

12
1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 1153 of 1994.

T.A. No:

DATE OF DECISION: 17th/95

Smt. Sushma Rani & ors.

PETITIONER.

Shri Suelhi Agrawal

ADVOCATE FOR THE
PETITIONER

V E R S U S

Union of Indis & ors.

RESPONDENTS.

Shri N.B. Singh

ADVOCATE FOR THE
RESPONDENTS.

C O R A M

The Hon'ble Mr. Justice B.C. Saxena, V.C.

The Hon'ble Mr. _____

1. Whether Reporters of local papers may be allowed to see the judgement? x
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgement? x
4. Whether to be circulated to all other Bench? yes.

B.C. Saxena

SIGNATURE
**

JAYANTI/

A2
2

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 17 DAY OF OCTOBER, 1995

Original Application No.1153 of 1994

HON. MR. JUSTICE B.C. SAKSENA, V.C.

1. Smt. Sushma Rani w/o late Subhash Chandra
2. Smt. Bandana Mukherjee, w/o late S.C. Mukherjee
3. Smt. Veena Nangia, w/o late S.K. Nangia
4. Smt. Sudha Sharma, w/o late S.C. Sharma
5. Smt. Urmila Sharma, w/o late J.N. Tiwari
6. Smt. Sarita Sharma, w/o late C.K. Sharma
7. Smt. Sundri Devi w/o late S.P. Naithani
8. Smt. Sampati Devi, w/o late J.S. Rawat
9. Smt. Santosh Kumari Narula w/o late R.N. Narula
10. Smt. Anandi Devi w/o late Kunwar Singh
11. Smt. Sushila Devi, d/o late Prem Singh Rawat
12. Smt. Bimla Nautiyal, w/o late Sri D.D. Nautiyal
13. Smt. Gayatri Devi w/o late U.C. Shah
14. Smt. Raj Rani Verma, w/o late Sri P.S. Verma
15. Smt. Pratima Chakraborty, w/o late K.D. Chakraborty
16. Smt. Nanhi w/o late Karimullah
17. Smt. Vidya Devi w/o late Naresh Kumar
18. Smt. Hansa Pandey w/o late S.C. Pandey
19. Smt. Bimla Devi w/o late N.L. Sharma
20. Smt. Chandra Devi w/o late Shyam Lal
21. Smt. Bina Banerji w/o late B.K. Banerji
22. Smt. Parvati Devi, w/o late Manjeet Singh
23. Smt. V.N. Nautiyal w/o late B.P. Nautiyal
24. Smt. Girija Devi, w/o late B.L. Saxena
25. Smt. Kuldip Kaur w/o late V.S. Parmar

Boh

:: 2 ::

26. Smt. Anita Thapa w/o late B.B. Thapa
 27. Smt. Kusum Mangain w/o late Balram Mangain
 28. Smt. Ram Pyari w/o late Ram Charan
 29. Smt. Santosh Devi w/o late Kishan Lal
 30. Smt. Mangan Devi w/o late Bhupendra Malia
 31. Smt. Leelawati w/o late Jagdish
 32. Smt. Bimla Thapa w/o late Sher Bahadur
 33. Smt. Chudi Devi w/o late Sultan Singh
 34. Smt. Kirti Prabha w/o late R.K. Gupta
 35. Smt. Amita Malhotra w/o S.K. Malhotra
 36. Smt. C.R. Kukkal w/o late M.L. Kukkal
 37. Smt. Shantipoorna Devi w/o late K.B. Gurung
 38. Smt. Neena Garg w/o D.P. Garg
 39. Smt. Rajni Gupta w/o Anil Kumar Gupta
 40. Smt. Swarn Kaur w/o late Gurcharan Singh
 41. Smt. Beena Dora w/o late Laxman Dass
- Working at Instrument Research Development R&D Organisation Raipur, Dehradun.

BY ADV. SHRI SUDHIR AGRAWAL
Versus

...Applicants

1. Union of India through the Secretary
Ministry of Finance New Delhi
2. Union of India through Secretary
Department of Defence Production
South Block Delhi.
3. Ordnance Factory Board 10-A Auckland
Road Calcutta through its Chairman
4. Chief Controller of Defence Accounts
(Pension) Allahabad.
5. Scientific Advisor Ministry of Defence
Research Development Organisation
New Delhi.
6. The General Manager Opto Electronics
Factory, Raipur Dehradun
7. The Director I.R.D.E Dehradun
8. The General Manager, Ordnance Factory
Dehradun

... Respondents

BY ADVOCATE SHRI N.B. SINGH

O R D E R (Reserved)

JUSTICE B.C. SAKSENA, V.C.

This O.A has been filed by 41 applicants. The

Bcr

husbands of the applicants were employed under Central Govt in various capacities and after their death the applicants were given family pension in accordance with the provisions of Central Civil Services (Pension) Rule 1972. Subsequently, the respondents, it is alleged by invoking the provisions of Office Memorandums dated 13.2.76 and 6.4.76 had stopped dearness relief on family pension. Annexure A-3 is a chart detailing the names of the husbands of each of the applicants, the office in which he was working, the post held by him, the date of his death, date of appointments of the applicants and the date of suspension of the dearness relief. The applicants as would appear from the chart have been given employment after the death of their husbands and thus they are reemployed family pensioners., and appeared to have been employed in the Ordnance factory^High school, Raipur, Dehradun which is owned and managed by the Ordnance Factory Dehradun.

2. The applicants case is that the validity of the office memorandums dated 13.2.76 and 6.4.76 ~~whereby~~ were the subject matter of adjudication before a D.B of the Tribunal at Ernakulam in O.A. No. 282/90 Smt. E. Manikam Vs. Post Master Peru and a Division Bench of the Tribunal vide its judgment dated 25.11.91 had allowed the said O.A and had held the two office memorandums as ultra-vires and contrary to Rule 54 of the Central Civil Services Pension Rules 1972 and also being arbitrary and being violative of Art. 14 and 16 of the Constitution. The said judgment is reported in 1992 Vol(1) All India Services Law Journal 589.

3. The applicants further case is that after the said decision by the Ernakulam Bench the respondents made an amendment by inserting Rule 55-A by amendment rules notified on 22.1.91. The applicants state that the validity of the said

~~XXXXXXXXXX~~ *for*

amended rule 55-A(1) &(2) was challenged in O.A. 801/91 before the Madras Bench in Meena Subramanian Vs. Union of India and the Division Bench by its judgement dated 13.1.92 had held sub-rule(2) of Rule 55-A as inserted by amendment Rule 1991 in Central Civil Services Pension Rules 1972 as ultravires and violative of Article 14 and 16 of the Constitution. The said judgment is reported in 1992(2) ATC 584.

4. The applicants state that they had waited for some time in the hope that the respondents shall extend the benefit of the judgment of Madras Bench and the Ernakulam Bench of the Tribunal to all similarly placed pensioners but ~~wikk~~ when the respondents did not act accordingly, various representations have been made to the respondents claiming benefit of the said judgments by all the applicants. The said representation is dated 31.7.93. The respondents 6 and 3 by their order dated 23.9.93 and 28.9.93 were stated to have ~~bejected~~ the representation of the applicants on the basis of the provisions of Office Memorandums dated ~~kxx~~ 13.2.76 and 6.4.76.

5. The applicants plea therefore ^{is} that reliance on the said memorandums dated 13.2.76 and 6.4.76 denying the applicants the benefit of dearness allowance on family pension even after the said provision has been declared unconstitutional was arbitrary and violative of Article 14 and 16 of the Constitution of India.

6. The respondents have filed a detailed counter affidavit and have also filed supplementary counter. The applicants have not filed any rejoinder affidavit. The validity of the aforesaid two office memorandums and the provisions of Rule 55-A of the Central Civil Services

Bel

A2
6

:: 5 ::

Pension Rules have since been decided by the Hon'ble Supreme Court in SLPs filed against the judgment of the Ernakulam Bench and the Madras Bench as also the other Bench of the Tribunal which took the same view. The decision of the Hon'ble Supreme Court is in the leading case of the Union of India and Ors Vs. G. Vasudevan Pillai and Ors and is reported in 1995(2) SCC-30. The said cases involved decision on three questions;

- (i) Whether the decision of Union of India not to allow dearness relief (DR) on family pension of Exservicemen on their reinstatement in a civil post is in accordance with law or not;
- (ii) Whether the denial of D.R on family pension on employment of dependents like widows of the Exservicemen is justified or not; and
- (iii) Reduction of pay equivalent to enhanced pension of those Exservicemen who were holding civil posts on 1.1.86, following their reinstatement, is permissible or not.

The decision of the Hon'ble Supreme Court on the second question is relevant for purposes of decision of this O.A. The Hon'ble Supreme Court in the light of its findings on question no.1 has held that the decision taken by the Central Govt ^{for} ~~whether~~ denial of dearness relief on family pension on employment of dependents like widows of the Exservicemen is justified ^{and} ~~or not~~ has to be sustained

Per

The various Office Memorandums which have been pleaded by the respondents in the instant O.A in support of the justification for non payment of dearness relief on family pension had been considered by the Hon'ble Supreme court on the said decision. I therefore, do not consider it necessary to indicate in detail the plea advanced by the respondents in their counter affidavits and supplementary counter affidavits. Copies of the Govt. of India's Finance Ministry's letters dated 6.10.74 20.5.75, 29.12.76 and 26.3.84 have been filed along with the counter affidavit and it has been pleaded that payment of dearness relief on family pension was suspended in terms of the said letters by the pension disbursing agencies for re-employment/employment.

7. The applicants have sought quashing of orders dated 23.9.93 and 28.9.93 Annexure A1, A2 to the O.A. By the first letter in response to the representation made by applicant no.1 she was furnished certified two extracts of CCS(Pension) Rules 1972 and 1986 while the second letter is addressed to the General Manager Upto Electronics Factory Dehradun. On behalf of the Director General Ordnance Factory the assessment staff officer informed the addressee that no such government order has been received for payment of dearness relief to the family pensioners who are employed in government organisations. Further it was indicated that in reference to the representation made by the family pensioners that there is no provision of restoration of relief as requested by them since the pension authority have stopped payment of relief under the provision of existing Govt. orders. In view of the contents of letter dated 23.9.93 the prayer for ~~ix~~ its quashing is wholly untenable. As far as the second letter dated 28.9.93 is concerned in view of the fact that the existing government orders on the basis of which it was indicated that there

was no provision of restoration of relief of dearness relief on family pension also appears to have been justified in view of the various letters of the Ministry of Finance.

8. The applicants have further prayed for issuance of a writ of mandamus directing the respondents to extend the benefit of the judgment of the Tribunal in the case of Smt. E. Manikam Vs. Post Master Peru decided by the Ernakulam Bench and reported in 1992 Vol(1) SLJ 589 and the decision of the Madras Bench reported in 1992(2)) ATC 584 Meena Subramaniam Vs. Union of India and Others and directing the respondents to continue to pay ^{dearness} relief on family pension to all the applicants with all arrears and continue to pay the applicants to which they are entitled to receive on family pension as per provisions contained in Rule 54 and 55-A(1) of the Central Civil Services Pension Rules 1972. The decision of the Hon'ble Supreme Court in 1995 SCC(L&S) 396/G. Vasudevan Pillai ^{Union of India Vs.} was against the aforesaid decisions of the Ernakulam and Madras Bench as also other Benches. Since the Hon'ble Supreme Court has sustained the provisions of various Office Memorandums issued by the Finance Ministry and thus in effect the two decisions by the Ernakulam Bench and Madras Bench ^{be deemed to have been set aside.} the benefit of which the applicants seek to be extended to them cannot be granted.

9. There is another reason for refusing to grant this relief. The Ernakulam Bench decision was rendered on 25.11.91. The said decision has not been made available. Even if going by the averments made in the O.A that the

Ernakulam Bench had held the provisions of Office Memorandums dated 13.2.76 and 6.4.76 as arbitrary and being violative of Article 14 and 16 of the Constitution and being contrary to Rule 54 of the Central Civil Services Pension Rules 1972. The question does ~~not~~ arise whether the present respondents were required to restore payment of dearness relief on family pension to the applicants who are dependents of Exservicemen. The respondents in their counter affidavit have indicated that the said decisions granted relief to the applicants of the said cases only. In the same context it has been pleaded by the respondents that the OA is belated and no relief can be extended on the basis of the two judgments referred by the applicants.

10. In the present case, from the chart annexed as Annexure 3, it is evident that the applicants were appointed either on compassionate ground or if so within a very short period of the death of the husband of each of the applicants. Immediately on their reappointment the dearness relief on pension was suspended. The chart discloses the date of suspension of family pension as ranging between the year 1980-89 mostly it is in the year 1981-82. This OA was filed on 28.7.94. A Division Bench of this Tribunal of which I was a Member had the occasion to consider the provisions of Sec. 21 of the Administrative Tribunal, s Act as also the question whether a judgment of a court or Tribunal affords a cause of action. The said decision is reported in 1995(2()) ATC pg.1 On Prakash Satija Vs. Union of India and Ors. In this O.A the applicants have sought to file one joint petition. They have to sink or swim together. The question of O.A. being barred by limitation has to be considered in the light of the date of accrual of cause of action for the relief claimed and the date of the institution of the O.A. ~~As noted here in above~~

4. The Madras Bench of the C.A.T in a decision reported in (1994) 28 A.T.C pg-20 Tamilnadu Divisional Accountant Association and Others Vs. Union of India and Others has taken the view, and we are in respectful agreement with the same, that the decision of a Tribunal would not give rise to a cause of action. The D.B. ~~held that~~^{held} it is the order of the authority concerned which has given rise to the grievance and the cause of action based upon which limitation has to be computed u/s 21 of the Administrative Tribunal's Act. The Madras Bench has noted that this position of law has been clearly affirmed in the judgment of the Supreme Court in Bhoop Singh ~~and~~ Vs. Union of India and Others (1991) (2) 21 A.T.C 675. The ~~Madras~~^{Madras} Division Bench in the said decision considered that more than ~~five~~^{five} years ~~was~~^{delay} not having been satisfactorily explained and rejected the application on this ground alone. On 14.10.86. ^a decision on the said order was rendered by the Chandigarh Bench of the Tribunal on 1.5.90 thereafter the applicant's Association moved ~~in~~ the matter, five years delay was held to be fatal.
5. ~~The~~^A Full Bench ~~of~~^{decision} of the Ernakulam Bench of the Tribunal in a decision reported in (1994) (28) A.T.C FB 177 has also taken the view that decisions in similar cases does not give rise to a cause of action and the period must be counted from the date the claim relates to. The Full Bench referred to certain observations made ~~in~~ by the Supreme Court in Bhoop Singh Vs. Union of India and Ors (Supra)
6. As noted hereinabove in para 4, the respondents had made representations seeking extension of the benefit of the judgment of the Madras Bench and Ernakulam Bench of the Tribunal that applicants were similarly placed. The said representations ~~was~~ made on 31.7.93 and by order dated

:: 10 ::

23.9.93 and 28.9.93 the representations were rejected on the basis of the provisions of Office Memorandum dated 13.2.76 and 6.4.76. In this context it would be ~~irrelevant~~ to draw attention to a Supreme Court decision in Ratan Chandra Sawant Vs. Union of India and Ors reported in 1994 SCC (L&S) 182. The petition/before the Supreme Court in that case were casual labourers in South Eastern railway. They were alleged to have been appointed between 1964-69 and were retrenched between 1975-78. Through a petition they sought a direction to be issued to the opp. parties to include their names in the live casual labours register after due screening according to their seniority. The basis for the claim was the judgment rendered in 1985-87 in Indrapal Yadav and another Vs. Union of India by which the Supreme Court has directed the opp. party to prepare a scheme and to absorb the casual labourers in accordance with their seniority. The petitioners appeared to have made a representation in 1990 to ~~his~~ higher authority in which it has alleged that the Railway Authorities were not following the orders of Hon'ble Supreme Court ~~in~~ and a decision taken by the Calcutta Bench of the CAT. In the facts of the case, the Hon'ble Supreme Court took the view that why the petitioners did not approach the ~~Court~~ ~~XXXXXX~~ till 1990 held that 2 questions arise.

- (i) Whether the petitioners were entitled the ~~as a~~ of right matter ~~XXXXXX~~ to the employment and ~~whether~~ ~~another~~
- (ii) They have lost their right if any due to delay. While dealing the said question the following observations were made:

" delay itself deprives the person ~~of~~ remedy available in absence of fresh cause of action or ~~a~~ ~~in~~ legislation. Person ~~who~~ loses his ~~in~~ legislation.

A person wh

11
::11::

right as well."

There was a delay of 15 years in the said petition and the petitions were dismissed by the Supreme Court. A moot point that may arise is whether the rejection of the representation by the impugned orders gave a fresh cause of action. The representations clearly were not under any statutory provision. They were filed after a delay of more than two decades. In myr considered opinion the rejection of the said representation will not revive the lost cause of action which arose if at all in the year 1974-76.

6. In view of the discussion hereinabove, the O.A lacks merit and is accordingly dismissed. Parties shall bear their own costs.

Bobaksew

Vice Chairman

Me (A)

Dated: 17. November, 1995

Uv/