

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

Dated: Allahabad, the 28th day of August 2001
Coram: Hon'ble Mr. Justice R. R. K. Trivedi, VC
Hon'ble Mr. S. Dayal, A.M.

ORIGINAL APPLICATION NO.314 OF 1996

Smt. Asha Sharma,
aged about 29 years,
w/o late Shri V.K. Sharma,
r/o Quarter No.Type-I/1,
Radio Colony,
Nazibabad-246763

. Applicant

(By Advocate: Ashish Srivastava)

Versus

1. Union of India through
Station Director,
All India Radio,
Nazibabad- 246763.
2. Branch Manager,
State Bank of India,
Nazibabad- 246763.

. Respondents

(By Advocate: Sri S.K. Anwar)

O R D E R

(By Hon'ble Mr. S. Dayal, AM)

This Original Application, under Section 19
of the Administrative (Tribunals) Act, 1985, has
been filed for seeking payment of Dearness Relief

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on pension of the applicant with effect from 26.7.93 and 18% interest on the arrears of Dearness Relief to be payable to the applicant.

2. The applicant's husband was working as a Motor Driver under Director, All India Radio, Nazibabad and died on 18.1.91. The applicant was given compensatory appointment on 26.7.91 on the post of Peon in the pay-scale of Rs.750- 940/-. The applicant was also getting in addition to her pay and allowance a sum of Rs.550/- towards Family Pension plus Dearness Relief. She continued to get the Dearness Relief from 18.1.91 to 25.7.93. The applicant's pension from July, 1993 was withheld and she made a representation against the same. The applicant claims that one Mrs. Uma Shama was denied Dearness Relief after her compassionate appointment on 15.6.93. She filed OA No.270/93 before the Jaipur Bench of the Tribunal and a direction was given on 11.2.94 to the respondents to grant Dearness Relief to Mrs. Uma Shama, applicant in the said OA. The applicant's representation to the respondents got her reply dated 8.2.95 that she will have to file a case separately in order to get relief, which Mrs. Uma Shama was getting.

3. We have heard the arguments of Sri Ashish Srivastava for the applicant and Sri S.K. Anwar for the respondents.

4. The learned counsel for the respondents besides the earlier arguments of confining the relief to the person in whose favour directions were given has also stated that the dependants of entire official who got re-employment are also not entitled to get any Dearness Relief. In stating this,

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the learned counsel for the respondents has relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal No.3543-46 of 1990, decided on 8-12-94. The authority for denial of the benefit has been cited as Ministry of Personnel, Public Grievances and Pension O.M. No.48/3/94-Q/w (g) dated 14th March, 1995. Another authority cited by the respondents is Union of India and others Vs. G. Vasudevan Pillai and others, 1995, SCC (L &S), Page 396. The respondents have contended that in the light of the said judgments, the law laid down in Smt. Uma Sharma's case (supra) is not a good law. The Respondents have also referred the letter dated 20.5.96 addressed to Branch Manager, State Bank of India, Nazibabad, stating that she was ready to refund dearness relief on her ^{family} pension paid to her for the period 26-7-91 to 25.7.93 along with interest.

5. A single member bench of this Tribunal had considered the submissions and had held that as the purpose of giving dearness relief was to help the employees to meet the rising prices of essential commodities, the payment of dearness relief was not, therefore, justified. It held that the view taken by the Division Bench of Central Administrative Tribunal, Jaipur was not a good law. A proposal was made that the case may be referred to a larger Bench for giving authoritative pronouncement for effective determination of the controversy regarding the dearness relief on Family Pension, in case a person receives ~~xpr~~ family pension after employment.

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6. The Hon'ble Chairman of Central Administrative Tribunal on the said proposal required the issue to be referred to the Division Bench of one of us (Hon. Mr. S. Dayal) and Hon'ble Mr. Justice R. R. K. Trivedi.

7. We have considered the controversy involved in this case. The order was passed by the Jaipur Bench in OA No.270 of 1993, which was decided on 2.11.94 (1994 (27) ATC-1) declaring the applicant to be entitled to grant of dearness relief, which was withdrawn on account of applicant's employment, and directing the respondents in the said O.A. to pay the applicant Dearness Relief within a period of three months. The contention of the applicant was that the Dearness Relief was a part of the pension and should be paid even after the employment on compassionate ground and the respondents could not withhold Dearness Relief on the ground that the applicant was in employment and, therefore, he was entitled to Basic Pension and Dearness Allowance. The Division Bench of Jaipur relied upon the case of Mrs. Meena Subramaniam Vs. Union of India & ors, 1992, 20 ATC, 584 (Madras), in which it has been held that the Dearness Relief was not separable from pension. Madras Bench relied upon Pension Rule 55-A, which was inserged, vide amendment in the year 1991 and held that giving an opportunity for employment and giving pension were two different things and once pension was allowed, Dearness Relief should be paid along with pension, otherwise there will only a part payment of the pension.

The Division Bench held that entitlement to Family Pension arose on death of a government servant under Rule 54 (ii) of CCS (Pension) Rules, 1972. The Division Bench also observed that two Family Pensions could be given to the person entitled under Rule 54(ii) of CCS (Pension) Rules, 1972. The Division Bench also observed that a widow would get appointment on merit and in that case she would have a right under the rules to get dearness relief. It also considered the fact that there could be more than one widow of a ^{deceased} and all the widows were entitled to get the benefit of Family Pension. If one widow was in employment, the dearness relief on Family Pension could not be withheld from other widows. The Division Bench also took into consideration the provisions of Rule 55-A of CCS (Pension) Rules, 1972, inserted by way of amendment in the year 1991, in which it has been laid down that if a pensioner is re-employed under central or state government or a corporation, she shall not be eligible to draw dearness relief on pension and Family Pension during the period of such re-employment. It held that re-employment would not encompass compassionate appointment.

8. It is clear from the judgment of the Jaipur Bench in the case of Mrs. Uma Sharma Vs. Union of India and others (supra) that the issue of grant of dearness relief on pension/Family Pension hinges on interpretation of Rule 55-A of CCS (Pension) Rules, 1972. Rule 55-A is reproduced as below:-

"55-A. Dearness Relief on Pension/Family Pension

- (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."

The Jaipur Bench of the Tribunal in Mrs. Uma Sharma Vs. Union of India and others (supra) had observed that in clause (ii) of Rule 55-A of CCS (Pension) Rules, 1972, the word "employed" should be used in place of "re-employed" to make more reasonable, equitable and just. The law laid down in the judgment in the case of Mrs. Uma Sharma Vs. Union of India and others (supra) had ^{✓ subsequently} been altered by the law ~~now~~ laid down by the Apex Court in Union of India and others Vs. G. Vasudevan Pillai and others, 1995, SCC (L & S), Page 396. In the said case, the Apex Court examined the issue as to whether the directions of Govt. of India not ~~to~~ to allow dearness relief on pension to the ex-servicemen on the re-employment was in accordance with law or not and whether the denial of dearness ~~a~~ relief on Family Pension on employment of dependents like widow or ex-servicemen was justified or not. As regards the first issue, the Apex Court held as follows:-

"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 re-employed; and in the case of the re-employed pensioners it would be permissible in law to deny DR on pension inasmuch as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of DR, as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed."

9. With regard to the denial of the Dearness Relief on Family Pension, the Apex Court in the said case laid down as follows:-

" In some of the cases, we are concerned with the denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen. This decision has to be sustained in view of what has been stated above regarding denial of DR on pension on re-employment inasmuch as the official documents referred on that point also mention about denial of DR on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependants on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done."

10. The Apex Court in the said case considered sub-para (i) of Annexure No.1 of Office Memorandum dated 1.8.75 of Ministry of Finance, Department of Expenditure and Office Memorandum dated 22.4.87 on the subject of grant of Dearness Relief to pensioners on the recommendations of IVth Central Pay Commission.

11. We have taken into consideration O.M. No. 22(8)-E.V(A)/75 dated 13.2.76 read with O.M. dated 26th March, 1984, which lays down as follows:-

"(3) Payment of relief on pension/family pension shall be suspended during the period of employment/re-employment.

The payment of relief in pension shall be suspended when a Central Government pensioner is-

- (i) re-employed in a Department/Office of the Central Government or a State Government,
- (ii) employed/re-employed or absorbed permanently in a Central Government or a State Government Company/Corporation/Undertaking or Autonomous Body or in Nationalised Bank including Reserve Bank of India and the State Bank of India or in a 'Local Fund' as defined in clause (m) of sub-rule (1) of Rule 3 of the CCS (Pension) Rules, 1972.

NOTE: For the purpose of (ii) above, Government Company/Corporation/Undertaking is the one which not less than fifty one per cent of the paid-up share capital is held by the Central Government or by any State Government or more State Governments and includes a Company/Corporation/Undertaking which is subsidiary of a Government Company.

A Government servant who on permanent absorption in an organisation referred to in (ii) above elects the alternative of receiving the retirement gratuity and lump sum amount in lieu of pension, will not be eligible to receive any relief even after he has ceased to be in the employment of the organisation concerned.

The payment of relief on family pension shall similarly be suspended when a person in receipt of family pension is employed in any of the organisations mentioned in (i) and (ii) above."

We have also considered the instructions circulated by the government of India, Department of Pension and Pensioners Welfare O.M. No.42/3/94-O/Pw(G) dated 14.3.95, by which denial of dearness relief on Pension/ Family Pension in case of those ex-servicemen as well as civillian employees of the government of India was declared legal and just. The Apex Court in its judgment in Union of India Vs. G. Vasudevan Pillai and others (supra) has relied upon the Office Memorandum of Government of India, Department of Pension and Pensionaries' Welfare O.M.No.2/5/87-PIC-I dated 22.4.87 and put its seal of approval of sub-para (v) of the said OM, which lays down as follows:-

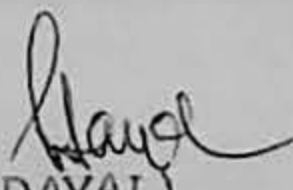
"(v) The dearness relief under the revised pattern will also be suspended when the Central Government Pensioner/Family Pensioner is-

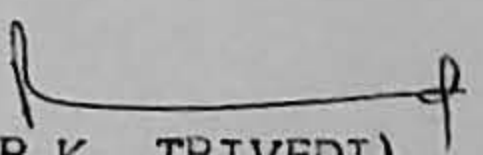
- (i) employed/re-employed in a Department/ Office of the Central Government; or
- (ii) Employed/re-employed or permanently absorbed in the Central or a State Government company, Corporation Undertaking or autonomous body or in Reserve Bank of India or in a Public Sector Bank or GIC/LIC, etc. in the same manner as under the existing pattern."

12. From the above, it is clear that the Apex Court has filled the gap earlier existing in Rule 55-A of CCS (Pension) Rules, 1972 for suspension of Dearness Relief during the period

of employment/re-employment of a Central Government pensioner/Family Pensioner in a department/Office of Central Government by accepting paragraph (v) of the O.M. dated 22.4.87 based on the recommendations of the IVth Central Pay Commission as filling this gap. Thus, the law laid down in Mrs. Uma Sharma Vs. Union of India and others (supra) decided on 11.2.94 stood amended by Union of India and others Vs. G. Vasudevan Pillai and others (supra), decided on 8.12.94 by the Apex Court. This law has subsequently been confirmed in Union of India and others Vs. Rekha Majhi, 2001 SCC (L&S), 744, which upheld the denial of Dearness Relief on Family Pension in a similar case of an employee of the Railways but directed the respondents not to make any recovery of excess pension paid. The O.M. dated 22.4.87 having been upheld by the Apex Court, the relief claimed by the applicant through this OA filed in 1996 cannot be allowed. The O.A. is, therefore, dismissed as lacking in merits.

There shall be no order as to costs.


(S. DAYAL)
MEMBER (A)


(R.R.K. TRIVEDI)
VICE- CHAIRMAN

Nath/