

Central Administrative Tribunal
Principal Bench

O.A. 2475/98

New Delhi this the 20th day of January, 2000

(B)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Smt. Imrati Devi,
W/o Shri Soran Singh,
R/o 502, Gali No. 17-B,
Sadh Nagar, Palam Colony,
New Delhi.

Applicant.

By Advocate Shri A.K. Trivedi.

Versus

1. Union of India, through
Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. Chief Engineer,
Western Command, MES,
Chandimandir,
Chandigarh.
3. Garrison Engineer (North),
Air Force Station, Palam,
Delhi Cantt-110010 ... Respondents.

By Advocate Shri Mohar Singh.

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

In this application, the applicant has prayed for two reliefs, namely, (1) that her husband, who was earlier working with the respondents and had been medically boarded out was entitled for invalid pension w.e.f. 1.1.1992 along with interest @ 18% per annum and thereafter as he is missing w.e.f. 15.7.1995 she is entitled to family pension in accordance with the rules and instructions.

2. I have heard Shri A.K. Trivedi, learned counsel and Shri Mohar Singh, learned counsel for the parties and perused the records.

B/

(A)

3. During the hearing, learned counsel for the applicant has submitted that he does not press the interest of 18% p.a. on the arrears of pension, as mentioned above.

4. The brief facts of the case are that the applicant, who is the wife of one Soran Singh states that he was employed as Mazdoor in the office of respondents w.e.f. 7.4.1967. According to Shri A.K. Trivedi, learned counsel, the applicant's husband was a mental patient and hence was unable to attend the office work regularly for a number of years. He has submitted that the respondents themselves in their letter dated 18.1.1990 followed by their letter dated 2.12.1991 had constituted a Medical Board which had come to the conclusion that Shri Soran Singh was suffering from epilepsy with psychosis and was not in a position to carry out his normal duties. Later, the Medical Board had made its recommendations in December, 1991, that Shri Soran Singh be boarded out from Government service without further loss of time. Subsequently, the respondents have published Part-II orders stating that the applicant's husband Shri Soran Singh had been medically boarded out as his chances of recovery to the extent of carrying on with his normal duties are remote which order is dated 20.1.1992. There was also a mention to the effect that Shri Soran Singh was medically boarded out without any pensionary financial benefits and his period of absence was to be regularised. This was subsequently deleted by the order dated 6.9.1993. In the later order, it was also mentioned that the EOL w.e.f. 10.7.1974 to 31.12.1991 that is for a period of 6,384 days, has been granted without pay and allowances and without Medical certificate. According to the learned counsel for the applicant, the applicant's husband had, therefore,

85

worked with the respondents from 7.4.1967 till he was boarded out on 31.12.1991 which shows that he has worked for more than 10 years and there is no reason why invalid pension as provided under Rule 38 of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'the Rules') should not have been sanctioned to him. He has further submitted that in Rule 38 of the Rules, there is not even a mention of 10 years qualifying service which is the only ground on which the respondents are rejecting the claim of the applicant for pension.

5. The second claim of the applicant is on the ground that from 15.7.1995, the whereabouts of the husband are unknown. He has also submitted that the fact that the applicant's husband was not mentally fit should be kept in view. He has submitted that all necessary formalities like lodging of the police report and making a representation to the respondents have been done, but with no effect. He has also relied on the Govt. of India O.Ms. dated 29.8.1986 and 25.1.1991 issued under Rule 54 of the Rules. He has submitted that more than one year has elapsed since the applicant had lodged the FIR to the Police Station about the fact that her husband is missing and she is also willing to fulfil the other conditions like furnishing of an indemnity bond, etc. in accordance with the rules for payment of family pension. In the circumstances, learned counsel has submitted that both the claims of the applicant may be allowed.

6. The main contention of the respondents is that the applicant's husband was absent from service on a number of occasions, including from 6.12.1967 to 9.7.1974 and 10.7.1974 to 31.12.1991. They have submitted that the latter period has

(16)

been treated as extra-ordinary leave without medical certificate. Taking into account these facts, the applicant has discharged his duties for a period of six years and eight months only. Shri Mohar Singh, learned counsel, has submitted that under Rules 38 and 49(2)(b) of the Rules, the applicant's husband would be entitled to invalid pension on being boarded out/retired only if he has completed ten years of qualifying service. Regarding the second claim of the applicant, the main contention of the learned counsel is that necessary papers for grant of family pension have been given to him only after this O.A. has been filed. Hence, the respondents had no time to consider the matter.

7. I have considered the pleadings on record and the submissions made by the learned counsel for the parties.

8. I find force in the submissions made by Shri Mohar Singh, learned counsel for the respondents, that unless and until the applicant's husband had completed qualifying service of 10 years, as provided under Rule 49 of the Rules, he would not be entitled to invalid pension on being boarded out on account of mental infirmity. Learned counsel for the applicant has also relied on Rule 21 of the Rules. He has submitted that under proviso (ii) to this Rule as admittedly the applicant had been granted extra-ordinary leave for a period of 6384 days without pay and allowances and without Medical certificates, the competent authority should have further regularised the leave as qualifying service as Shri Soran Singh was not in a position to "join or rejoin duty". He has submitted that the

82

(17)

expression "due to his inability to join" should be read separately from "rejoin" and the rest of the phrase. This does not appear to be correct because the word 'or' is the conjunction between "join" and "rejoin" which is followed by the words 'duty on account of civil commotion'. Admittedly, this condition does not exist in the present case. No doubt, the applicant was not in a position to re-join his duty for which he had not given the medical certificates. Therefore, the contention of the learned counsel for the applicant based on proviso (ii) to Rule 21 is rejected. In the facts and circumstances of the case, as the applicant's husband Shri Soran Singh has not put in 10 years of qualifying service which is required under the Rules, the claim for grant of invalid pension is not tenable and is accordingly rejected.

9. With regard to the claim for family pension, in view of what has been stated above, the O.A. is disposed of with a direction to the respondents to consider the applicant's representation dated 30.10.1998 and 12.5.1999 and take a decision in the matter in terms of the relevant rules and instructions. Necessary action in this regard shall be taken within a period of three months with intimation to the applicant. In case the decision is taken to grant the applicant family pension in accordance with the rules and instructions, the same shall be done immediately thereafter. No order as to costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'