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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 3345/2001

New Delhi, this the 22nd day of March, 2002

Hon'ble Shri Govindan S.Tampi, Member (A)

Shri Om Prakash Gandhi
S/o Late Shri D.R.Gandhi
R/o ED/131, Tagore Garden
New Delhi - 110 027.

...Applicant

(Applicant in person)

V E R S U S

1. Director of Accounts (Postal)
Delhi Circle, Old Sectt. Sham Nath Marg
New Delhi - 110 054.
2. Deputy Director General (PAF)
Deptt. of Posts, Dak Bhawan,
Sansad Marg, New Delhi - 110 001.
3. Director General (Posts) and
Chairman Postal Services Board
Ministry of Communications,
New Delhi - 110 001.

...Respondents

(By Advocate Shri K.R.Sachdeva)

O R D E R (ORAL)

By Hon'ble Shri Govindan S.Tampi,

By this OA, the applicant Shri Om Prakash Gandhi seeks the benefit of Family Pension Scheme of the Govt. of India, in his case as well.

2. Heard Shri Gandhi, applicant in person and Shri K.R.Sachdeva, ld. counsel for the respondents during the oral submissions today.

3. The applicant who held the post of Accounts Officer, under Director General (Posts), Ministry of Communications, joined Bharat Heavy Electricals Ltd. (BHEL) New Delhi, a Public Sector Undertaking (PSU), on deputation, with prior permission of the Govt. He was allowed absorption in BHEL and grant of pensionary benefits, as per Rules of 1977. The Hon'ble Supreme Court while deciding CWP No.11855/1985 and Contempt

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Petition No.530/1997, on 15-12-1995 and 1-5-1998 respectively directed that not only 1/3 commuted portion of pension and DA reliefs to PSU absorbed Central Govt. Pensioners, after 15 years from the date of commutation of the pension and also other attendant benefits as given to other Central Govt. Pensioners. Following the above, Department of Pension and Pensioners' Welfare, issued three OM on 30-9-1996, 13-1-1998 and 14-7-1998 to streamline the procedure in this regard. On applicant's filing a representation, Director of Accounts (Postal), New Delhi, permitted restoration of the commuted portion of pension, but debarred him from the benefit of Family Pension Scheme. This was clearly incorrect, as he fulfilled all the criteria laid down by the Govt. in this regard. In support of his plea, the applicant had submitted a declaration by him that on the date of his retirement from the PSU, he was not entitled for Family Pension Scheme under the BHEL's Scheme along with the Certificate from the BHEL to the effect. The OM dated 22-1-1990, permitting the absorbee pensioners to opt for the benefit under Family Pension Scheme could not be availed himself by the applicant, as it was available only to those in service on 22-1-1990 and he had retired from service on 25-10-1986. Govt. of India's OM dated 14-7-1998, was issued to help all the absorbee pensioners, irrespective of their date of retirement, his case deserved favourably consideration and order, he pleaded with the Postal Authorities. The points raised by him was got independently verified by the respondents from BHEL, who had confirmed on 18-1-2001, that the applicant was not entitled to BHEL Family Pension Scheme. Thus the

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requirement laid down in the Govt. of India's OM dated 14-7-1998 had been fulfilled. Still, the respondents had arbitrarily decided by the impugned order No. Admn.I-E-IV/Pen/D-1971 dated 20-3-2001 that the applicant cannot be granted the benefit of Family Pension Scheme. The applicant points out that this was a clear case of discrimination, as people similarly placed in other Ministries were granted the same benefit and steps have been taken in the respondents' organisation itself for extending the same benefit in other cases. The applicant prays that the Tribunal should intervene and help him as he was a PSU absorbed Central Govt. Pensioner, who was entitled for Family Pension Scheme in accordance with the relevant Rules and Instructions. This was all the more necessary as he was a cancer patient, whose case deserves immediate consideration and favourable disposal. The above was fervently reiterated by Shri Gandhi, during the oral submissions before me today.

4. In the reply, filed on behalf of respondents, it is pointed out that the applicant had been permanently absorbed in BHEL, a PSU w.e.f. 5-5-1977, following his voluntary retirement from the respondents' organisation on 4-5-1977. All his dues have been correctly worked out and granted to him at that time itself, which included full commutation of pension DCRG, Family Pension etc. On a request from the individual on 5-6-1979 that he would be availing himself of the Family Pension Scheme of BHEL, a sum of Rs. 2080/-, which was held back from the DCRG was also refunded to him. Only in 1998, the applicant made a request for grant of family pension, keeping in mind the DOP&PW's OM of 1997 and 1998. His case was

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considered by the respondents, but it was found that he was entitled only for restoration of 1/3 of commuted value pension, which was granted to him. The benefit of Family Pension Scheme was not available in his case. He was seeking to get an inadmissible benefit which was not covered by the relevant Rules and Instructions and the same cannot be accepted, plead the respondents. During the oral submissions, Shri K.R.Sachdeva, ld. counsel for the respondents pointed out that the applicant had not impleaded Department of Pension and Pensioner's Welfare, which is the nodal authority in this regard to give any clarification in the matter. The other Organisations/Ministries would go by the advice of the said nodal authority. Shri Sachdeva further brought to my attention OM No.4/5/2001-P&W (D) dated 10-12-2001 and 1-2-2002, whereunder, the nodal Ministry and inform Director of Accounts (Postal), the respondents in this case that "As per Rules Central Govt. employees absorbed in a public sector undertaking, if not compulsorily governed by the family pension scheme of the PSU are entitled to Central Govt. family pension". It has also been advised that as Shri Gandhi was not a Member of FPS of that organisation, he would be eligible for Central Govt. family pension in terms of Rule 54 of CCS (Pension) Rules. Respondents have been advised to examine the case of the applicant in the light of the above clarification, keeping in mind, his present health condition, Shri Sachdeva, ld. counsel indicated that the Tribunal may take an appropriate decision in this matter.

5. I have carefully considered the matter. The point

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for determination in this OA is the eligibility for the benefit of Family Pension Scheme to a PSU absorbee Central Govt. Pensioner, in terms of the instructions contained in OM dated 30-9-1996, 13-1-1998 and 14-7-1998. The respondents have restored to the applicant 1/3 of the commuted value of the pension, after 15 years of his retirement, but had declined to extend to him the benefit of Family Pension Scheme. This cannot be endorsed, as it is brought on record that the applicant was not a beneficiary of Family Pension Scheme of BHEL, a fact intimated by the PSU itself in their letter issued to the respondents on 18-1-2001, copy endorsed to the applicant. In that scenario, the advice tendered by the Deptt. of Pension and Pensioners' Welfare to the respondents in their letters dated 10-12-2001 and 1-2-2002, referred to in para 4 (supra) becomes relevant. As the nodal authority itself has given the clarification in this matter, which is in favour of the applicant, the Tribunal has only to advise the respondents to fall in line and do the needful within a short time framed.

6. In the above view of the matter, the OA is disposed of with the directions to the respondents to favourably consider and decide the case of the applicant, in the light of the clarification issued by the nodal authority in their letters of 10-12-2001 and 1-2-2002, within a period of four weeks from today or in any event before 30-4-2002. No costs.

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(GOVINDAN S. TAMPI)
MEMBER (A)