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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI;

O.A.NO.2098/94

New Delhi, this the 19th day of May, 1995

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri P.T. THIRUVENGADAM, Member (A)

1. Ms. Shashi Chhabra,
Tech. Asstt. Grade-VIII,
ERTS Division CRRI, Mathura Road,
New Delhi.
2. Ms. Sujata Chari,
Tech. Asstt. Grade-VIII,
DLS (Library) CRRI,
Mathura Road, New Delhi.
3. Ms. Arati Sengupta,
Tech. Grade-VI,
DLS (Library) CRRI,
Mathura Road, New Delhi.
4. Ms. Kamla Devi, Helper-B,
ERTS Division, CRRI,
Mathura Road, New Delhi.
5. Ms. Raj Rani Chopra,
Helper-A, ERTS Division, CRRI,
Mathura Road, New Delhi.
6. Ms. Munni Dvi, Helper-A,
Horticulture Section, CRRI,
Mathura Road, New Delhi.
7. Ms. Birwati Devi, Helper-A,
ILT Division, CRRI,
Mathura Road, New Delhi.
8. Ms. Tripta Sharma, Helper-A,
GTE Division, CRRI,
Mathura Road, New Delhi.
9. Ms. Bhoga, Sweeper, CRRI,
Mathura Road, New Delhi.

... Applicants

By Advocate: Shri Vivekanand

Vs.

1. Council of Scientific & Industrial
Research, through Joint Secretary
Administration, Rafi Marg,
New Delhi.

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2. Central Road Research Institute through its Director, Mathura Road, New Delhi.
3. Union of India, through Secretary, Ministry of Personnel, Pension & Grievances, Deptt. of Pension & Pensionary Welfare, IIIrd Floor, Lok Nayak Bhawan, Khan Market, New Delhi. Respondents

By Advocate: Smt. Sheila Sethi

ORDER

Hon'ble Shri J.P. Sharma, Member (J)

The applicants have jointly filed this application on the ground that all of them were appointed on compassionate ground after the death of their husbands who were permanent employees of Central Road Research Institute, which is a unit of CSIR. The applicants were granted family pension with respect to the services rendered by their husbands as permanent employees with the respondents. The applicants have assailed the orders dated 22.1.91 order No.42(30)-P & P.W./89-E and the order^{dated 29.7.94}/No.15(1)/94-Pension(Miss) . The order of 1991 was issued by the CSIR and the other order was issued by Respondent Nos. 2 and 3. The applicants were informed by individual letters that those employees who are in the receipt of

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family pension are not entitled to grant of dearness relief on the pension. The applicants have prayed for the grant of the reliefs that a direction be issued to the respondents that the compassionate appointees are entitled to dearness relief on family pension and the rule 55A(ii) of CCS (Pension) Rule 1972 is unenforceable to that extent. Further to quash the impugned orders dated 29.7.94 and 22.9.94 rejecting the claims of the applicants for grant of dearness relief on the pension. It is further prayed that the dearness relief on the pension be restored with 12% p.a. on the arrears.

The respondents contested this application and in the reply stated that the applicants are not entitled to the grant of dearness relief on pension and in this connection reliance has been placed on Rule 55-A of the CCS (Pension) Rules 1972 which is quoted below:-

(i) Relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Government may specify from time to time.

(ii) If a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them in India or abroad including permanent absorption in such Corporation/Company/Body/Bank, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

(iii) The Central Government employees who get permanently absorbed in terms of Rule 37 and opt for lump sum payment in lieu of pro rata monthly pension in terms of Rule 37, shall not be eligible for dearness relief.

It is further stated that the matter has been decided by Hon'ble Supreme Court in the case of CSIR Vs. Ambuja wali involving the same question of law in SLP No.21761/93 decided by the judgement dated 8.12.94 in a bunch of cases, a copy of which has been filed as Annexure R-1 to the counter. It is said that the applicants have no case.

We have heard the learned counsel for the parties. The learned counsel for the applicant has referred to the decision in the case of Smt. E. Manikkam Vs. The Post Master, Tirur reported in 1992(1) SLJ 589 decided on 25.11.91. It is on the fact that the relief on the pension cannot be suspended when one is re-employed. The other decision on the similar point is of Meena Subramanian & ors vs. UOI & ors reported in(1992) 20 ATC 584, CAT, Madras decided on 13.1.92 in O.A.No. 801/1991. Another decision of CAT, Bangalore Bench is in the case of Smt. B. Bhuvaneshwari and ors Vs. Chief General Manager(Posts), Bangalore and ors. decided on 7.10.93. The other decision is of Mrs. Uma Sharma Vs. UOI & ors of CAT, Jaipur Bench

by the order dated 11.2.94 reported in 1994(2) SLJ 100. The applicant's counsel has also referred to the point of limitation and in this connection, he has relied on a decision of CAT, Hyderabad Bench in the case of A. Manibhushana Rao and others Vs. G.M. South Eastern Railway, Calcutta and ors. reported in 1992(3) SLJ 168. On the point of limitation also the reliance has been made in the case of Smt. Kadiran Bibi Vs. UOI & ors. decided by Patna Bench, Single Member reported in 1994(1) SLJ 254. The contention of the applicant's counsel has no force in the light of the decision of Hon'ble Supreme Court in a bunch of cases which are quoted below:-

CIVIL APPEAL NOs. 5543-46 of 1990

(With C.A. Nos. 3734/90, 6225/90, 2211-16/91, 2217/91, 4372/91, 4442/91, 2926/92, 350/93, SLP(C) Nos. 15777/89, 16185-93/91, 19792/91, 20074/91, 10912/92, 1794/93, C.C. No. 19390/93, C.A. No. 3063/91, SLP(C) Nos. 9511/93, 8657-56/92, C.C. Nos. 16598/92, 20044/93, SLP(C) No. C.C. Nos. 23273/93, SLP(C) Nos. 2272/94, 2752/94, 10520/93, C.A. No. 145/90, SLP(C) Nos. 3157/90, 17702/93, C.A. Nos. 3547/90, 69/93, 208/90, 142-44/90, SLP(C) Nos. 2025/93, 4308-09/92, 13176-79/92, 8519/93, 12270/93, 14348-54/92, 14039-51/92, 14052-56/92, C.A. Nos. 1809/93, 1810/93, SLP(C) Nos. 15447/93, 14653-57/93, C.A. Nos. 3949/93, 4366/93, 4367/93, 4368/93, 4369/93, 4370/93, 4371/93, 4372/93, 4373/93, 4374/93, 4375/93, 4376/93, 4377/93, 4402/93, 4403/93, SLP(C) No. 18382/93, C.A. No. 4227/93, SLP(C) No. 20902/93, C.C. No. 22644/93, C.A. Nos. 4641/93, 5060/93, C.C. No. 23392/94, C.A. No. 7461/93, SLP(C) Nos. 1505-99/94, 2594/94, 2270/94, 21761/93, 1925/94, 1791/94, C.C. No. 23737/94, SLP(C) No. 2851/94, C.C. No. 24226/94, SLP(C) Nos. 6076/94, 6872/94, 7511/94, C.A. Nos. 2428/94, 2430/94, C.C. No. 23538/94, SLP(C) Nos. 1459-56/94, 11393/94, No. 4708-09/94, SLP(C) No. 11044/94, C.C. No. 25594/94, SLP(C) No. 2995/94, C.A. No. 4945/94, SLP(C) Nos. 12456/91, 11580/91, 5493/90, 12972/91, 12454/91, 12455/91, 18694/91, 4281/92, 11432/91, 672/92, I.L. Nos. 16, 30-46 in SLP (C) No. 1505-95/94.

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By a common judgement all these cases were decided on 8.12.94 and in this case there is SLP No. 21761/93. The paperbook of that SLP has been filed by the counsel for the respondents to show the particular fact. The petitioner before the Hon'ble Supreme Court has been Union of India and the opposite party i.e. respondent is Mrs. D. Ambujavalli who was the petitioner in O.A.No.887/93 before CAT, Madras Bench. The husband of Mrs. D. Ambujavalli, who is respondent before Hon'ble Supreme Court, died in service in 1972 and the widow was appointed as L.D.C. on compassionate ground on 28.7.72. The applicant was being paid dearness relief on the family pension also but it was stopped thereafter and the dearness relief paid was ordered to be recovered. The Tribunal granted the relief to the widow in view of the decision in O.A.No.801/91 decided by Ernakulam Bench. The Hon'ble Supreme Court considered the various points raised in the similar petition because the CSIR was the petitioner before the Hon'ble Supreme Court against Mrs. D. Ambujavalli. The Hon'ble Supreme Court framed the following questions which are quoted below:-

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- (1) Whether the decision of the Union of India not to allow dearness relief (D.R.) on pension to the ex-serviceman on their re-employment in a civil post is in accordance with law or not;
- (2) whether denial of D.R. on family pension on employment of dependents like widows of the ex-serviceman is justified or not; and
- (3) reduction of pay equivalent to enhanced pension of those ex-servicemen who were holding civil posts on 01.01.86, following their re-employment, is permissible or not.

The Hon'ble Supreme Court in para 15 observed as follows:

" Our conclusion on the three questions noted in the opening paragraph are that denial of dearness relief on pension/family pension in cases of those ex-servicemen who got re-employment or whose dependents got employment is legal and just. The decision to reduce the enhanced pension from pay of those ex-servicemen only who were holding civil posts on 1.1.86 following their re-employment is, however, unconstitutional."

In view of this, the case is fully covered by the judgement of Hon'ble Supreme Court and has no merit. The application is, therefore, dismissed.

P. J. Thiruvengadam
(P.T. THIRUVENGADAM)
Member (A)

J. P. Sharma
(J.P. SHARMA)
Member (J)

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