

(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

OA NO. 2790/2004
MA NO. 795/2005
MA NO. 1236/2005
MA NO. 1819/2005

This the 3rd day of March, 2006

HON'BLE MR. JUSTICE M.A. KHAN, VICE CHAIRMAN (J)

Smt. Brahma Devi,
W/o Late Shri Chaman Lal Gheek,
R/o 48, Shastri Park, Chander Nagar,
Delhi.

(By Advocate: Sh. S.S.Arya)

Versus

Union of India through

1. General Officer –in-Command
Head Quarters, Western Command,
Chandi Mandir,
Chandigarh.
2. Controller of Defence Accounts,
Western Command, Chandigarh.
3. Principal Controller of Defence Accounts (Pension),
Draupati Ghat,
Allahabad (U.P.).

(By Advocate: Sh. Sanjeev Kumar)

ORDER

This is a second successive OA filed by the applicant, who is a widow, for grant of pension and retirement dues of her late husband Sh. Chaman Lal Gheek for the period of his service with the respondent from 11.4.1965 to 20.7.1965, the date on which he has died, and thereafter family pension to her. She is also claiming interest on belated payment:

2. The facts of the case may be narrated, briefly, as follows. Sh. Chaman Lal Gheek had joined the service in the establishment of the respondents as a Clerk on 20.4.1948. He tendered his resignation which was accepted w.e.f. 10.4.1965. He breathed his last on 20.7.1975. The applicant for the first time approached the respondent on 15.3.1998



for grant of pension etc. which was payable to her husband during his life time and family pension which became due to her after her husband's death. After seeking some clarification and information the respondent rejected her claim on 13.12.2001. The applicant challenged it in OA No. 1535/2002. The OA was disposed of on 6.6.2002 at the admission stage with a direction to the respondent to treat the legal notice served on behalf of the applicant as a representation made by the applicant and decide it by a speaking order in the light of the Tribunal's decision in Om Parkash Singh Maurya vs. Union of India and others in OA-353/1994 decided on 14.9.1998. Despite taking extension of time for deciding the matter, the order of the Tribunal was not complied with. The applicant served legal notices yielding no result. Ultimately the applicant again rejected the claim of the applicant by order dated 17.5.2003 on the ground that late husband of the applicant has not rendered minimum 20 years qualifying service to be eligible for grant of pension under Liberalized Pension Rules, 1957; the deceased was never entitled nor was in receipt of pension at the time of his death on 7.2.1975, so the applicant would also not be entitled to family pension and the cases of Om Parkash Singh Maurya (supra) and Bimla Devi vs. Union of India 1992 (2) SLJ 310 relied upon by the applicant were distinguishable as in both cases the deceased employee had died after CCS (Pension) Rules, 1972 (hereinafter mentioned as Pension Rules, 1972) had come into force. Applicant again made a representation asking the respondent to take into consideration the advice of the respondent No.3. Thereafter on 13.12.2003 the respondent No.2 disallowed the claim of the applicant in view of Rule 26 of Pension Rules, 1972 which provided forfeiture of service, if it was determined by resignation. Applicant then filed a CP No.125/2004, which was dismissed as withdrawn leaving it open to the applicant to challenge the orders of the respondent in appropriate proceedings.

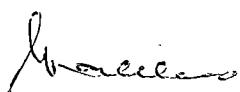
2. The respondent by their speaking order dated 17.5.2003 (Annexure A-2) have rejected the claim of the applicant on the ground that Rule 5 (1) of Pension Rules, 1972 stated that any claim of the pension or family pension would be regulated by the provisions of rule in force at the time when the Government servant had retired or was

Maneek

discharged or was allowed to resign from service or had died as the case may be; under Liberalised Pension Rules, 1957 applicable at the time of resignation of her husband late Sh. Chaman Lal Gheek in 1965 minimum 20 years of service was required to become eligible for the pension/family pension so he was not entitled to any pension; in the case of Smt. Bimla Devi (supra) and Om Parkash Singh Maurya (supra) the employee had retired after 1972, so Pension Rules 1972 were applicable; moreover, Rule 4 (1) of Family Pension Scheme for Central Government employees 1964 which was applicable in the case of the deceased employee the family pension would be admissible in case of death while in service after retirement on or after 1.7.1964 if at the time of death the retired officer was in receipt of compensation, invalid, retiring or superannuation pension and in case of death while in service the Government servant should have completed a minimum period of one year service. Since the deceased was neither entitled to nor was in receipt of any pension at the time of death on 20.7.1975 when he died so applicant will also not be eligible for pension.

3. Applicant has challenged the aforesaid order of the respondents on the ground that the resignation from service of the deceased employee amounted to his voluntary retirement for pension purpose, the deceased would be entitled to retiral benefit since he had rendered more than 10 years of qualifying service; the pension would not be forfeited in terms of Rule 26 of the Pension Rules, 1972 and; applicant would be entitled to family pension under Rule 54 of Pension Rules, 1972; the case of the applicant is fully covered by the decision in the case of Om Parkash Singh Maurya (supra).

4. The respondents have resisted the claim of the applicant in the counter reply. It is pleaded that the husband of the applicant had resigned from service on 10.4.1965 after completion of 16 years 11 months 21 days of service. He died on 20.7.1975. After 23 years of his death the applicant filed application on 15.3.1998 making claim for his pension and her own family pension. The matter has been considered by appropriate authority and detailed speaking order was issued on 13.12.2003 stating that under Rule 26 of Pension Rules, 1972 resignation from service or post unless it was allowed to be withdrawn in public interest entails forfeiture of past service. Under Liberalized Pension



Rules, 1957 which were applicable at the time of resignation of the applicant's husband in 1964-65 minimum 20 years of service was required to become eligible for the benefit of pension/family pension, so the claim of the applicant is not admissible. In the case of Smt. Bimla Devi (supra) and Om Parkash Singh Maurya (supra) the date of retirement of employee was after 1972 making Pension Rules, 1972 applicable in his case. Under Rule 6(1) of Family Pension Scheme of Central Government employees 1964 which is applicable in the case of applicant's husband the family pension would be admissible in case of death while in service and after retirement on or after 1.7.1964 at the time of death the retired officer was in receipt of compensation, invalid, retiring or superannuation pension. So late Sh. Chaman Lal Gheek was neither entitled nor was in receipt of any pension at the time of his death on 20.7.1975 so family pension would also not be admissible to the applicant.

5. In the rejoinder applicant has reaffirmed his case and denied the allegation of the respondents.

6. I have heard the learned counsel for the parties and have perused the case laws cited at the Bar.

7. Applicant's claim for grant of pension to her late husband from 11.4.1965 to 20.7.1975 when he had died and the claim of family pension to her since 21.7.1975 has been rejected by the respondent on the ground that the claim is not admissible under Rules. The grounds for rejection of the claim are as follows:-

(1) Under Rule 26 of the Pension Rules, 1972 resignation from service or a post unless it is allowed to be withdrawn in public interest by the appointing authority would entail forfeiture of the past service and since Sh. Chaman Lal Gheek had resigned from service on 11.4.1965 it would entail forfeiture of his past service.

(2) According to Rule 5(1) of Pension Rules, 1972, the claim of pension of family pension would be regulated by the provision of rules in force at the time when Government servant was to retire or was discharged or was allowed to resign from service or died, as the case may be. At the time

Chaman Lal Gheek

of resignation of late Sh. Chaman Lal Gheek in 1965 Liberalized Pension Rules, 1957 were applicable which prescribed minimum 20 years of qualifying service to become eligible for benefit of pension/family pension.

(3) Under Rule 4 (1) of Family Pension Scheme for Government employees 1964 which was in force at the time of resignation of late Sh. Chaman Lal Gheek the family pension would be admissible in case of death while in service or after retirement or after 1.7.1964, if at the time of death, the retired officer was in receipt of compensation, invalid, retiring or superannuation pension. Since the deceased employee was neither entitled to nor was in receipt of any pension at the time of his death on 20.7.1975, the applicant would also not be applicable and;

(4) The decision in the case of Om Parkash Singh Maurya (supra) and Smt. Bimla Devi (supra) relied upon by the applicant were distinguishable.

8. To counter the contention that the resignation would entail forfeiture of service, the applicant has forcefully referred to the judgment of the Hon'ble Supreme Court in J.K.Cotton Spinning & Weaving Mills Co. Ltd. Vs. State of U.P. and others (1990) 4 SCC 27 wherein the Hon'ble Apex Court after examining the provisions of UP Industrial Disputes Act, 1947 and the factual matrix of the case has held when an employee voluntary tendered his resignation, he voluntarily gives up his job. Such a situation would be covered by the expression 'voluntary retirement' within the meaning of clause (i) of Section 2 (S) of the State Act. This question was also examined by a Division Bench of the Hon'ble High Court in the case of Ashwani Kumar Sharma vs. Oriental Bank of Commerce 2003 (3) AISLJ 405 and after examining the law laid down in the above cited judgment and a number of other judgments vis-à-vis Rule 26 of Pension Rules, 1972 it has held that there was no discrimination between the employees who had retired under the scheme of voluntary retirement and the employee who had otherwise tendered his resignation and that the service of the employee who had resigned would not stand forfeited under Rule 26 of Pension Rules, 1972 so he would also not forfeit his right to receive pension under the applicable rules. This Tribunal in Om Parkash Singh Maurya

Sh. Chaman Lal Gheek

vs. Union of India and others in OA-2353/94 decided on 14.9.98 has upheld the claim of a widow for family pension whose husband had resigned from service and had not been paid pension and after his death the family pension of the widow on the same ground that the resignation amounted to forfeiture of the past service.

9. The judgments of the Hon'ble Supreme Court and the Hon'ble High Court are binding on this Tribunal whereas the orders of the coordinate benches of this Tribunal, has to be followed since we do not find any reason to take a different view. Accordingly, the contention of the respondent that the deceased Sh. Chaman Lal Gheek had forfeited his past service by tendering resignation in 1965 and would thus be ineligible for grant of pension for this reason is not sustainable in law. The resignation of late Sh. Chaman Lal Gheek would be treated to be a voluntary retirement from service by him for the purpose of deciding his claim for pension and that of the applicant's claim for family pension.

10. Sh. Chaman Lal Gheek before he resigned from service w.e.f. 11.4.1965 had served in the establishment of the respondent for 16 years 11 months and 21 days. One of the ground on which the claim of the applicant was rejected by the respondent is that he had not completed 20 years of service till the date of his resignation on 11.4.1965. The question would arise whether a person who had rendered 10 years of service and above would be entitled to be granted the pension under Liberalised Pension Rules, 1957 which were in force in 1964-65, the relevant year. The deceased had died prior to the coming in force of Pension Rules, 1972. It has been submitted that even under Liberalised Pension Rules, 1957 a Government employee who had completed 10 years of minimum service was entitled to be granted pension. Conversely the case of the respondent is that minimum 20 years was necessary for grant of pension under Liberalised Pension Rules, 1957 and a family pension to the widow would be admissible under family pension scheme for Central Government employees, 1964, applicable in the present case, in case of the death of the employee while in service or after his retirement on or after 1.1.1964 if at the time of the death the retired employee was in receipt of compensation, invalid, retiring or superannuation pension and since the husband of the



applicant late Sh. Chaman Lal Gheek was not in receipt of any compensation or the pension as mentioned in the rules, the applicant would also not be entitled to receive the family pension.

11. The applicant had filed the extract of the Pension Regulations, 1957 as Annexure A-28. Article 468 in Chapter XIX stated that the amount of pension that may be granted would be determined by length of service as set forth in Articles 474 to 485. Articles 471 (1) so far as it is relevant has provided as under:-

“474(1). The amount of a pension is regulated as follows:

(a) After a service of less than ten years, a gratuity not exceeding (except in special cases, and under the order of the Government of India up to a maximum of 12 months, emoluments) one month's emoluments for each completed year of service. If the emoluments of the officer have been reduced during the last three years of his service, otherwise than as a penalty, average emoluments may, at the discretion of the authority which has power to sanction the gratuity, be substituted for emoluments.

(b) After a service of not less than ten years a pension not exceeding the following amounts:-

Years of completed service	Scale of pension	Maximum limit of pension
10	10-sixtieths of average emoluments	Rs. 2,000 a year, or 166-2/3 a month
11	11 " " "	2,200 " 183-1/3 "
12	12 " " "	2,400 " 200 "
13	13 " " "	2,600 " 216-2/3 "
14	14 " " "	2,800 " 233-1/3 "
15	15 " " "	3,000 " 250 "
16	16 " " "	3,200 " 266-2/3 "
17	17 " " "	3,400 " 283-1/3 "
18	18 " " "	3,600 " 300 "
19	19 " " "	3,800 " 316-2/3 "
20	20 " " "	4,000 " 333-1/3 "
21	21 " " "	4,200 " 350 "
22	22 " " "	4,400 " 366-2/3 "
23	" " "	4,600 " 383-1/3 "
24	24 " " "	4,800 " 400 "
25 and above	30 " " "	5,000 " 416-2/3 "

12. The table has prescribed the maximum limit of the pension admissible on completion of service from 10 years to 25 years and above. Sub-Article (2) related to reckoning the gratuity and pension of the officials retiring from service on or after 22.4.1960. Rule 54 of the Pension Rules, 1964 which regulate the Family Pension provided that this rule would apply, inter alia, to the government servant, who was in service on 31.12.1963 and was governed by Family Pension Scheme for Central Government Employees, 1964 which was in force immediately before the commencement of these rules. The provision of rule would also be extended from 22.9.1977 to the government servants on pensionable establishments who retire/died before 31.12.1963 and also to those who were alive on 31.12.1963, but had opted out of 1964 Scheme. It has provided a table on the basis of which the amount of family pension was to be computed.

13. The respondent in their counter reply have also relied upon the aforesaid rules. Counsel for respondents has not been able to produce Liberalised Pension Rules which would be applicable exclusively in regard to the voluntary retirement cases. He has also not argued that Article 474 (1) Clause (b) will not be applicable to the case of the husband of the applicant. He had admittedly completed more than 10 years of service on 11.4.1965 when his service came to an end by resignation. The Article is, if not precisely the same, more or less similar to the present rule 49 of CCS (Pension) Rules, 1972 where pension is payable on a minimum qualifying service of 10 years. The amount of the pension in the case where the service of the retired employee was not less than 10 years would be as provided in the table below Article 474 (1) aforesaid cited. In other words, the pension was admissible to the deceased employee he having completed more than 10 years of service on the date of his deemed voluntary retirement in April, 1965. The pension has not been paid, the claim of the applicant to that extent has to be sustained.

14. Applicant has been denied family pension on the premises that her husband late Sh. Chaman Lal Gheek was not receiving any pension at the time of death. It is well-

M. A. Gheek

settled by catena of judgments of Hon'ble Supreme Court that the pension was not a bounty. It was a statutory right and it was treated for all intent and purport to be a deferred salary and it was granted when the employee completed prescribed qualifying service. The pension is to be paid to the employee not only when it is claimed, but it is the statutory duty of the employer to pay it as provided in the applicable rules. In case the applicant have not discharged their duties enjoined upon them under the service rules, they cannot pass on the blame to the applicant nor can they be excused as the statutory rules were not followed by them and the admissible pension was not paid to the employee when it was due. Therefore, when late Sh. Chaman Lal Gheek died in 1975 applicant will also become entitled to the family pension and the contention of the applicant to the contrary does not hold good. The delay in pressing her claim will not deprive her of actual monetary benefit.

15. Accordingly, the OA is allowed. The respondents are directed to release pension to late Sh. Chaman Lal Gheek for the period from 11.4.1965 to 20.7.1975 and thereafter determine the family pension admissible to the applicant and release the same to the applicant. This order shall be implemented preferably within a period of 4 months from the date on which the certified copy of the order is received by the respondent. In the circumstances, parties shall bear their own costs.

M.A. Khan
(M.A. KHAN)
Vice Chairman (J)

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