.

9. As regards applicants 6 to 18, I declare that they are eligible for relief on family pension and direct the respondents not to deduct the D.A. portion of the family pension payable to the applicants. They may also disburse to the applicants the D.A. portion of the family pension already deducted/suspended from them without any delay.

10. There will be no order as to costs.


(N. DHARMADAN)
JUDICIAL MEMBER
23.3.93

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