

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 21st DAY OF MAY, 2010)

PRESENT:

HON'BLE MR. S.N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 1323 OF 2004
(U/s, 19 Administrative Tribunal Act. 1985)

Smt. Prema Kumari, Wife of Late Sri Sabhajit Singh,
Resident of Village and Post Benda, District-Banda.

.....Applicant
By Advocate: Shri D.P. Singh

Versus

1. Union of India through Secretary,
Ministry of Finance, South Block,
New Delhi.
2. Controller General of Defence Accounts,
New Delhi.
3. Principal Controller of Defence Accounts,
Allahabad.
4. Controller of Defence Accounts, Patna.

..... Respondents
By Advocate: Shri H.N. Pandey

O R D E R

1. None for the respondents even on a revised call. Shri D.P. Singh learned counsel for the applicant is present. This OA relates to the year 2004 and this is an old matter. Vide order dated 25.3.2010 Shri Firoz Ahmad holding brief of Shri R.D. Tiwari counsel for the respondents made a statement that he does not have the file and he sought further time for two weeks for reconstructing the file to represent the matter. Accordingly, a final opportunity of two weeks was granted on payment of cost of

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Rs.200/- and the case was listed on 22.4.2010. It seems that there was no sitting on that day and the case again came up on 17.5.2010 and it was noted that this being an old matter sufficient time has already been given for reconstructing the file and the case was ordered to be listed on 21.5.2010 with clear stipulation that no further adjournment would be granted. When the case came up for hearing today there was no representation on behalf of the respondents. Since the counter affidavit is on record this case is being decided on merits on the basis of materials available on record and after hearing Shri D.P. Singh, learned counsel for the applicant.

2. Earlier it has been noted on 11.12.2009 from the order sheet that counsel for the respondents raised a preliminary objection (interestingly after five years) that OA does not fall within the territorial jurisdiction of C.A.T. Allahabad as the matter pertains to an officer who was posted at Shilong. Today during the hearing when this issue was pointed out to the learned counsel for the applicant he made a statement that the applicant after the death of her husband resides at Banda and as per CAT Rule 6(2) of CAT (Procedure) Rules of 1985 OA can be filed at the jurisdiction of the Bench where the applicant resides. The explanation submitted on behalf of the applicant is found to be tenable and accepted.

3. The facts of the case are that the applicant's husband Late Sabhajit Singh was an employee of the Central Defence Accounts and was posted at Shilong, in Meghalaya when he was killed by terrorist on 22.12.1979 a fact not disputed by respondents. After much delay the applicant was paid Family Pension w.e.f.

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13.12.1979 vide order dated 1.3.1998 (Annexure A-1 to the OA). Subsequently, Government of India issued a circular providing for Liberalised Pensionary Award on 9.11.1984 (Annexure A-2). In the said circular it was stipulated that where Government Servants are killedthe survivors may be allowed benefits of Liberalised Pensionary Award contained in Circular-A under the heading of FAMILY PENSION. These orders shall apply to casualties occurring on or after **1.8.1984**. Yet another circular dated 9.4.1990 (Annexure A-3) was issued wherein it was stipulated that the scope of Liberalisation was enhanced and it was stipulated that the circular will be applicable for all cases arising on or after **1.1.1986** followed by instructions contained in O.M. No.2/6/87-P. & P.W. dated the 18th March, 1988 in which in part (B) the methodology for re-fixing the Family Pension was indicated. Learned counsel for the applicant placed reliance on Allahabad High Court Judgment dated 28.11.2001 in Writ petition No.38282 of 2001, Rajmuni Devi Versus District Inspector of Schools, Ghazipur and Others wherein it has been held:-

"Pension-Family pension-On the account of death of husband-Applicability of Government Order dated 24th February, 1989, providing family pension to such employee who died after 1st December, 1989-Where as petitioner's husband died on 31st August, 1987- Aforesaid Government order amounts to carving out class from a homogenous class of persons who are entitled for family pension, which is not permissible- Held, petitioner would be entitled for family pension."

Learned counsel for the applicant also relied on the judgment of Union of India and Another Vs. SPS Vains (Retd.) and Others, (2008) 9 Supreme Court Cases 125 wherein it was held as under:-

"Service Law-Pension-Disparity within the same rank- Validity-Criteria for pay fixation laid down in Special Army Instruction 2/S/1998 which enabled post 1-1-1996 retired Major pension compared to pre 1-1-1996 retirees-D.S. Nakara case, (1983) 1 SCC 305, followed

and held it was not permissible to create a class within class-Government directed to extend similar benefit to pre 1-1-1996 retirees on notional basis-Pay-Pay fixation-Notional fixation of retired employees-Pay revision-Cut-off date-Determination of-Constitution of India-Arts.14 and 16-Classification-Temporal classification-Cut-off date-Armed Forces.

Learned counsel for the applicant also relied on the judgment of Premilobai Vishnu Dixit Vs. State of Maharashtra, AIR 1985 SC 1196=1985 Lab. I.C. 950.

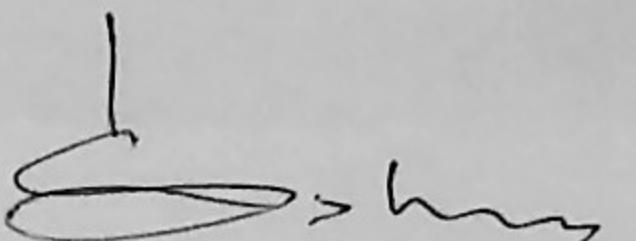
4. I have carefully perused the counter affidavit. In para 10 of the counter affidavit the stipulation of effective date of implementation being 1.8.1984 in the circular dated 9.11.1984 (Annexure A-2) relied upon are reiterated.

5. As regards the applicant's claim in (para 4.15 of OA) lump sum compensation of Rs.5 lacs vide Government of India Office Memorandum dated 11.9.1998 (Annexure A-5 of the OA) the respondents' stand is that this is applicable on or after 01.08.1997. The casualty occurred on 22.12.1979. Perusal of Office Memorandum dated 11.09.1998, however, shows that these instructions were issued as a consequence of the recommendation of Fifth Pay Commission and, therefore, this G.O. is not applicable in case of the applicant. Even on a specific query the learned counsel for the applicant is not in a position to show any other contemporary instructions at the time of the death of the applicant for a lumpsum payment which has been denied to the applicant. This relief is, therefore, not being pressed by learned counsel for the applicant.

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6. After giving a thoughtful consideration to the material available on record and very respectful perusal of the rulings cited by learned counsel for the applicant it is considered to be a fit case for grant of Liberalized Family Pension following the decision of Hon'ble Supreme Court particularly the latest decision of Union of India and Another Vs. SPS Vains (Retd.) And Others, (2008) 9 SCC 125. The competent authority i.e. respondent no.3 is directed to revise and refix the Family Pension of the applicant as per Liberalized Family Pension in terms of circular dated 9.11.1984 and 9.4.1990 and pay arrears as per rules within a period of three months of receipt of certified copy of this order.

7. OA is partly allowed. No Costs.


Member-A

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