

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2498/94

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Hon'ble Shri R.K.Aheerja, Member(A)

New Delhi, this 8th day of August, 1996

Smt. Anila Garg
w/o Late Shri Ashok Garg
r/o B-316, Sarojini Nagar
NEW DELHI.

... Applicant

(By Ms. Bisaria, Advocate)

Versus

Union of India through

1. The Director
Commission for Scientific &
Technical Terminology
Ministry of Human Resources Development
West Block-VII, R.K.Puram
NEW DELHI.

2. Ministry of Finance
Govt. of India
Central Pension Accounting Office
NEW DELHI.

3. The Director of Education
Delhi Administration/Govt. of NCT
Old Secretariat
DELHI.

.... Respondents

(By Shri J.Banerjee, Proxy of Shri Madhav Panikar
Advocate)

O R D E R(Oral)

The husband of the applicant who was working as Assistant Research Officer (ARO in short) in the Ministry of Human Resources Development expired on 14.1.1990. At that time, the applicant was already working as a Teacher in the Directorate of Education. On the death of her husband, the family pension was sanctioned w.e.f. 15.1.1990 and the same included the basic pension and the Dearness Allowance. However,

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the respondents allegedly without giving any notice to the applicant, stopped the payment of Dearness Allowance on the component of the family pension, w.e.f. October, 1991 and also ^{recovered} received the so called over payment already made from January, 1990 to October, 1991 from the applicant. The applicant states that she came to know later that a similar matter had come up before the Madras Bench of this Tribunal in the case of Mrs. Meena Subramanian and Others Vs. Union of India & Others reported in 1992 Vol.2 ATR P- 75, in which it was held that Dearness Relief is not separable from pension - Once pension is allowed to be drawn, Dearness Relief should be paid along with it. The applicant thereafter made various representations for payment of the Dearness Allowance on basic family pension but without avail, she has therefore, come before the Tribunal seeking directions to the respondents to pay her Dearness Allowance on the basic family pension being paid to her w.e.f. 15.1.1990 along with 18% interest on the arrears thereof.

2. The respondents have not filed a formal reply. However, Shri J. Banerjee, learned proxy counsel for the respondents argued the case today on behalf of the respondents and submitted that the facts of the present case are squarely covered by the decision of the Hon'ble Supreme Court in Union of India & Others Vs. G. Vasudevan Pillay & Others reported in 1995 (29) ATC P-180.

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3. I have heard the learned counsel on both sides. The short question to be decided is whether the present case is covered or is distinguishable from the case cited by the learned counsel for the respondents. I have perused the aforesaid decision. The entire case came up before the Supreme Court concerning the payment of Dearness Allowance to ex-servicemen reemployed in civil posts as well as the payment of dearness allowance on family pension payable to the dependants of ex-servicemen. The Hon'ble Supreme Court on the facts of the case, came to the conclusion that the denial of Dearness Relief to the ex-servicemen reemployed in civil posts or whose dependants got employment is legal and just. Shri J. Banerjee submits that the principle decided in this case is that where the dependants are employed, they are not entitled to any DA on family pension sanctioned to them. I am, however, unable to agree with the learned counsel for the applicant and I am of the opinion, for the reasons given in the next paragraph that is the ratio of the Judgment of the Madras Bench of this Tribunal (Supra) which is applicable in the facts and circumstances of the present case under discussion.

4. In the case of Union of India and Others Vs. G. Vasudevan Pillay & Others, the persons involved were ex-servicemen and the question was of payment of DA on their reemployment in civil posts. In the present case, the facts and circumstances are different inasmuch as the husband of the applicant was not an ex-serviceman who had sought employment to a civil post. Furthermore,

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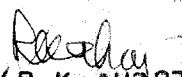
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the Hon'ble Supreme Court observed in Paragraph-8 of the Judgment that "For the disposal of the present cases it is not necessary to express any opinion on this aspect of the matter inasmuch as, according to us even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get reemployed" (Emphasis supplied).

5. It is clear therefore, that the Supreme Court has not expressed any opinion, in regard to the pensioners and the survivors of such pensioners, who do not fall under the category of reemployment ex-servicemen.

6. In the light of the above discussion, I find that the present case is squarely covered by the Judgment of this Tribunal (Madras Bench) in Mrs. Meena Subramanian and Others Vs. Union of India & Others. The applicant is therefore, entitled to receive the component of DA on the basic family pension. The applicant, will however, to receive the arrears only for the period beginning one year prior to the filing of this application i.e. without any interest thereon. The payment of arrears will be made to the applicant by the Respondent No.2 & 3 within a period of three months from the date of receipt of a copy of this order. No costs.


(R.K. AHUJA)
MEMBER(A)

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