

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

**Original Application No.1247 of 2002.**

Allahabad, this the 25<sup>th</sup> the day of November, 2005.

**Hon'ble Mr. K.B.S. Rajan, Member-J**

Smt. Padmawati  
Widow of Manmohan Lal, Packer  
C/o Sri Swatantra Kumar Srivastava,  
Resident of S-81/329-A-4,  
Khajuri Gola,  
Varanasi.

.....Applicant.

(By Advocate : Shri B.P.Srivastava)  
Shri N. Srivastava  
Shri R.K. Pandey

**Versus**

1. The Union of India,  
Through the Secretary,  
Ministry of Personnel,  
Public Grievances and Pension,  
C.G.O. Complex, Lodi Road,  
New Delhi.
2. The Controller of Defence Accounts,  
(Pension), Allahabad.
3. The Commandant,  
Central Ordnance Depot,  
Cheeki, Allahabad.

.....Respondents.


(By Advocate : Shri A. Sthalekar)

**ORDER**

The anxiety of the applicant, widow of a retired government servant, in getting some financial <sup>benefits</sup> by way of family pension, ~~assistance~~ during the last limb of her life and the zeal of her counsel, who has been handling this litigative battle since the beginning of the current century could well be appreciated; but what is to be seen is whether Law permits the relief sought for by the applicant.

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2. It is appropriate to give a brief facts of the case upto the time of the earlier litigation, as contained in the order dated 05-02-2002 in OA 1494/2001 at this juncture.

- (i) Smt. Padmawati widow of late Man Mohan Lal has filed this OA for grant of family pension. Late Man Mohan Lal was working as packer in the office of the Commandant, Central Ordnance Depot, Cheoki, Allahabad (respondent No.3). Man Mohan Lal died on 21.36.1960. According to the applicant, she submitted an application for grant of family pension in the prescribed proforma on 8.1.90/26.2.90 (Annexure A-1 to the OA). In response to this application, the applicant received a memorandum dated 15.3.90 from the respondent No.3 informing her that the application form lacks certain details and the applicant was required to submit the same after completing the necessary details alongwith an affidavit to the effect that the applicant was a legally wedded wife of late Manmohanlal. The applicant accordingly submitted her reply on 2.4.90 (Annexure A-3 to the OA) alongwith the certain documents and affidavit. It is stated that when no reply was received by the applicant, she approached the Ministry of Personnel, Public Grievances & Pension, New Delhi. Thereafter, the Ministry sent a memo to the Joint Secretary (E), Department of Defence, South block, New Delhi, in which it was stated that the necessary action as considered appropriate may be taken to redress the grievance of the applicant and a suitable reply be sent to the applicant. The grievance of the applicant is that despite of several reminders sent by her, the Ministry of Defence has not considered the application of the applicant and no reply has been sent, hence she filed the present OA.
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(ii) Having heard the learned counsel for the parties, we dispose of this OA with the direction to the applicant to file a fresh representation enclosing a copy of the aforesaid letter dated 11.3.92 to the respondent No.3 within a period of one month from the date of communication of this order, who will decide the same and pass appropriate orders within a period of three months from the date of receipt of such representation.


3. In the wake of the above order the applicant sent her representation 21-03-2002. It is this representation that has been rejected by the respondents, ~~stating as~~ <sup>under</sup> vide impugned order dated 06-06-2002. The applicant has assailed the same on the ground that there is no distinction between "discharge" and "retirement" and as such, just because her husband, according to the respondent was "discharged" her entitlement to the family pension cannot be negatived.

4. Respondents have contested this OA. Primary objection taken by them is on limitation and on merits the respondents have contended that from the records which are available, the applicant's husband was discharged from the service as early as prior to 20-04-1949 and no papers relating to family pension have been submitted by the applicant. Para 6 of the counter reads as under:-

"That in reply to the contents of para 4(1) of the petition, it is stated that as per Appendix 'H' of Regulation Army Ordnance Services Part-1, service Books/Service Card of a Govt. employee

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are maintained upto 25 years from the date of superannuation/discharge/death/medically boarded out. As per COD Chheoki letter No.181468/56/LB dated 20.4.1949 submitted by Smt. Padmawati Devi i.e. petitioner, her husband named Man Mohan Lal was discharged from service prior to 20.4.1949. Since the service records prior to 25 years have been destroyed in terms of ibid Rules, as such no action can be taken at this belated stage. Moreover, the petitioner failed to submit documents required for grant of family pension viz-a-viz CPF contribution account number which is an essential document for grant of family pension. Moreover, it is further stated that since the petitioner was discharged from service as per letter dated 20.8.1949 submitted by her, as such she is not entitled for family pension being the widow of a discharged person. Any claim for family pension needs to be examined in terms of Rule 54 of CCS (Pension) Rules, 1972 read with Office Memorandum No.1(11)/85-Pension Unit dated 18.6.1985 issued by the Government of India, Ministry of Personnel and Training, Administrative Reforms and Public Grievances and Pension (Department of Pensions and Pensioners' Welfare). The said rules provide for grant of family pension to the family of a Government servant in a pensionable establishment who died during service or after retirement and was in receipt of a pension or a compassionate allowance under the said Rules. Late Sri Mohan Lal was discharged from service in 1949 long before he died in 1960. He, therefore, neither retired from service with a pension nor died during service. So far T. No.F-2/75 is concerned, it is submitted that no such Ticket Number was allotted by the answering respondent to any Industrial employee of COD Chheoki".





5. Arguments were heard and the documents perused. Certain fundamental questions arise in this case. When the applicant's husband was 'discharged' from service as early as in 1949, it is not exactly known whether he was governed by pension Rules, if any. If he was governed by CPF, whether he had received the same and in the event of options if any for conversion, whether such option was exercised. Even the CP Fund Account is not available anywhere. Had the applicant's husband been entitled to such pension etc., during his life time, he would have certainly availed of the same and there is no reference of the same. All that is available is that the applicant's husband was discharged from government service in April, 1949; that he died in 1960; that the applicant is his legal heir and she applied for family pension in 1990. No further particulars are available. Under these circumstances, the entitlement or otherwise of the applicant for family pension cannot be decided by this Tribunal. If a decision is to be taken, the same has to be in negative only as in the absence of documents to prove that the applicant is entitled to family pension, the only decision that could be arrived at is that she is not entitled to. For, in the absence of a rule, the Tribunal cannot bestow any concession as a matter of benediction. The words of Hon'ble Mr. Justice S. Mohan in the case of **LIC v. Asha Ramchandra Ambekar, (1994) 2 SCC 718**, is apt to be cited here.

The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in "Merchant of Venice" :

**"The quality of mercy is not strain's;**

**It droppeth, as the gentle rain from heaven**

**Upon the place beneath it is twice bless'd;**

**It blesseth him that gives, and him that takes;"**

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that "law is the embodiment of all Wisdom". Justice according to law is a principle as old as the hills. **The courts are to administer law as they find it, however, inconvenient it may be.**

11. At this juncture we may usefully refer to *Martin Burn Ltd. v. Corporation of Calcutta*. At page 535 of the Report the following observations are found :

'A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.'

The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done."  
(Emphasis supplied).

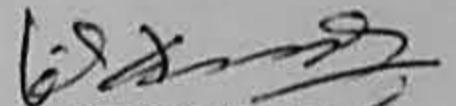
6. The applicant at present is a septuagenarian. Her husband was stated to be a "freedom fighter". (His naming his son, born just after independence, as "Swatantra Kumar" to some extent proves the averment



of the applicant.) The lady has been fighting this case for the past five years. Under these circumstances, perhaps, it could be possible for the Ministry of Personnel to consider her case for minimum family pension under any relaxation of the Rules if so permitted and subject to the applicant applying for the same. This observation is purely a suggestion and should not be mistaken as a direction of the Tribunal nor should it be misconstrued as a recommendation.

7. The OA ofcourse, fails and is dismissed.

8. Under the above circumstances, there shall be no order as to cost.

  
MEMBER-J

RKM/-