IN THE CENTRAL ADMINISTRATIVE TRIAUNAL

AHMEDABAD BENCH

O.A. No. 457 OF 1993
~~T.A.No.~~

DATE OF DECISION 19-1-1994

Smt. Jayaben J. Jambudia, Petitioner

Mr. K.C. Bhatt, Advocate for the Petitioner(~~s~~)

Versus

The Union of India & Ors. Respondents

Mr. Akil Kureshi, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. V. Radhakrishnan, Admn. Member.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Smt.Jayaben J. Jambudia,
Group 'D'
Head Post Office,
Junagadh. ..... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus.

1. The Union of India, through
   The Director General
   Department of Posts
   Ministry of Communication
   New Delhi.

2. The Postmaster General
   Rajkot Region,
   Rajkot.

3. The Supdt of Post Offices
   Junagadh Division,
   Junagadh.

4. The Postmaster,
   Junagadh. ..... Respondents.

(Advocate: Mr. Akil Kureshi)

J U D G M E N T

O.A.No. 457 OF 1993

Date: 19-1-1994.

Per: Hon'ble Mr. V. Radhakrishnan, Admn. Member.

Heard Mr. K.C. Bhatt, learned advocate for the applicant and Mr. Akil Kureshi, learned advocate for the respondents.

2. The applicant is the widow of late Shri Jethalal K. Jamudia, Postman Junagadh Head Post Office, who died on 2-12-1980. She was granted family pension and she was getting family pension on dearness relief from 3-12-1980. She was appointed on compassionate ground as Group 'D' Staff in the same office. She joined the

..... 3/-

department on 5-11-1983. The applicant was drawing family pension along with dearness relief upto 4-11-1983. The dearness relief was discontinued thereafter. She represented to the Postmaster, Junagadh vide her application dated 7-4-1993. The Postmaster Junggadh vide his letter dated 14-5-1993, Annexure A-2, rejected the application onx the ground that re-employed pensioners are not eligible to get dearness relief on pension/family pension. She preferred an appeal to Supdt. of Post Offices Junggadh, who was also rejected the appeal vide his letter dated 21-5-1993, Annexure A-4,. Hence she has now approached the Tribunal with this O.A and has asked for the following reliefs:

"(i) The impugned order No. A2/Family Pension/93 dated 14-5-93 issued by the Postmaster Junagadh be quashed and set aside (Ann.A-2)

(ii) The impugned order No. C2/Misc/93-94 dated 21-5-93 issued by the Supdt of Post Offices Junagadh be quashed and set aside(Ann.A-4)

(iii) The respondent authority be directed to draw Dearness relief on family pension with immediate effect and be paid to the applicant, and be directed to calculate the dearness relief on family pension payable at the rate from time to time for the period for which Dearness relief is not paid to the applicant and all arrears to be paid within one month from the date of receipt of communication by the respondent authority, declaring sub clause (ii) of Rule 55(A) as illegal, unsustainable and violative of Article 14 of the Constitution of India.

..... 4/-

(iv) Any other suitable relief may please be granted."

3. The respondents have filed reply. They have taken shelter under provision of Rule 55A of CCS(Pension) Rules 1972 which is reproduced below:

"Rule 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 Govt. 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.

(iii) The Central Government employees who get permanently absorbed in terms of Rule 37 and opt for lump sum payment in lieu of pro rata monthly pension in terms of rule 37 shall not be eligible for dearness relief."

Accordingly it is their contention that as per the above Rule the applicant is not entitled to dearness relief on family pension. Further they have taken the objection that the application is barred by limitation and the delay in approaching the Tribunal is without any justification. They also state that Rule 55 A of said

..... 5/-

rules draws a reasonable classification as those family pensioners who were employed from a distinct and separate class from those who are not employed on compassionate ground on account of death of spouse in harness. They have therefore, contended that the discontinuation of dearness relief on family pension is just and proper and legal. They have denied that discontinuation of dearness relief is arbitrary or illegal.

4. Mr.K.C. Bhatt, learned counsel for the applicant has supported his arguments with the decision of C.A.T. Ernakulam Bench, decided on 25.11.91, (All India Service Law Journal, 1992(1)(CAT) page 589), and C.A T. Madras Bench, decided on 13.1.1992 (1992)20 ATC page 584). In the former case, the applicant was a widow of employee of the Southern Railway and she was working as clerk in the State Government of Kerala. After her husband died she was drawing family pension along with dearness relief. After more than 8 years after the death of her huaband, the authorities had stopped payment of relief on pension. Representations were turned down and she approached the CAT Bench Ernakulam. The Bench came to the conclusion that the family pension would be payable to the family of deceased Government servant as per provisions of Rule 54 of Civil Service (Pension) Rules. As per

..... 6/-

provisions of this rules the quantum of family pension is dependent on the basic pay of the Government servant and the length of his service. It has absolutely no relation to number of dependent members of family and the financial position of the family. Similarly there is nothing in the CCS(Pension) Rules which would suggest that, if a recipient of a family pension is employed there should be a reduction in the pension or in the relief on pension. The family pension payable to the family of a deceased Government servant has absolutely no bearing on the question whether the recipient for the family pension is employed or unemployed. Family pension is granted in consideration of service rendered by Govt. servant during the period while he was in service. It is therefore, the property earned by the recipient and deprival of such property without observing the due process of law has to be struck down as unreasonable and unjust. It is well settled by now that relief of pension is an ~~adjust~~ adjunct of pension, the fact that the recipient of the family pension is an employee under the Government receiving a regular salary can not be considered as a ground to deprive him of a portion of pension or the pension relief. In a case where one or more member's of the family in receipt of family pension is employed in private sector undertakings or in business and are earning substantial income the relief on pension is not

..... 7/-

suspended on account of they being so employed, but even if one member of the family who is a recipient of the family pension is employed either in the State Government or in the Central Government Company even though in the lowest post the relief on family pension is to be suspended during the period with the recipient of the family pension is thus employed. Hence the Bench came to the conclusion that this discrimination is highly arbitrary and unreasonable. It also held the administrative instructions can not be abridge the statutory benefit confined by Rube 54 of CCS(Pension) Rules and therefore, the administrative instructions are unsustainable, hence the Bench directed the respondents not to suspend the relief on family pension with pension relief. In the another case decided by C.A.T Madras Bench, the applicants were widows of persons who were employed in Geological Survey on compassionate grounds. They were getting family pension along with dearness relief, but because of audit objection the dearness relief on pension was stopped all of a sudden. They contested the stopping of dearness relief on pension on the ground the dearness relief has part of the pension and family pension was paid in consideration of service rendered by their husbands and their subsequent employment in Government can not be a cause for the denial of dearness relief on their family pension. The respondents in that case had relied on sub-clause (ii) of New Rule 55-A incorporated in the CCA (Pension) Rules,1972 by way of amendment of Rule in 1991. That sub-clause reads as follows:

..... 8/-

> "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 Bench held that pension is a kind of compensation for the service rendered by a Govt. servant and is a valuable right vesting in the Govt. servant. Regarding dearness relief on pension, the Bench referred to sub-clause (i) of Rule 55-A of the CCS(Pension) Rules, clause (ii), which reads as under:

> "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."

Accordingly the dearness relief is meant to compensate for the rise of the cost of living. Dearness relief forms part and parcel of the pension. Dearness relief is meant to restore the pension to its original value. It is not a bounty, but a right on par with pension of which it forms an inseparable part. So sub-clause (ii) of Rule 55-A is not sustainable since it is in contradiction with sub-clause (i) which defines the nature of the dearness relief. The Bench hence came to the conclusion that when pension is allowed to be drawn, dearness relief should be paid along with it, otherwise,

..... 9/-

there will be only a part payment of pension in real terms. Dearness relief on pension is to restore the pension to its original value, when it is eroded by the rise of the cost of living. If the dearness relief is not paid, the persons concerned will get a diminished pension in terms of real value and pension being a right cannot be diminished indirectly. Accordingly it held that sub-clause (ii) of Rule 55-A which denies dearness relief on pension to a category of pensioners, namely, the re-employed is an unreasonable discrimination since the price rise is the same for all pensioners. So sub-clause (ii) of Rule 55-A is violative of Article 14 of the Constitution and hence not enforceable. In the result, the respondents were directed to continue to pay the dearness relief on pension to the applicants. Mr. Akil Kureshi, learned advocate for the respondents stated that the Government of India has gone on appeal against the above two decisions, but no stay has been granted.

5. The present case is on all fours with the above mentioned case decided by the Madras Bench, I am in respectful agreement with the judgment of the Madras Bench which would fully apply in this case also. Accordingly the applicant is entitled to draw dearness relief on family pension. In so far as the question of limitation raised by the learned counsel for the

..... 10/-

respondents is concerned, the case of action viz. drawal of pension being a recurring right, it can not be sustained. Accordingly I pass the following order:

ORDER

The application is allowed. The order issued by Postmaster Junagadh dated 14.5.1993, Annexure A-2 and Superintendent of Post Offices, Junagadh dated 21.5.1993, Annexure A-4 are quashed and set aside. The respondents are directed to draw dearness relief on family pension payable to the applicant from the current month onwards as per rules. However, as the applicant has approached the Tribunal only on 26.7.1993, the arrears of dearness relief will be payable to the applicant only from 26.7.1992 i.e., from one year prior to the date of application. This shall be done within a period of eight weeks from the date of receipt of this order. Application is disposed of with no order as to costs.

(V.Radhakrishnan)
Member (A)

vtc.

S. 6/97

Section-IX

6 Copies 8-24-9-97

Central Administrative Tribunal
Ahmedabad Bench.
Inward No. 907
Date 12.9.97

D.No.13395/94/Sec.IX
Supreme Court of India,
New Delhi.
Dated:- 6th September, 1997

From:-

SECTION OFFICER,
SUPREME COURT OF INDIA,
NEW DELHI.

To:-

The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench, Ahmedabad.

CIVIL APPEAL NO. 5922 to 5928 of 1997
(From ~~High Courts~~/Central Administrative Tribunal,
Judgment and Order dated 19th January, 1994 in
O.A.Nos. 452, 457, 466, 473 to 475 and 485 of 1993).

The Union of India & Ors. ..APPELLANT(S)

-VERSUS-

Smt. Muktaben Kishor Kumar Rajyaguru ..RESPONDENT(S)
etc. etc.

Sir,

In pursuance of Order XIII, Rule 6, S.C.R.1966, I am directed to transmit herewith a certified copy of the ~~Judgment~~/Order dated the 29th August, 1997 in the appeal above-mentioned.

The certified copy of the decree made in the aforesaid appeal ~~and Original record~~ will be sent later on.

Please acknowledge receipt.

Yours faithfully,

SECTION OFFICER

Judl. 12/9/97 17/9/97

For perusal pl. 18.9.97

DR (J)

Encl: As above.

Hon'ble V.C. 17/9/97

Hon'ble member (A)

Hon'ble member (J) 23.9.97.

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

203971

CIVIL APPEAL NOS. 5922-5925 OF 1997
arising out of
SPECIAL LEAVE PETITION (C) NOS. 3280-86 OF 1996

The Union of India & Ors. ...Appellants

vs.

Smt. Muktaben Kishor Kumar Rajyaguru & Ors. ...Respondents

ORDER

Delay condoned.

Leave granted.

In view of the decision of this Court in Union of India & Ors. vs. G. Vasudevan Pillay & Ors. [1995 (2) SCC 32], the impugned order is set aside and the appeals are allowed.

However, in the facts and circumstances of the case, we direct that the amount already paid to the respondents under the head of Dearness Relief on Family Pension would not be recovered from them.

The appeals are allowed with the above modification.

....CJI.

sd/-

sd/- ....J.

(B N Kirpal)

New Delhi
August 29, 1997

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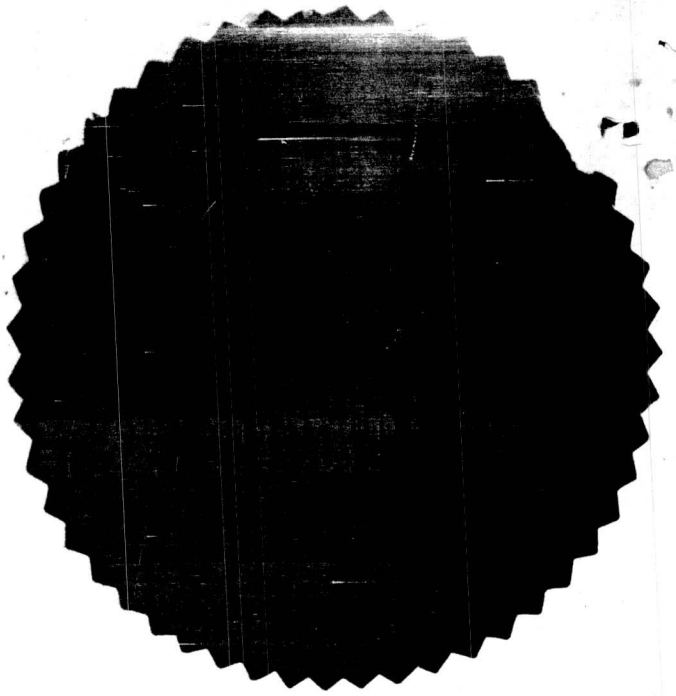

VALID IN MY PRESE
12/9/17

All communications should be addressed to the Registrar, Supreme Court, by designation, NOT by name
Telegraphic address :—
"SUPREMECO"

D.No. 7339/94/IX.

SUPREME COURT
INDIA
NEW DELHI

Dated, the April, 1998.

From: The Registrar (Judicial),
Supreme Court of India,
New Delhi.

To: The Registrar,
Central Administrative Tribunal,
Ahmedabad Bench, Ahmedabad.

CIVIL APPEAL NOS.5922-5926 OF 1997.

The Union of India and Ors. Appellants.

Versus

Smt. Muktaben Kishore Kumar and Ors. Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 6th September, 1997, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 29th August, 1997 of the Supreme Court in the said appeals.

Please acknowledge receipt.

Yours faithfully,

for Registrar (Judicial).

PTO

Sup. C. 52

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

256847

Certified to be true copy
Assistant Registrar (Judl.)
Supreme Court of India
1998

No. of 199

CIVIL APPEAL NOS.5922-5928 OF 1997.

(Appeals by special leave granted by this Court's Order dated the 29th August, 1997 in Petitions for Special Leave to Appeal (Civil)Nos.3280-3286 of 1996 from the Judgment and Order dated the 19th January, 1994 of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in O.A.Nos.452, 457, 466, 473, 474, 475 and 485 of 1993).

The Union of India and Ors. Appellants.

Versus

Smt. Muktaben Kishor Kumar and Ors. Respondents.

(For full cause title please see schedule'A'attached herewith).

29th August, 1997.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE B.N.KIRPAL

For the Appellants : Mr. Rajiv Nanda, Advocate.

For Respondent No.1 : Mr. Amlan Ghosh, Advocate.

The Appeals above-mentioned being called on for hearing before this Court on the 29th day of August, 1997, UPON perusing the record and hearing counsel for the appearing parties above-mentioned, respondent Nos.2 to 4 and 6 and 7 not appearing though served, THIS COURT in view of its decision in Union of India and Ors. Vs. G.Vasudevan Pillay and Ors. reported in 1995 (2) SCC 32 DOTH in allowing the appeals ORDER:

1. THAT the Judgment and Order dated the 19th January, 1994 of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in Original Application Nos.452, 457, 466, 473, 474, 475 and 485 of 1993 be and is hereby set aside and the aforesaid original applications filed by the Respondents herein before the aforesaid Tribunal be and are hereby dismissed but the amount already paid to the respondents herein under the head of Dearness Relief on Family Pension would not be recovered from

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Jagdish Sharan Verma, Chief Justice of India at the Supreme Court, New Delhi dated this the 29th day of August, 1997.

(R.P.DUA)
JOINT REGISTRAR

Scrutiny No.

CA 5922-28/97 (97-II)

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO._____OF 1994

In the matter of :

1. The Union of India through
   The Director General,
   Department of Post,
   Ministry of Communication,
   New Delhi.

2. The Post Master General,
   Rajkot Region,
   Rajkot.

3. The Supdt of Post Offices,
   Junagadh Division,
   Junagadh.

4. The Postmaster,
   Junagadh. .... Petitioners

Versus

1. Smt. Muktaben Kishor Kumar
   Rajyaguru, Stamp Vendor
   Head Post Office,
   Junagadh-362 001 (Arising out from O.A. No. 462/1993)

....2

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2. Smt. Jayaben J. Jambudia,
Group 'D',
Head Post Office,
Junagadh. (Arising out from O.A.457/93)

3. Smt. Muktagauri Raman Kishor
Thakur, Group 'D'
Head Post Office,
Junagadh-362 001. (Arising out from OA 466/93)

4. Smt. Savitaben Harjivandas Lukka,
Group 'D',
Post Office Keshod-362 220. (Arising out from OA 473/93)

5. Smt. Ansuyaben P. Dholakia,
Group 'D',
C/o The Supdt. of Post Offices,
Porbandar-360 575 (Arising out from O.A.474/93)

6. Smt. Manjulaben Chandrasinh Chandela,
Group 'D',
Post Office Keshod Sakshaygadh. (Arising out from OA 475/93)

7. Smt. Manjulaben Narmadashanker Jani,
Group 'D' Head Post Office,
Junagadh 362 001 (Arising out from O.A.485/93)

6) (copies)

&

SUPREME COURT

CRIMINAL/CIVIL APPELLATE JURISDICTION

No. of 199

CIVIL APPEAL NOS.5922-5928 OF 1997.

The Union of India and Ors. Appellant s.
Petitioner

Versus

Smt. Muktaben Kishor Kumar and Ors. Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH AT AHMEDABAD.
O.A.Nos.452, 457, 466, 473-475 and 485 of 1993.

DECREE ALLOWING THE APPEALS.

Dated the 29th day of August, 1997.

Ms. Anil Katiyar,

Advocate on Record for the Appellants.

Compared with

SHRI Amlan Ghosh,

No. of folios

Advocate on Record for Respondent No.1.

sg.
6.4.98.

SIGNED IN MY PRESENCE

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

O, Application No. 457/93 of 19

Transfer Application No. _____ Old W.Pett No.

CERTIFICATE

Certified that no further action is required tobe taken and the case is fit for consignment to the Record Room (Decided)

Dated : 31/11/94

Countersigned :

31-12-94

Section Officer/Court officer

Signature of the Dealing Assistant

CAT/J/10

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT NEW DELHI

INDEX SHEET

CAUSE TITLE ..... OA/457/93 ..... OF 198□.

NAMES OF THE PARTIES ..... Mrs. J. T. Jambudia .....

VERSUS

..... U.O.I. & Ors. .....

PART A B & C

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