

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

* * *

(14)

O.A. NO. 315/1986

Date of Decision : 25.09.92

Km. Bhagwanti Mantani

...Applicant

THROUGH

Her Brother Shri I.J. Mantani

VS.

Union of India & Ors.

...Respondents

CORAM

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

For the Applicant

...Ms. Promila Kumari, counsel

For the Respondents

...Ms. Nisha Sahay, proxy
counsel for Sh.M.L.verma,
counsel

1. Whether Reporters of local papers may be
allowed to see the Judgement? *JS*

2. To be referred to the Reporter or not? *JS*

JUDGEMENT

The applicant through her brother, Sh.I.J.Mamtani has filed this application on 2.5.1986 for grant of pension to the applicant, who is the daughter of late Sh.J.J. Mantani, retired Assistant Engineer (Civil) from the Central Government on the ground that she is mentally retarded daughter of the said employee. The applicant has claimed the reliefs that she may be granted family pension at the rate admissible under the Rules together with

Je

dearness and other admissible allowances from 12.5.1978 and for future till her life time. She has also prayed that the Notification No.1(3) EV(B)/74 dt. 30.9.1974 be declared as ultra vires the Constitution and be struck down and the applicant be granted compensation by way of interest on the delayed amount of pension due to her.

2. The facts as stated by the applicant are that she is the daughter of late Shri J.J. Mantani, who was employed as Assistant Engineer and worked in Kanpur Central Division, CPWD, Kanpur till his retirement in 1969. He died in 1976. After his death, his widow Smt. Ganga Devi was getting family pension till her death in May, 1978. The applicant has alleged herself to be mentally subnormal daughter of late employee and she has been dependent on her parents till their death. After the parents' death, she is being looked after by her brother, Shri I.J. Mantani through whom the present application has been filed. The case of the applicant is that after the death of her mother in 1978, she is entitled to family pension as provided under Rule 54 (6) (iv) of the CCS (Pension) Rules, 1972 as amended

upto date. This Rule provides that before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature as to prevent her from earning a livelihood and the same shall be evidenced by a certificate obtained from Medical Officer not below the rank of a Civil Surgeon stating out as far as possible the exact mental or physical condition of the child. The explanation to the said rule also provides that only the disability which manifests itself before the retirement or death of the Government servant while in service shall be taken into account for the purpose of grant of family pension under the said rule. On 30.9.1974, Ministry of Finance issued a Notification whereby the Central Civil Service (Pension) Rules, 1972 were amended. A copy of the same is annexed as Annexure A to the application. In Rule 54 (6), the following proviso was inserted :-

"Provided that if the son or daughter of a Government servant is suffering from any disorder of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 18 years in the case of son and 21 years in the case of the daughter, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

(i) if such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor

le

97

children in the order set out in clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of 18 or 21, as the case may be, and thereafter, the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind or who is physically crippled or disabled and shall be payable to him/her for life;

(ii) if there are more than one such son or daughter suffering from disorder or disability of mind or who are physically crippled or disabled, the family pension shall be paid in the following order, namely :-

(a) firstly to the son, and if there are more than one son, the younger of them will get the family pension only after the lifetime of the elder;

(b) secondly, to the daughter, and if there are more than one daughter, the younger of them will get the family pension only after the lifetime of the elder;

(iii) the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor;

(iv) before allowing the family pension for life to any such son or daughter, the sanctioning authority shall satisfy that the handicap is of such a nature as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child.

(v) the person receiving the family pension as guardian of such son or daughter shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled."

3. According to the applicant, she is severe mental abnormality case since birth which has prevented her from earning a livelihood. She was born in 1938 and since then on account of this disability/handicap, she has neither been able to earn her livelihood nor she is capable of earning livelihood till she is alive. For the first time

6

(18)

in 1982, i.e., four years after the death of the mother, a representation was made to the Executive Engineer, CPWD, Kanpur for the grant of pension to the applicant. On this, the applicant was informed to correspond on Director General's office by quoting the reference of PPO etc. for necessary action by the letter dt. 20.7.1982. On 9.6.1983, the applicant made another representation to the Chief Engineer, CPWD, New Delhi, Northern Zone enclosing a medical certificate of G.B. Pant Hospital for processing the case of family pension of the applicant. He has also annexed a copy of that certificate which goes to show that the applicant is a case of severe mental subnormality since birth. On this the office of the Chief Engineer wrote to Executive Engineer, Kanpur, Central Division to process the case. On 29.6.1984, on behalf of the applicant, a request was made to Chief Controller of Accounts, CPWD for grant of said pension. It appears that a letter dt. 30.10.1984 was ^{replied} replied by the Pay and Accounts Officer by the letter dt. 22.1.1985 in which it was informed that the family pension is not admissible to the applicant as the said medical certificate was obtained in 1983 more than 14 years after the date of retirement of the employee. It was also mentioned in that

de

(19)

applicant at the age of
letter that a certificate obtained by the \angle 45½ years
(father)
after the death of the employee \angle is not a valid certificate
and it has also not been signed by the appropriate medical
authority. On behalf of the applicant, another
representation was made on 11.3.1985 to the Controller
General of Accounts, Ministry of Finance. The applicant
was already informed in June, 1984 by the impugned letter
that the family pension in this case is not admissible.
The applicant had, therefore, filed this application for
the grant of the aforesaid reliefs.

4. The respondents contested the application. In
the reply it is stated that when the employee, Sh. J. J. Mantam
retired in 1969, there was no order to grant family pension
to disabled son, daughter or wife. As such the
Notification dt. 30.9.1974 is not applicable in the
present case. The said orders are applicable only to
the Government servants who were in service on the date of
the issue of the order or retired after this date. The
point of limitation has also been urged. It is further
stated that the old records are not available to verify
certain facts alleged by the applicant. In view of this
fact, it is stated that the application is not maintainable

and also devoid of merit.

5. I have heard the learned counsel for the parties at length and have gone through the record of the case. Firstly, the case is hopelessly barred by time. The learned counsel for the applicant argued that in the matter for pension, the limitation will not be attracted. The question came up before the Hon'ble Supreme Court in Union of India Vs. All India Services Pensioners' Association, reported in AIR 1988 SC 501 where the Hon'ble Supreme Court held that the Tribunal was in error in upholding that gratuity was payable in accordance with the Notification dt. 24.1.1975 to all those members of All India Services, who had retired prior to 1.1.1973. As regards pension payable to those, who had retired prior to 1.1.1973, the Hon'ble Supreme Court has rejected the claim of such pensioners in the order dt. 25.4.1991 in Civil Appeal No.897/87 (Union of India vs. All India Service Pensioners' Association & Ors.). The rejection was on the ground that the claim was barred by limitation as the pensioners had sought reliefs on a legal forum

6 ...8...

(21)

after 10 years of the commencement of the benefits. In the present case, the employee retired in 1969 and he died in 1976. The pension was allowed to the widow Smt. Ganga Devi, who also died in 1978. During the life time of the parents, no request was made by the applicant through her brother I.J. Mantani. Shri I.J. Mantani is also an officer of the rank of Superintending Engineer, who is the real brother of the applicant. Thus it cannot be said that the next brother of the applicant was totally oblivious of all these facts. When he filed this application in 1986, he could have also filed this application earlier. During the course of the arguments, it has been revealed that the applicant in her own name owns a house in Lajpat Nagar and that is also fetching an income of not less than Rs.2,000 p.m. But what is material for limitation is that at no point of time within the life time of parents, any request was made by the applicant nor the deceased employee or his widow had made any such request. The deceased employee died in 1976 and the amendment in Rule 54 (6) was inserted w.e.f. 30.9.1974. Thus it cannot be said that the present application can be considered for the reliefs desired by the applicant after such a long period.

6. Since this is a case of a mentally retarded lady, so it has also been considered on merit. The learned counsel for the applicant did not challenge the vires of the Notificate of 1974 nor she advanced arguments on that account of relief No.2 in para 7 of the application has been given up. Now the only question remains for consideration of the reliefs for grant of family pension as per the Extant Rules. Though amendment is prospective in operation, but the learned counsel has relied on the judgement of the Hon'ble Supreme Court in the case of D.S. Nakara, 1983 SC P. Taking a very lenient view of the matter, a certificate filed during the course of the arguments, goes to show that the applicant is 53 years of age where it is written that she can do household work and take care of herself. Her I.Q. falls between 50 to 60. Mild mental subnormality ^(dull) with $\frac{1}{2}$ average, adaptive skill was observed. This certificate has been issued by Dr. Mehta of Department of Psychiatry, AIIMS, New Delhi. The said Notification of 1974, though not applicable to the case of the applicant, yet the applicant does not fulfil the condition absolutely to come up within that Notification. The respondents

23

have rightly rejected the claim of the applicant on the ground that the subnormal mental disability was never found to have been manifested during the life time of the parents before the Government servant retired or before his death in 1976. It cannot be, therefore, said when the applicant was examined at the age of 53, that she is mentally retarded since birth. Mental subnormality since birth certificate earlier filed by the applicant in 1983 with the representation, was not by a competent authority, i.e., by a Psychiatrist. That too was obtained 7 years after the death of the Government servant.

7. I have also considered the matter on humanitarian grounds, but the applicant owns a house in Lajpat Nagar and that she belongs to well placed family. She is unmarried. During the course of hearing, the brother of the applicant was also present and he has admitted that at least Rs.2,000 p.m. shall be the rental income of the house. On this ground also, the case is not covered on the point of humanitarian consideration. The case is not covered also by the Rules.

...11...

20

8. In view of the above facts, the present application is hopelessly time barred and is also devoid of merit and is dismissed leaving the parties to bear their own costs.

AKS

J. P. Sharma
25.9.92
(J.P. SHARMA)
MEMBER (J)