

CENTRAL ADMINISTRATIVE TRIBUNAL**MADRAS BENCH****OA/310/00831/2016****Dated Monday, the 24th day of February, Two Thousand Twenty****CORAM : HON'BLE MR. T. JACOB, Member (A)**

1.Smt A.K. Saroja (deceased)
2.V.S.Swaminathan,
3.V.S.Subramanian,
4.V.S.Rajathi,
5.V.S.Shanthi,
6.V.S.Jayaraman.Applicants 2 to 6 (Legal
heirs of the deceased)

(By Advocate M/s. M. Muthupandian)

Vs

Union of India rep by,
Deputy Controller of
Communication Accounts (PVA),
Office of the Principal Controller
of Communication Accounts,
Tamil Nadu Circle,
No.60, Ethiraj Salai,
Chennai 600008.Respondent

(By Advocate Mr. K. Rajendran)

ORDER**(Pronounced by Hon'ble Mr.T.Jacob, Member (A))**

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“To call for the records relating to the order dated 09.09.2015 in Pr. CCA/DoT/TN/PEN/PG/AKS/2015 at Chennai of the respondent quash the same and consequently direct the respondent to refix the pension of the applicant from 01.04.1987 taking in to 33 years of service and pay arrears and other benefits at 12% of interest and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper and thus render justice.”

2. Smt A.K. Saroja, the applicant who had filed this OA, died on 15.03.2018 during the pendency of this OA leaving behind her husband, two sons and two daughters as her legal heirs. Legal heirs have thus come on record by filing MA.282/2019 which was allowed on 03.07.2018.

3. The brief facts of the case as stated by the applicants are as follows:-

Smt Saroja, the deceased Government employee joined services of the Madras Telephones on 04.05.1957 and retired from service on medical invalidation on 14.08.1987 while working as Telephone Supervisor, Chennai Telephones, Chennai. She was granted invalid pension based on the 28 years of qualifying service rendered by her. The Government of India, Ministry of Finance by an order dated 22.12.1983 implemented the judgment of the Hon'ble Supreme Court dated 18.12.1982 in W.P.Nos.5939-41 of 1980, applying revised liberalized pension formula to the Government employee who retired from the service on or after 31.03.1979. Therefore, the deceased employee claimed that she is entitled for full pension. The

pension was covered by the said OM and the pension has to be refixed on the date of retirement taking into account the qualifying service as 33 years. Several representations were submitted to various authorities requesting to grant full pension and the last such representation was dated 30.01.2015. The representations dated 21.11.2013 and 30.12.2013 were forwarded to the Ministry of Health and by letter dated 04.03.2014 to the Dept. of Pension and Pension Grievance, New Delhi. The representation dated 08.12.2014 was forwarded by the letter dated 10.03.2015 by the Ministry of Personal, Public Grievances and Pension to the Deputy Director, Department of Telecommunication, New Delhi. The respondent by letter dated 25.08.2015 requested the applicant to send Pension Payment Order and the same was forwarded. Due to the above, there is a delay in approaching this Tribunal. The respondent by order dated 09.09.2015 rejected the request of the deceased employee for grant of full pension stating that the OM is applicable only to the pre- 31.03.1979 pensioners and not relevant to the claim made by the deceased employee. Hence, this OA seeking the above reliefs, inter alia, on the following grounds:-

- a. The action of the respondent in denying full pension is violative of Art. 14 and 16 of the Constitution of India.
- b. The action of the respondent in denying pension is contrary to the order dated 22.10.1983 of the Government of India, Ministry of Finance, Department of Expenditure which state the liberalized pension formula was applicable to those government servants who retired from service on or after 31.03.1979.
- c. The deceased employee retired from service on 14.08.1987 and granted invalid pension. Hence the liberalized pension formula is

applicable to her and she is entitled for full pension.

d. This Tribunal by an order dated 27.09.2002 in OA.340, 341 of 2002 in respect of voluntary retirement held that the liberalized pension formula was applicable to those Government servants who retired from service on or after 31.03.1979. The writ petition filed before the Hon'ble High Court in WP Nos.10691, 10692 and 30004 of 2003 against the order of this Tribunal was dismissed by an order dated 07.12.2005.. The Special Leave Petition filed before the Hon'ble Supreme Court was also dismissed by an order dated 12.07.2011.

e. The action of the respondent in denying full pension is contrary to the judgment reported in 1998 8 SC 30.

f. The Central Administrative Tribunal Principal Bench by an order dated 21.04.2015 in OA 1165/2011 with OA 2165/2011 and OA 246/2012 held that the qualifying service for earning full pension will be treated as twenty years also for those who retired from the central service on or before 31.12.2005 and were alive on that date.

g. The Ministry of Personnel Public Grievances and Pension by order dated 06.04.2016 delinked pension from qualifying service of 33 years for the pre revised pension.

4. The applicants have relied on the following citations in support of their submissions:-

i. The order of the Central Administrative Tribunal, Principal Bench in O.A.No. 1165 of 2011 with O.A.No. 2165 of 2011 and 246 of 2012 dated 21.04.2015.

ii. The order of the High Court of Delhi in W.P.No.8012 of 2013 and W.P.No. (C) 8056 of 2013 dated 07.05.2015.

iii. The order of the Central Administrative Tribunal, Principal Bench in R.A.No. 165 of 2015 in O.A.No.2165 of 2011 with R.A.No. 172 of 2015 in O.A. No. 1165 of 2011 dated 22.01.2016.

5. The respondents have filed a detailed reply statement. It is stated therein that the applicant who retired on invalidation on 14.08.1987 after rendering a qualifying service of 28 years and 17 days has claimed for full pension citing Supreme Court Judgement dated 17.12.1982 and Ministry of Finance, Govt of India order dated 22.12.1983 and several judgements in support of her claim for full pension. The Hon'ble Supreme Court Judgement dated 17.12.1982 and Ministry of Finance, Govt of India order dated 22.12.1983 are not applicable in her case, but it is applicable only in respect of pre 31.03.1979 pensioners. The applicant retired on invalidation on 14.08.1987 and rendered a qualifying service of 28 years while the ceiling prescribed for the extension of the benefit of full pension is for 33 years. Besides the applicant has cited some judgements which are applicable to Voluntary Retirement under Rule 48A of CCS (Pension) Rules, 1972 and not to the case of applicant who retired on invalidation under Rule 38 of CCS (Pension) Rules, 1972. The applicant is eligible for full pension w.e.f 01.01.2006 vide Govt of India's latest OM dated 06.04.2016. Accordingly, the pension revision authority has also been issued on 09.08.2016. All the representations submitted by the applicant were duly replied in time by the Department of Telecommunication (now BSNL) and also by the respondent on 09.09.2015. The Government of India, Ministry of Finance, Department of Expenditure vide O.M No.F1(3) EV/83 dated 22.12.1983 issued orders for implementing the Liberalized Pension Formula to pre- 31.03.1979 pensioners who were in receipt of pension as on 01.04.1979 consequent on implementation of Hon'ble Supreme Court of India Judgement dated 17.12.1982. In the instant case, the

applicant retired from service on invalidation w.e.f 14.08.1987 after rendering a qualifying service of 28 years and 17 days and not eligible for full pension as applicable to those pensioners who rendered not less than 33 years of qualifying service. As such, the order dated 22.12.1983 cited supra, which is applicable to pre 31.03.1979 pensioners, is not relevant to this applicant.

6. The applicant retired on invalidation retirement on 14.08.1987 under Rule 38 of CCS (Pension) Rules, 1972 and not on Voluntary retirement. The Hon'ble High Court of Madras in its order in W.P.Nos 10691, 10692 and 30004 of 2013 cited by the applicant is related to Voluntary retirement under Rule 48A of CCS (Pension) Rules, 1972. As such, the pre-2006 pensioners are eligible to draw full pension only from 01.01.2006 vide O.M dated 06.04.2016. The Government of India vide O.M dated 06.04.2016 cited by the applicant clearly ordered to give full pension to pre-2006 pensioners without pro-rata reduction of pension even if the Pensioners had qualifying service of less than 33 years of service at the time of retirement and the arrears of revised pension would be payable w.e.f 01.01.2006. The applicant is eligible for full pension w.e.f 01.01.2006 and not from 14.08.1987 as per the Government of India O.M dated 06.04.2016. The action is already taken to revise all eligible cases including the case of the applicant and the revision authority in the case of applicant has already been issued. Therefore, the submission of the applicant in this OA are not relevant and the claim is not tenable as per CCS (Pension) Rules, 1972. Hence the respondents pray for dismissal of the OA.

7. The applicant has filed rejoinder and the respondents have filed reply to

rejoinder.

8. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

9. The claim of the applicant is to afford her full payment from the date of her medical invalidation on 10-08-1987 as per the provisions of the CCS(Pension) Rules, notwithstanding the fact that on the date of her invalidation on medical grounds, the applicant had only 28 years of service. The weightage of five years which the applicant is claiming is available only in the case of who proceed on voluntary retirement as per the provisions of Rule 48A of the CCS(Pension) Rules, 1972. The authority cited by the applicant relates to such voluntary retirement as rightly pointed by the counsel for the respondents. In any event, full payment is available to the applicant from 01-01-2006 by operation of law which reduced the period of qualifying service to less than 33 years. Till 31-12-2005, for drawing full pension, possession of 33 years of qualifying service is a sine qua non as per the rules governing pension matters prior to 31-12-2006. Hence, entitlement to quantum of pension for the period from 14-08-1987 till 31-12-2005 has necessarily to be based on the extant rules and the applicant had been paid pro-rata pension reckoning the qualifying service as 28 years, If without any authority full pension is directed to be paid when qualifying service was only 28 years, it would amount to pre-dating the rule obtaining as on 01-01-2006 (from which date alone, full pension is admissible with a lesser qualifying service), for a period anterior to it, which is impermissible. Again, since the relief sought is payment of arrears, the same acquires the character

of money suit, which has certain limitation period. In the following two decisions, the Apex Court has held as under:-

(a) M.R. Gupta vs Union of India (1995) 5 SCC 628, wherein it has been held as under:-

“**5.** Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant’s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant’s claim is found correct on merits, he would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant’s claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1-8-1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

6. The Tribunal misdirected itself when it treated the appellant’s claim as “one time action” meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a government

servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (*See Thota China Subba Rao v. Mattapalli Raju*).

7. Learned counsel for the respondents placed strong reliance on the decision of this Court in *S.S. Rathore v. State of M.P.*² That decision has no application in the present case. That was a case of termination of service and, therefore, a case of one time action, unlike the claim for payment of correct salary according to the rules throughout the service giving rise to a fresh cause of action each time the salary was incorrectly computed and paid. No further consideration of that decision is required to indicate its inapplicability in the present case.

8. For the aforesaid reasons, this appeal has to be allowed. We make it clear that the merits of the appellant's claim have to be examined and the only point concluded by this decision is the one decided above. The question of limitation with regard to the consequential and other reliefs including the arrears, if any, has to be considered and decided in accordance with law in due course by the Tribunal. The matter is remitted to the Tribunal for consideration of the application and its decision afresh on merits in accordance with law. No costs."

(b) *Jai Dev Gupta vs State of HP (1997) 11 SCC 13*

K. VENKATASWAMI, J.— The appellant approached the Central Administrative Tribunal for the relief that he is entitled to the pay scale of Lecturer in Commercial Arts though he was appointed to the post of "Studio Artist". In addition to that he claimed the difference in the salary from the year 1971. He approached the Tribunal for this relief in May 1989. The Tribunal accepted the claim of the appellant that he should be paid the salary of Lecturer in Commercial Arts though he was appointed to the post of "Studio Artist" in view of the fact that he was performing the duties of Lecturer in Commercial Arts. However, the Tribunal granted the relief of difference in back wages from May 1988 only on the ground that under Section 21 of the

Administrative Tribunals Act the period of one year is prescribed for redressal of grievances. Against the decision of the Tribunal that the appellant is entitled to be paid the salary of Lecturer in Commercial Arts though he was appointed as "Studio Artist" the respondents have not filed any appeal. The appellant has preferred this appeal claiming the difference in back wages from the date of his posting as Lecturer in Commercial Arts.

2. Learned counsel appearing for the appellant submitted that before approaching the Tribunal the appellant was making a number of representations to the appropriate authorities claiming the relief and that was the reason for not approaching the Tribunal earlier than May 1989. We do not think that such an excuse can be advanced to claim the difference in back wages from the year 1971. In *Administrator of Union Territory of Daman and Diu v. R.D. Valand* this Court while setting aside an order of the Central Administrative Tribunal has observed that the Tribunal was not justified in putting the clock back by more than 15 years and the Tribunal fell into patent error in brushing aside the question of limitation by observing that the respondent has been making representations from time to time and as such the limitation would not come in his way. In the light of the above decision, we cannot entertain the arguments of the learned counsel for the appellant that the difference in back wages should be paid right from the year 1971. At the same time we do not think that the Tribunal was right in invoking Section 21 of the Administrative Tribunals Act for restricting the difference in back wages by one year.

3. In the facts and circumstances of the case, we hold that the appellant is entitled to get the difference in back wages from May 1986. The appeal is disposed of accordingly with no order as to costs.

10. Thus, even if there could be any entitlement, the claim for the same should have been made within three years (the period of limitation for any money suit), whereas in the instant case, for arrears of pension from 1987 to 2005, the claim has been made as in 2016. Thus, from this point of view as well, the applicant is not entitled to the relief claimed.

11. The Madras High Court Judgment in W.P. No.10691, 10692 and 30004 of 2003 quoted by the deceased applicant is related to voluntary retirement under Rule 48-A of CCS (Pension) Rules and not applicable to retirement on invalidation under Rule 38 of CCS (Pension) Rules 1972. As per the ruling on the subject, deceased employee is not eligible for full pension and she had been correctly sanctioned the proportionate pension and that is being paid.

12. In the conspectus of the above facts and circumstances of the case, I find no reason to interfere with the impugned order of the respondents. The OA is liable to be dismissed and is accordingly dismissed. No costs.

(T. JACOB)
MEMBER(A)
-02-2020

/kam/