

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, DELHI

AHMEDABAD BENCH

O.A No. 665 OF 1993 198
Tax No:

DATE OF DECISION 31-3-1994.

Smt. Gulabgauri P. Pandya, Petitioner

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

Versus

The Union of India & Ors. Respondent(s)

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

CORAM.

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

The Hon'ble Mr.

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *M*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *Y*

Pls see
Note
on
last
page
Anon
6th
CPT

Smt. Gulabgauri P. Pandya,
Group 'D' Post Office
Una (Sorath).

..... Applicant.

(Advocate: Mr. K.C. Bhatt)

Versus.

1. The Union of India, through
The Director-General
Department of Posts
Ministry of Communication
New Delhi - 110 001

2. The Postmaster General
Rajkot Region
Rajkot 360 001

3. The supdt of Post Offices,
Junagadh Division
Junagadh 362 001

4. The Postmaster
Veraval.

..... Respondents

(Advocate: Mr. Variava for
Mr. Akil Kureishi)

JUDGMENT

O.A. No. 665 OF 1993

Date: 31-3-1994.

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

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

2. The applicant is the widow of late Shri P.K.
Pandya, Group 'D' Una(s) Post Office, who expired on
4-3-1980. She was granted family pension along with
dearness relief from 5-3-80 to 13-6-1984. She was
appointed on compassionate ground as Group 'D' staff
at Una(s) Post Office. She joined the department with



..... 3/-

effect from 14-6-1984. The dearness relief was discontinued thereafter. The applicant represented to the Postmaster Veraval on 7-4-1993 against her stoppage of dearness relief. She received a reply from him dated 20.4.1993, Annexure A-2, that re-employed pensioners are not eligible to get dearness relief on pension/family pension. She preferred an appeal against this order to Supdt. of Post Offices, Junagadh, who rejected the appeal vide his letter dated 25-5-93, Annexure A-4. Hence she has approached the Tribunal with this O.A and has asked for the following reliefs:

- "(i) The impugned order No.A/F.Pen/VRL/130 dated 22-4-93 issued by the Postmaster Veraval be quashed and set aside(Ann.A-2)
- (ii) The impugned order No. C2/Misc/93-94 dated 25-5-93 issued by the Supdt of Post Offices Junagadh be quashed and set aside (Annexure 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.
- (iv) Any other suitable relief may please be granted."

3. The respondents have filed reply. They have taken shelter under provision of Rule 55-A 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 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 husband, 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 CCS(Pension) Rules. As per 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 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 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 Govt. 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 Rule 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 applicant 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 Govt. can not be cause ~~xxx~~ 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:

Mh

"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 Government 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 Govt. 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, 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 (i) 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 in violation 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 advocate for the respondents is concerned, the cause of action viz.,

Abd

drawal of pension being a recurring right, it can not be sustained. Accordingly I pass the following order:

O R D E R

The application is allowed. The orders issued by Postmaster Veraval dated 20-4-1993, Annexure A-2 and Superintendent of Post Offices, Junagadh dated 25.5.93, 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 8.11.1993, the arrears of dearness relief will be payable to the applicant only from 8.11.1992 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.

131
29/95
All communications should be
addressed to the Registrar,
Supreme Court, by designation.
NOT by name
Telegraphic address :—
"SUPREMECO"

No. 1832
D.No. 232795/Sec.IX

SUPREME COURT
INDIA

Dated New Delhi, the 6th March, 1995 19

FROM Assistant Registrar,
Supreme Court of India.

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

PETITIONS FOR SPECIAL LEAVE TO APPEAL (C) NOS. 6248 TO 6250
OF 1995

WITH

INTERLOCUTORY APPLICATIONS NOS. 1 TO 3
(Applications for condonation of delay in filing
the Special Leave Petitions)

AND

INTERLOCUTORY APPLICATIONS NOS. 4 TO 6
(Applications for ex-parte stay)

Union of India & Ors. .. Petitioners

-Vs-

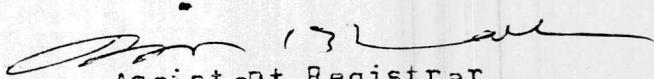
Smt. Gulabgauri P. Pandya & Ors. .. Respondents

Sir,

I am directed to forward herewith for your information
and necessary action a certified copy of the Order of this
Court dated 28th February, 1995 passed in the matters
above-mentioned.

Please acknowledge receipt.

Yours faithfully,


Assistant Registrar

IN THE SUPREME COURT OF INDIA

XRIGHTS & JURISDICTION

CIVIL APPELLATE JURISDICTION

578355

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XW

X 500

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 6248 TO
6250 OF 1995(Under Article 136 of the Constitution of India, from the
Judgment and Order dated 31st March, 1994 of the Central
Administrative Tribunal, Ahmedabad Bench at Ahmedabad in
O.A. Nos. 665, 623 and 659 of 1993)

WITH

INTERLOCUTORY APPLICATIONS NOS. 1 TO 3
(Applications for condonation of delay in filing the
Special Leave Petitions)

AND

INTERLOCUTORY APPLICATIONS NOS. 4 TO 6
(Applications for stay by notice of motion with a
prayer for an ex-parte order)

1. Union of India, resp. by
Director General, Department
of Posts, Ministry of Communication,
New Delhi.
2. The Postmaster General,
Rajkot Region, Rajkot-360 001
(Gujarat).
3. The Superintendent of Post Offices,
Junagadh Division, Junagadh-362 001,
(Gujarat).
4. The Post Master,
Veraval (Gujarat).
5. The Postmaster,
Junagadh-362 001 (Gujarat).

.. Petitioners

Certified to be true copy

[Signature]
Assistant Registrar (Jud.)
..... 6/2/1995
Supreme Court of India

-Vs-

1. Smt. Gulabgauri P. Pandya,
Group 'D' Post Office, Una(Sorath),
Gujarat State.
2. Smt. Nirmalaben P. Gondia,
Group 'D' Post Office, Lushala
(Gujarat State).
3. Smt. Saradeben S. Bhatt,
Group 'D' Head Post Office,
Junagadh (Gujarat State).

.. Respondents

28th February, 1995

CORAM:

HON'BLE MR. JUSTICE J.S. VERMA
HON'BLE MRS. JUSTICE SUJATA V. MANOHAR

For the Petitioners: Ms. Anil Katiyar, Advocate.

THE PETITIONS FOR SPECIAL LEAVE TO APPEAL AND THE APPLICATIONS FOR STAY and condonation of delay in filing Special Leave Petitions above-mentioned being called on for hearing before this Court on the 28th day of February, 1995 UPON hearing Counsel for the Petitioners herein THIS COURT while directing issue of notice to the Respondents herein to show cause why delay be not condoned and Special Leave be not granted to the Petitioners herein to appeal to this Court against the Judgment and Order of the High Court above-mentioned, DOTH ORDER that pending the hearing and final disposal by this Court of the applications mentioned above for stay after notice, the operation of the Judgment and Order dated 31st March, 1994 of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad, passed in O.A. Nos. 665, 623 and 659 of 1993 be and is hereby stayed;

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

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, this the 28th day of February, 1995.

(K.C. SETHI)
DEPUTY REGISTRAR

3 copies

Varied
28/3/95
Final
28/3/95

SUPREME COURT
ORIGINAL JURISDICTION
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NOS. 6248 TO 6250 OF 1995

~~XXXXXX~~

WITH

~~XXXXXX~~

INTERLOCUTORY APPLICATIONS NOS. 1 TO 3

(Applications for condonation of delay
in filing the Special Leave Petitions)

AND

INTERLOCUTORY APPLICATIONS NOS. 4 TO 6

(Applications for ex-parte stay)

Union of India & Ors.

.. Petitioners

~~VS-~~

~~XXXXXX~~

Smt. Gulabgauxi P. Pandya & Ors. .. Respondents

ORDER DIRECTING ISSUE OF SHOW CAUSE NOTICE

AND GRANTING AD-INTERIM/EX-PARTE STAY.

~~XXXXXX~~

DATED THIS THE 28TH DAY OF FEBRUARY

Dated the

Engrossed by ^{CS}

~~SHRI~~ Smt. Anil Katiyar,

Examined by

~~SHRI~~ Advocate on Record for the Petitioners.

Compared with

~~SHRI~~

No. of folios

Advocate on Record for

SEALED IN MY PRESENCE

7/3/95

Section-IX

59 to 9/95

D.No. 232/95/IX

Supreme Court of India
New Delhi.

Dated:- 11th December, 1995

From:-

Assistant Registrar,
Supreme Court of India,
New Delhi.

Central Administrative Tribunal

Ahmedabad Bench.

Inward No..... 1648

Date..... 6.1.96

To:-

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

CIVIL APPEAL NO. 11455 to 11457 of 1995

(From ~~High Court~~ / Central Administrative Tribunal,
Judgment and Order dated 31/3/94 in
O.A. Nos. 665, 623 and 659 of 1993).

Union of India & Ors.

..Appellant(s)

-Versus-

Smt. Gulabgauri P. Pandya & Ors.

..Respondent(s)

Sir,

In pursuance of Order XIII, Rule 6, S.C.R.1966,
I am directed by their Lordship of the Supreme Court
to transmit herewith a certified copy of the ~~Judgment~~
Order dated the 1st December, 1995 in the appeal above-
mentioned.

The Certified copy of the decree made in the
aforesaid appeal and Original Records, if any, will be
sent later on.

Please acknowledge receipt.

Yours faithfully,

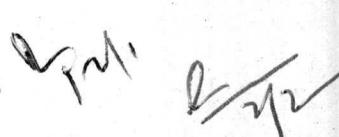


ASSISTANT REGISTRAR

Encl: As above.

For perusal please

Honorable Mr. Justice (A)
Honorable Mr. Justice Radha Krishnan,
New Delhi



44393

Certified to be true copy

V.P.

Assistant Registrar (Jdil.)

18/XII/95

1995

Supreme Court of India

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11455-11457 OF 1995

(arising out of S.L.P. (C) Nos. 6248-50 of 1995)

Union of India & Ors.

... Appellants

Smt. Gulabgauri P. Pandya & Ors.

... Respondents

ORDER

Delay condoned.

Leave granted.

In view of the decision of this Court in U.O.I. and Ors. vs. G. Vasudevan Pillay and Ors. (1995 (2) SCC 32). the impugned order is set aside and this appeal is 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 appeal is allowed with the above modification.

No costs.

5d/-

.....
(J.S.Verma).

New Delhi,
December 1, 1995.

5d/-

.....
(K.Venkataswami)

Recd

Paravel

19.7.96

DRAFTE

19/7/96

3.7.1996

D.No. 232/95/IX

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

**SUPREME COURT
INDIA**

Dated New Delhi, the June, 1996. 19

Central Administrative Tribunal
Ahmedabad Bench
Matter No. 2611
Date 19.07.96

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

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

CIVIL APPEAL NOS.11455 TO 11457 OF 1995.

Union of India & Ors.

...Appellants.

Vs.

Smt. Gulabgauri P.Pandya & Ors.

...Respondents.

Sir,

In continuation of this Registry's letter of even number dated the 11th December, 1995, I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 1st December, 1995 of the Supreme Court in the appeals above-mentioned.

Please acknowledge receipt.

Yours faithfully,

V. Mani

12/7/96

for Registrar(Judicial)

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

XXXXXX

Certified to be true copy

K. Verma

95157

Assistant Registrar (Judi.)

No.

of

XXX

XXXX

Supreme Court of India

CIVIL APPEAL NOS. 11455 TO 11457 OF 1995.

(Appeals by special leave granted by this Court by its Order dated the 1st December, 1995 in Petition for Special Leave to Appeal (Civil) No. 6248 to 6250 of 1995 from the Judgment and Order dated the 31st March, 1994 of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in O.A. No. 665,623 and 659 of 1993).

Union of India & Ors.

...Appellants.

Vs.

Smt. Gulabgauri P. Pandya & Ors.

...Respondents.

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

1st December, 1995.

CORAM:

HON'BLE MR. JUSTICE J.S.VERMA

HON'BLE MR. JUSTICE K.VENKATASWAMI

For the Appellants: Mr. A.Jayaram, Additional Solicitor General of India.
(Mr. Hemant Sharma and Ms. Anil Katiyar, Advocates with him).

For the Respondents: Mr. Amlan Ghosh, Advocate.

The Appeals above-mentioned being called on for hearing before this Court on the 1st day of December, 1995, UPON perusing the record and hearing counsel for the parties herein, THIS COURT in view of the decision of this Court in U.O.I. & Ors. Vs. G.Vasudevan Pillay and Ors. (1995(2) SCC 32) DOTH in allowing the appeal ORDER:

1. THAT the Judgments and Orders dated 31st March, 1994 of the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad in O.A.Nos.665,623 and 659 of 1993 be and are hereby set aside and in place thereof an order dismissing the O.A.Nos.665,623 and 659 of 1993 filed by the respondents herein before the aforesaid Tribunal be and is hereby substituted but it is hereby directed that the amount already paid to the respondents herein under the head of the Dearness Relief on Family Pension would not be recovered from them;

2. THAT there shall be no costs of these appeals in this Court;

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

WITNESS the Hon'ble Shri Aziz Mushabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 1st day of December, 1995.

(Sd/)
(MANJU GOEL)
(R.P.DUA)
JOINT REGISTRAR (Cwg)

Schedule 'A'

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

6248-6250

S.L.P. (CIVIL) NOS. 11455-11456 OF 1995

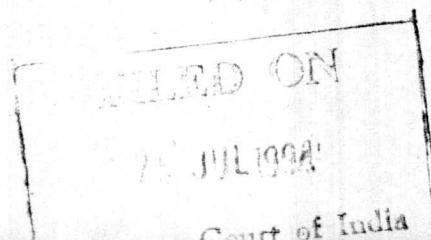
C.A. NOS. 11455-57 of 1995
against

(O.A. Nos. 665, 623 and 659 of 1993 Central
Administrative Tribunal, Ahmedabad Bench)

In the matter of :

1. Union of India rep. by
Director General,
Department of Posts,
Ministry of Communication,
New Delhi.
2. The Postmaster General,
Rajkot Region,
Rajkot 360 001 (Gujarat)
3. The Superintendent of
Post Offices,
Junagadh Division,
Junagadh 362001
(Gujarat)
4. The Post Master,
Veraval
(Gujarat)

....2



5. The Postmaster,

Jumagadh 362001

(Gujarat)

.... Petitioners

48

Versus

1. Smt. Gulabgauri P. Pandya,

Group 'D' Post Office,

Una (Sonth)

Gujarat State

(O.A. No. 665/1993)

2. Smt. Nirmalaben P. Gordia,

Group 'D' Post Office,

Lushala (Gujarat State)

(O.A. No. 659/1993)

3. Smt. Samaben S. Bhatt,

Group 'D' Head Post Office,

Jumagadh (Gujarat State)

(O.A. No. 623/1994)

.... Respondents

SPECIAL LEAVE PETITION

To

The Hon'ble the Chief Justice of India
And His Companion Justices of the
Supreme Court of India.

SUPREME COURT
~~CRIMINAL/CIVIL APPELLATE JURISDICTION~~

XXX

XXXX

of 199

CIVIL APPEAL NOS. 11455 TO 11457 OF 1995.

Union of India & Ors.

Appellants.
Petitioners.

Versus

Smt. Gulabgauri P. Pandya
& Ors.

Respondent s.

CENTRAL ADMINISTRATIVE TRIBUNAL,
AHMEDABAD BENCH AT AHMEDABAD.
O.A. Nos. 665, 623 and 659 of 1993.

DECREE ALLOWING THE APPEALS
WITH NO COSTS.

On the 1st day of December 1995.

SHRI
Mrs. Anil Katiyar,

Examined by Advocate on Record for the Appellants.

Compared with SHRI Amlan Ghosh,

No. of folios Advocate on Record for the Respondents.

SEALED IN MY PRESENCE
✓ 12/12/1995

CENTRAL ADMINISTRATIVE TRIBUNAL
Ahmedabad Bench

Application No. 0410665193 of 19

Transfer Application No. _____ Old W.Pett No. _____

CERTIFICATE

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

Dated : 08/01/2014

Countersigned :

Ansorul 08/01/2014
Section Officer/Court Officer

ceedaf
Signature of the Dealing
Assistant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AT NEW DELHI AHMEDABAD

INDEX SHEET

CAUSE TITLE..... 041665193..... OF 198□.

NAMES OF THE PARTIES..... **Mrs. G. P. Pandya**.....
VERSUS
U. O. I. & O.E......

PART A B & C

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Submitted :

C.A.T./Judicial Section.

Original Petition No

665

of

1993

Miscellaneous Petition No

of

Shri SMT. G. P. Pandya

Petitioner(s)

versus

U.O. I & O.S.

Respondent (s)

This application has been submitted to the Tribunal by
Shri K. C. Bhabat Adv.

Under Section 19 of the Administrative Tribunal Act, 1985. It has been scrutinised with reference to the points mentioned in the check list in the light of the provisions contained in the Administrative Tribunal Act, 1985 and Central Administrative Tribunals (Procedure) Rules 1985.

The application has been found in order and may be given to concerned for fixation of date.

The application has not been found in order for the reasons indicated in the check list. The applicant advocate may be asked to rectify the same within 14 days/draft letter is placed below for signature.

ASSTT.

K. Patel
11-11-93

S.O.(J)

Bhagat
11-11-93

D.R.(J)

Parikh
11-11-93

Court-I

601 886454

OA st 630/93

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD - BENCH

ORIGINAL APPLICATION NO 665 OF 1993

(1)

Smt. GULABGAURI P. PANDYA.....APPLICANT

V/S

UNION OF INDIA AND OTHERS.....RESPONDENTS

SUBJECT: Title of the Case:- Dearness relief on Family Pension

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Date 8-11-93

Ahmedabad

Signature of the Applicant

IDENTIFIED BY ME

lqersdy
(K.C.BHATT)

Advocate.

Filed by Mr. K. C. BHATT
Learned Advocate for Petitioners
with second set 3 H... spares
copies copy served/not served to
other side

CBP/par
Dy. Registrar C.A.T.(J)
8-11-93 Ahmed Bench

APPLICATION UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL ACT,
1985.

(FOR USE IN TRIBUNAL'S OFFICE)

Date of Filing

Registration No

665/93

REGISTRAR

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD -BENCH

Smt. Gulabgauri. P. Pandya.....APPLICANT

V/S

(1) The Union Of India through.....RESPONDENTS
The Director-General

Department of Posts
Ministry Of Communication
New-Delhi- 110 001

(2) The Postmaster-General
Rajkot Region
RAJKOT 360 001

(3) The Supdt of Post Offices,
Junagadh Division
Junagadh 362 001

(4) The Postmaster Veraval

(1) PARTICULARS OF THE APPLICANT:-

(i) Name of the Applicant : Smt. Gulabgauri. Pandya

(ii) Name of the Husband : Shri P.K. Pandya

(iii) Age of the applicant: Adult

(iv) Designation and particulars : Group 'D' Post Office Una
of the Office

(v) Address for service of Notice: Smt. G.P. Pandya
Group 'D' Post Office Una
(Sorath)

(2) PARTICULARS OF THE RESPONDENTS:-

As per cause Title.

(3) PARTICULARS OF THE ORDERS AGAINST WHICH APPLICATION IS MADE

2

(A) (i) Order No. A/F/Pen/VRL/130

(ii) Date: 20-4-93

(iii) Passed by : Postmaster Veraval 362 265

(Annexure A-2)

(B) (i) Order No : C2/Misc/93-94

(ii) Date : 25-5-93

(iii) Passed by : Supdt of Post Offices

Junagadh Division, Junagadh 362 001

(Annexure A-4)

(4) JURISDICTION OF THE TRIBUNAL :-

The applicant declares that the subject matter against which She wants redressal is within the jurisdiction of the Tribunal.

(5) LIMITATION:-

The applicant further declares that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act, 1985.

(6) FACTS OF THE CASE:-

The facts of the case are given below:-

6.1 The applicant states and submits that she is a widow of late Shri P.K.Pandya Group 'D' Una(s) Post Office who expired on 4-3-80.

She was granted family pension and she was getting family pension + Dearness relief from 5-3-80

6.2 She was appointed on compassionate ground as Group 'D' at Una(s) Post Office with effect from 14-6-1984 Vide S.P. Junagadh Memo No B2/55/P.K.Pandya dated 23-5-84 and she joined in the department with effect from 14-6-1984.

6.3 She was paid dearness relief on family pension for the period from 5-3-80 to 13-6-1984 and discontinued to be paid with effect from 14-6-1984.

3

6.4 The applicant states and submits that when it has come to her knowledge that dearness relief on family pension is to be paid and there are such Judgements of C.A.T.Madras and C.A.T. Ernakulam, she had approached to the Account Branch of Veraval H.O. and also requested the Postmaster Veraval in this regard and at last she had requested Postmaster Veraval vide her application dated 7-4-93.

The Postmaster Veraval vide his letter dated 20-4-93 replied as under (Annexure A-2)

APP-15 CL(4):- Admissibility of relief and adhoc relief in pension to employed/Re-employed/Absorbed pensioners.

(a) The payment of relief and adhoc relief in pension shall be suspended when a Central Govt. servant is ---

(i) Re-Employed in a Deptt/Office of the Central Govt. or a state Govt.

(ii) Employed/Re-employed or absorbed permanently in a central Govt or a state Govt/Company/Corp/Undertaking as autonomous body or in Nationalised Bank or in a local fund as defined in clause(m) of Sub Rule 1 of Rule 3 of the C.C.S Pension Rules 1972.

The applicant had preferred representation to higher authority i.e. S.P.Junagadh who had rejected the representation vide orders dated 25-5-93 (Annexure A-4)

GROUND FOR RELIEF

6.5:- The applicant states and submits that she has relied on the following Judgements:

(i) S.L.J. 1992 (1)SLJ(CAT)P.589 C.A.T.Ernakulam O.A.No 282/90 decided on 25-11-1991.

4

Smt. Manikkam V/S The Postmaster Tirur.

C.C.S(Pension) Rules, Rule 54. Adhoc relief on Pension-discrimination Administrative instructions against Rules-O.M. of 13-2-76, 6-4-76, 18-3-77, Rule 54 entitles family to family pension and relief on it-Administrative order debar one from such relief on pension of Re-employed-Rules makes no change in entitlement relatable to economic status-Held OMS could not over rule the rules. (Para 4 and 5)

IMPORTANT POINT

RELIEF ON PENSION CANNOT BE SUSPENDED WHEN ONE IS RE-EMPLOYED

PARA 4 L-

The learned counsel for the applicant argued that these instructions being only, administrative instructions have no force of statutory rules, especially, when they purport to abridge the statutory benefits conferred on pensioners under the Civil service pension Rules.

The learned counsel further argued that classification of recipients of family pension as persons employed with Govt. or Govt. undertaking or no so employed are irrational and discriminatory and violation of Article 14 and 16 of Constitution of India and therefore these instructions have no binding force.

We have given our anxious consideration on this argument.

Family pension would be payable to the family of a deceased Govt. servant as per provisions of Rule 54 of the Civil Service Pension Rules. As per the provisions of this rule the quantum of family pension is dependent on the basic pay of the Govt. servant and the length of his service.

The family pension payable to the family of a deceased Govt servant has absolutely no bearing on the question whether

5

recipient of the family pension is employed or unemployed. This discrimination to our mind is highly arbitrary and unreasonable-since the instructions contained in Annexure R-1(A) and clarification contained in Annexure R-2(A) are only in the nature of Administrative instructions which have no Statutory force and since they purport to abridge the statutory benefits conferred by Rule 54 of the Civil Services (Pension) Rules. We are of the view that these instructions are unsustainable.

PARA 5:-

In view of what is stated above, we allow the application, set aside the impugned order at Annexure A-3 declare that Annexure R-2(A) order of the 4th respondent is unsustainable and unreasonable and directs the respondents not to suspend the relief on family pension and to continue to pay to the applicant the full family pension with the pension relief treating that Annexure R-1(A) and R-2(A) have no legal force. The undisbursed family pension should be disbursed to the applicant within a period of one month from the date of communication of this order.

(ii) A.T.C. (1992) 20 A.T.C. P.584 C.A.T.MADRS.

Meena Subramaniam (Mrs) and others. V/S Union of India and others. O.A. 801 of 1991 decided on 13-1-1992.

Pension-Family pension-Dearness relief-Admissibility to a widow on her compassionate appointment- Pension is a property-Dearness relief is granted to the pensioner for compensating for eroding value of rupee-Hence the relief has to be treated as part of pension and therefore it cannot be denied on compassionate appointment-Statutory rule denying the relief declared Invalid-Central Civil Services (Pension, Rule 1972 Rule 55(A)(i) and 55 (A)(ii)-Constitution of India Article 14,16 and 300 A.

6

HELD:-

As can be gathered from Rule 55(A)(i) of the Central Civil services (Pension) Rules, 1972. Read with Govt. of India Deptt of pension and pensioner's welfare O.M. No 2/5/67-PIC dated 22-4-87. Dearness relief is meant for compensating for rise in cost of living. The relief has the effect of off-setting the eroding value of pension. Since the purpose of the relief is to restore pension to its original value, it cannot be treated as different from pension (Para-6).

There is inconsistency between clauses (i) and (ii) of Rule 55 (A) because clause (i) authorises grant of relief whereas clause (ii) denies it on Re-employment. In view of the purpose of the relief, as explained above clause (ii) introduced unconstitutional discrimination and is therefore invalid (para 6 & 9).

PARA 9 :-

To sum up, Dearness relief on pension is to restore the pension to its original value, when it is eroded by these rise of the cost of living. It acts like a stabilizer to keep the pension intact in spirit of the change in the purchasing power of the rupee. If the dearness relief is not paid, the person concerned will get a diminished pension in terms of real value and pension being a right cannot be diminished indirectly. Pensioners are getting dearness relief against price rise as per Sub clause (i) of Rule 55(A). Sub clause (ii) of the same rule, which denies dearness relief on pension to a category of pensioner 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.

PARA 10:-

7

PARA 10:-

In the result, the respondents are directed to continue to pay dearness relief on pension to the applicants. The application is allowed. No costs.

6.5

The applicant states and submits that the respondent authority has denied dearness relief on family pension vide App.15 Clause 4 sub rule 1 of Rule 3 of the C.C.S Pension Rule 1972.

The Honourable C.A.T. Ernakulam in its Judgement as discussed above in para 6.5 and Honourable C.A.T. Madras in its Judgement have directed to continue to pay dearness relief on family pension to the applicants.

6.6

The applicant further submits that if her son or her daughter or any other member of her family would have been appointed on compassionate ground, she would have been continued to be paid Dearness relief on family pension while she herself appointed on compassionate ground, the dearness relief on family pension is discontinued which is discriminatory.

(7) DETAILS OF REMEDIES EXHAUSTED:-

The applicant declares that she has availed of all the remedies available to her under the relevant service rules.

The applicant has preferred an appeal (Annexure A-3) and rejected by the appellate authority (Annexure A-4).

(8) MATTER NOT PENDING WITH ANY OTHER COURT ETC.

The applicant declare that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other Bench of the Tribunal.

8

(9) RELIEF(S) SOUGHT:-

In view of the facts mentioned in para-6 above, the applicant prays for the following relief:-

- (i) The impugned order No A/F.Pen/VRL/130 dated 22-4-93 issued by the Postmaster Veraval be quashed and set aside (Annexure A-2)
- (ii) The impugned order No C2/Misc/93-94 dated 25-5-93 issued by the Supdt of Post Offices Junagadh be quashed and set aside (Annexure 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.
- (iv) Any other suitable relief may please be granted.

(10) Interim order, if any prayed for:-

-----NIL-----

(11) -----NIL-----

(12) PARTICULARS OF POSTAL ORDER IN RESPECT OF THE APPLICATION

FEE OF RS 50/- FIFTY ONLY

(i) No of I.P.O. 8 01 233309 886454

(ii) Name of Issuing Post Office:- Junagadh Distt Court P.O. Ahmedabad

(iii) Date of Issue of Postal Order: 21-7-93 5-11-93

(iv) Post office at which payable: Ahmedabad

(13) LIST OF ENCLOSURES:-

Annexure herewith.

03/01/94 21/11/93 41. 4321

9

VERIFICATION

I, Smt Gulabgauri Pandya Widow of late Shri P.K.Pandya
Group 'D' Post Office Una (s), Age Adult, do hereby verify that
the contents of this application are true to my personal
knowledge and I have not suppressed any material facts.

Date 8-11-93

Ahmedabad

K. P. Pandya
(G.P.PANDYA)

SIGNATURE OF APPLICANT

IDENTIFIED BY ME

K. C. Bhatt
(K.C.BHATT)
Advocate.

CAT

A-1

From: Smt.G.P.Pandya
Group 'D' Una-s

Dated 7-4-93

To
The Postmaster
Veraval H.O.

State of

Gujarat

Post Office

Subject:- Payment of dearness allowance with Family pension.

.....

Respected Sir,

I Smt.G.P.Pandya Group 'D' Una-shereby submit that I am getting family pension under P.P.O.No SP-7023-F and also serving in the department as group 'D'.

No dearness allowance is drawn alongwith my family pension.

I had requested many times in account branch but no satisfactory reply ~~was~~ is received by me.

Kindly intimate the rulling under which the dearness allowance is not drawn alongwith my family pension. Please send the copy of the same.

Even if it is there instructions it is illegal and therefore arrange to draw dearness allowance alongwith my family pension.

Yours Faithfully

X 054145122124581

TRUE COPY

K. C. BHATT
B.A. LL.B. ADVOCATE

प्रकाशनहार-2/Corr.-2

मार्तीय डाक विभाग/DEPARTMENT OF POSTS INDIA
राजस्थान/Office of the

A-2

गोपनीय डीराम्ब,
POST MASTER (HSG-II)
VERAHAL-262265.
20-4-93

To

Smt. Dr. P. Pandya
Gadisar Vana (स)

No. A/ F. ren/ VAL/ 130
Sub: Payment of relief with
Family pension.

With ref. to your
application dtd 7-4-93

it is to intimate you

TRUE COPY that dearness relief
K. C. BHATT with family pension
B.A. LL.B. ADVOCATE is not drawn by this
Office as per Appendix
15, clause no 4.

KTC

COPY OF THE RULES:

APP. 15

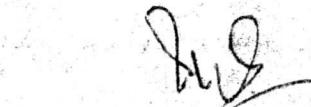
C1 (4) Admissibility of relief

and adhoc relief in Pension to
employed / reemployed / absorbed pensioners

(i) The payment of relief and
adhoc relief in Pension shall be
suspended when a central Govt.
pensioner is —

(i) Reemployed in a Dept. / office of
the central Govt. or a State Govt.

(ii) Employed / reemployed as absorbed
permanently in a central Govt or a
State Govt / company / corp. / undertaking
as autonomous body or in nationalised
bank or in a local fund as
defined in clause (m) of sub rule
1 of Rule 3 of the CCS Pension
Rules 1972



पोस्ट मास्टर श्रीमति,
POSTMASTER (HSG-II)
VERAVAL - 362 003.

From:- Smt. G. P. Pandya
Group 'D' Una-S
Dated: 18-5-93

A-3

12

To
The Supdt of Post Offices
Junagadh Division
Junagadh 362 001

Sub:- Appeal against the order No A/F.Pen/VRL/130 dated
20-4-93 of Postmaster Veraval regarding Non drawl of
D.A. with family pension

••••

Respected Sir,

Kindly direct Postmaster Veraval to draw D.A.
relief alongwith my family pension which is not being drawn
since the date of my family pension.

Yours Faithfully

ગુજરાતી વિસુલ
(G.P.PANDYA)

TRUE COPY

K. C. BHATH
K. C. BHATH
B.A. LL.B. ADVOCATE

A-4

ભારતીય ડાક વિભાગ/Indian Post Department

12

સંખ્યા.....

No. From :-

Supdt Of Post Offices
Junagadh Division
Junagadh 362 001.

વિનાસ.

Date.....

To :- Smt. G P. Pandya
Group 'D' Una (S)

No. :- C 2/Misc/93-94 Dated at Junagadh the
25-5-93.

Subject :- Appeal against the order ~~xx~~ No. A/F-Pen/VRL/
130 dated 20-4-93 of Postmaster Veraval
HO regarding non drawal of D.A. with Family
Pension.

Ref. :- Your appeal dated 18-5-93 on the subject
cited above.

The action of the Post Master Veraval H O
is correct. As per rule you are not eligible to get
D.A. relief on Family Pension.

TRUE COPY

Keshav
K. C. BHATT
B.A. LL.B. ADVOCATE

(P P Soni)
Supdt Of Post Offices
Junagadh Division
Junagadh 362 001.

A-5

14

Copy of letter No.RAG.2/53/48/80 dt. 11-5-1981 from the Postmaster-General, Gujarat Circle, Ahmedabad addressed to the Supdt. of Post Offices, Junagadh Dist. Junagadh 362 001.

Sub:- Employment of dependents in relaxation of recruitment rules - Case of Smt.G.P.Pandya w/o Late Shri P.K.Pandya Group-D Una (Sorath).

Ref:- Your office OO letter No.B.2/55/P.K.Pandya dt.13-3-84.

The Postmaster-General, Gujarat Circle, Ahmedabad is pleased as a special case and on compassionate grounds to order appointment of Smt.G.P.Pandya w/o Late Shri P.K.Pandya Group-D Una(S) who died on 4-3-1980 to the Group-D cadre in Junagadh Division in relaxation of normal recruitment rules. You are, therefore, requested to inform the applicant and appoint her against the vacancy of your division after observing usual pre-appointment formalities.

An undertaking in writing may be obtained from her that she would take care of her family after her appointment.

Actual date of appointment may please be intimated to this office.

Receipt of this letter may please be acknowledged.

This is in supersession of Item K-6 of this office letter No.RAG-2/53/Gr.B/NTC/82/II dated 26-10-1983.

Sd/-
(J.C.Bhatt)
For Postmaster-General
Ahmedabad 380 009.

Enclat.No.B-2/55/P.K.Pandya dated at Junagadh the 23-5-1984

Copy for information and necessary action to:-

1/2 The Postmaster, Veraval HO with one spare copy for Service Book.
3. The Sub Postmaster, Una Sorath. Smt.G.P.Pandya is allotted to his Unit. He will please take action after observing usual pre-appointment formalities Charge report and Gradation List Particulars may be sent to this office.
4. P/F of the official.
Smt.G.P.Pandya W/o late Shri P.K.Pandya Ex Class IV Una Sorath at Post Mota Desar (Māxāxākhanī) (Mirnathnu) via Una Sorath. She is requested to see the Sub Postmaster, Una Sorath immediately.
5. Spare.
6/7

[B.B.Kapadia]
Supdt. of Post Offices
Junagadh Division
Tele:293

TRUE COPY

K. C. BHATT
B.A. LL.B. ADVOCATE

Ansir/

Indian Post & Telegraph Department
Office of the SUB POSTMASTER
UNA (E-mail) 36200

memo no. PF/SMT. (R.P. Pandya) Unas the 14th
June 84.

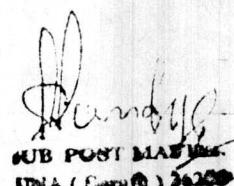
Consequence upon the SP Jmugd No.
B.2/55/P.K. Pandya Dtd 23.5.1984 on A.P.C
for group 'D' official smt R.P. Pandya is
allotted to this unit. The following
orders of posting are hereby issued
less than 90 Ninety Days.

(i) Smt (R.P. Pandya) approved candidate is
appointed as atty Temporary Pecker
unas on purely temporary & adhoc
basis against the vacant post of Pecker.
Vide SP. Ord No. A. 21/21/Pmcy Dtd. 4.5.84 one
Temporary Post of Pecker of this office is
made permanent.

The Candidate is given to under-
stand that his appointment is on purely
Temporary & adhoc basis and his services
is liable to be terminated at any
time without any notice.

Relief arrangement-

Smt R.P. Pandya A.P.C for C.I. IV
should join as atty Temporary Pecker
unas immediately.


SUB POSTMASTER
UNA (E-mail) 36200

TRUE COPY

K. C. BHATT
B.A. LL.B. ADVOCATE

पत्र-व्यवहार-22
Corr.-22

भारतीय डाक-तार विभाग
INDIAN POSTS AND TELEGRAPHS DEPARTMENT

उत्तर देते समय दृश्या
निम्न संदर्भ से

प्रेषक
From

In reply
please quote

सेवा में
To

क्रम संख्या
No.

दिनांक
Dated at

विषय
SUBJECT

COPY of this office memo is issued to

- (1) The Superintendant of Posts, D.M.D. Dhanbad with 362001 with his office memo B-2 1551 R.K.Pandey
Dtd 23-5-84.
- (2) The Post Masters Varanasi HO 362265
- (3) P.T. of official
- (4) Education list
- (5) Office Copy
- (6) Spouse

Note:- Provisional Family pension @ Rs.100/- (Rs. One Hundred Nine
u.e.f. 5-3-80 to 31-9-80 has been sanctioned to the pension

म० ल० डा० ता०-99 (ठ)
A. G. P. T.-99(L)

भारतीय डॉक-तॉलेग्राफ विभाग
INDIAN POSTS AND TELEGRAPHS DEPARTMENT



[डाक लेखा नियम पुस्तक, खण्ड I (अस्थायी संकलन) का पैरा 9-19 देखिए]
 See Para. 9-19 of the Postal Accounts Manual, Volume I (Provisional Issue)]

सेवा-सिवृति की तारीख.....
Date of retirement

रूपान्तरण की तारीख
Date of commutation

संवितरक का हिस्सा Disburser's Portion

रकार के नामे डाला जाए *Government*

पंत्थन अदायगी आदेश
PENSION PAYMENT ORDER

..... सरकार के नामे डाला जाए
Debitable to..... Government

{ x or remarriage whichever is earlier and Rs. 66/- (Rs. Sixty Six only) p.m. from 5-3-87 onwards till death or remarriage whichever is earlier.

लेखा शीर्ष—Head of Account

मुख्य शीर्ष—Major Head

लघु शीर्ष—Minor Head

Family Pens

दत्तमत/प्रभारित—Voted/Charged

पहली अदायगी के समय पेन्शनभोगी के हस्ताक्षर लेने के लिए स्थान

Place for signature of Pensioner
to be taken at the time of first
payment

पेन्शन भोगी की मृत्यु की तारीख(Postal)(पोस्टमास्टर द्वारा भरा जाए और साक्षरकित किया जाए)
 Date of death of the pensioner Nagpur ~ 440001, (to be filled and attested by the Postmaster)

विधवा/विधुर के पुनर्विवाह या मृत्यु की तारीख...
Date of remarriage or death of the widow/widower

दिनांक/Dated the..... 10 - 1970.

महोदय/Sir

इस आदेश के पेन्शनभोगी के हिस्से को प्रस्तुत करने पर और दावेदार से राशि के लिए सामान्य रूप से रसीद लेकर और जब तक अन्य नोटिस न दिया जाए, प्रत्येक मास की समाप्ति पर श्री.....को स्पष्टे.....(आयकर काटकर) जो कि.....के तौर पर.....पेन्शन तथा उसकी राहत की राशि है, अदा कर दी जाए। अदायगी.....से चालू हो जानी चाहिए।

TRUE COPY

K. C. BHATT
B.A. B.L.L.B. ADVOCATE

26/10/94 BPR

(17)

✓ Reply Received with submissions
by Mrs. Akil Kureishi
for respondent with Second Set.
Copy served.

Copy received
5-1-94

Dy. Registrar C.A.T. (J)
Ahmedabad Bench

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

ORIGINAL APPLICATION NO. 665 OF 1993

*T.
22.12.93
15/1/94*
Smt. G.P. Pandya

..Applicant

v/s.

The Union of India & Ors.

..Respondents

*Reed Copy
Keshavji
5-1-94*
Written Reply on behalf of
the respondents

I, V.J. Upadhyay working
as Asst. Jyväskylä with respondent No.
3 herein, do hereby state in reply to the above
application as under:

1. That I have perused the relevant papers
and files pertaining to the above application and I
am conversant with the facts of the case and I am
authorised to file this reply on behalf of the res-
pondents.

2. At the outset I say and submit that the
application is misconceived, untenable and requires
to be rejected.

3. At the outset I say and submit that no
part of the application shall be deemed to have been

Presented by
Mr. Akil Kureishi
Ad

2+0=2

admitted by the respondents unless specifically stated so herein. All the statements, averments and allegations contained in the application shall be deemed to have been denied by the respondents unless specifically admitted by me herein.

4. At the outset I further say and submit that one Shri P.K. Pandya was working in the Junagadh Division i.e. the office of the Superintendent of Post Offices, Junagadh, as Group-D Class-IV and he expired on 4.3.1980. On his expiry Smt. G.P. Pandya, the applicant herein was granted family pension plus dearness relief. The applicant was thereafter appointed as Group-D Class-IV servant on compassionate ground with effect from 14.6.1984. The applicant was being given dearness allowance with effect from the said date and the dearness relief on family pension was discontinued with effect from 14.6.1993. This was done as per the Government of India's instruction contained in para-6(v) under para-2 of Appendix 15 of the C.C.S. (Pension) Rules, 1972 incorporated as Rule 55(A) ibid. The said instruction stipulated that re-employed pensioners and family pension receivers who are employed will cease to get dearness relief. Under the circumstances the respondent-authorities have discontinued payment of dearness relief to the applicant. It is further submitted that on referring the cases to the Director General Department of Posts, New

Delhi, it is learnt through the Postmaster General, Rajkot that a special leave petition is filed in the Hon'ble Supreme Court of India ~~also~~ in the similar case.

5. In reply to paras-1, 2& 3, of the application I say that the respondents have no comments to offer.

6. In reply to para-4 of the application, I say that the contents of the same are incorrect and I deny the same.

7. In reply to paras-6.1 and 6.2 of the application, I say that the respondents have no comments to offer.

8. In reply to para-6.3 of the application, I say that all the family pensioners are paid dearness relief. But as per the provisions of Rule 55(A) of the C.C.S. (Pension) Rules, 1972 it is to be discontinued once the family pensioner gets employed. The Rule 55(A) was incorporated as such from the instructions of the Government of India, vide- para-6(v) under para-2 of Appendix 15 of C.C.S. (Pension) Rules, 1972.

9. In reply to para-6.4 of the application I say that the disposal of the applications and representations were done as per Rule 55(A) of C.C.S. (Pension) Rules, 1972.

10. In reply to para-6.5 of the application I say that one Special Leave Petition is filed in the Hon'ble Supreme Court in the similar case and the same is as yet pending.

11. In reply to paras-6.6, 7,8, 9, 10 and 11 of the application, I say and submit that the respondents have no comments to offer.

12. In view of what has been stated above, I say and submit that the application is totally misconceived, untenable and the applicant is not entitled to any relief, either interim or final, as prayed for in the application and this Hon'ble Tribunal be pleased to reject the application forthwith with costs.

Ahmedabad,

Dt. 5-1-1994.

V.T.Upadhyay

: Verification :

I, V.T.Upadhyay, working as Asst. Judge with respondent No. 3 herein, do hereby state and verify that what is stated above is true to my knowledge, information and belief and I believe the same to be true. I have not suppressed any material facts.

Ahmedabad,

Dt. 5-1-1994.

V.T.Upadhyay

DCP

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

ORIGINAL APPLICATION No.665 OF 1993

Smt. G.P. ~~Pandya~~ Pandya.....APPLICANT

v/s

UNION OF INDIA AND OTHERS.....RESPONDENTS

AFFIDAVIT-IN-RE-JOINDER

I, SmtGulabgauri.P.Pandya widow of late Shri P.K. Pandya, Group 'D' Post Office Una (s), age adult, resident of Una(s) the applicant in the above said O.A, do hereby state on solemn affirmation as under:-

(2) That the respondents have filed a reply and a copy of the same is served to me.

(3) I have read the said reply. The contents of the reply which are not specifically admitted in the rejoinder affidavit are not true hence not admitted.

(4) With reference to para.2 of the reply. It is admitted that the original application is in detail with true facts and discloses necessary material circumstances and facts and the application stands on merits.

(5) With reference to para 4 of the reply the respondent authority has replied that the dearness relief on family pension was discontinued with effect from 14-6-1993 (Correct should be 14-6-1984). This was done as per the Govt. of India's instruction contained in para 6 (V) under para 2 of Appendix 15 of C.C.S(Pension) Rules, 1972 incorporated as Rule 55(A) ibid. The said instruction stipulated that ~~re-employment~~ Re-employed pensioners and family pension receivers who are employed will cease to get dearness relief. Under the circumstances the respondent

authorities have discontinued payment of dearness relief to the applicant."

The applicant submits that in this regard the judgement of Ernakulam and C.A.T. Madras cited in para 6.5 of O.A. by which the instructions are declared as unsustainable and unreasonable and Rule 55(A)(ii) is declared as violative of Article 14 of the Constitution of India and declared as invalid.

6. The applicant further states that this Hon'ble Tribunal has passed the order in Judgements dated 19-1-1994 in identical matters in O.A -452, 457, 466, 473, 474, 475, 485 of 1993 as under.

ORDER

The application is allowed. The orders issued by Postmaster Junagadh dated 14-5-93 Annexure A-2 and Supdt of Post Offices, Junagadh dated 21-5-93, 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 26-7-93 the arrears of dearness relief will be payable to the applicant only from 26-7-92. 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.

7. The applicant further states in addition to the decision of the Hon'ble C.A.T. Ernakulam and C.A.T. Madras and submits that in her P.P.O. the condition were made that family pension + Relief is payable till the date of Re-marriage or death whichever is earlier, but no condition is cited either in her P.P.O or in her appointment order that dearness relief will be discontinued on family pension from the date of her appointment on compassionate ground.

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8. The applicant further submits that if her son or daughter or any other near relative would have been appointed on compassionate ground, he would have received the Dearness allowance on his pay and the applicant would have also be paid dearness relief on family pension on her appointment on compassionate ground is illegal and discriminatory and therefore violative of Article 14 of the Constitution of India.

VERIFICATION

I, Smt Gulabgauri Pandya widow of late Shri P.K.Pandya Group'D' Post Office Una(s), Age Adult, resident of Una(s), do hereby verify that the contents of this application are true to my personal knowledge and I have not suppressed any material facts.

Date: 17-2-96

Ahmedabad

X 9/CHW/11242 MS VI
(G.P.PANDYA)

Signature of Applicant

IDENTIFIED BY ME

K.C.Bhatt
(K.C.BHATT)
Advocate.