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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH : JODHPUR

Date of order : 5.2.1996.

OA NO. 107/1995

Uma Vyas

... Applicant.

versus

Union of India & Ors.

... Respondents.

Mr. S.K. Vyas, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.

**CORAM:**

Hon'ble Mr. N.K. Verma, Administrative Member.

.....

**BY THE COURT:**

Heard learned counsel for the parties.

2. In this OA, the applicant Smt. Uma Vyas, wife of Shri Sohan Lal Vyas has claimed dearness relief on the family pension granted to her under the C.C.S. (Pension) Rules, 1972, Rule 54 (11). The facts of the case are that the applicant's husband, who was in the Railways, died in 1974 and she was granted family pension of Rs. 200/- per month with effect from 21.12.74 and this amount she continued to draw till 20.12.81 after which the amount of family pension was reduced to Rs. 100/- per month. She was already in the Government service working as Teacher in the State Government while the husband died and she still continues to be in the Government service. She has already been informed by Annexure A/1 dated

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2.11.94 that as she is in the Government service, she is not entitled to Dearness Allowance payable on her pension, hence the O.A. The applicant has calimed restoration of Dearness relief on her family pension on the basis of the judgement passed by the Madras Bench of the Tribunal in O.A. No. 1503/92 in the case of Mahilini Thomas vs. Collector of Customs decided on 16.7.1993. Learned counsel for the applicant Mr. S.K. Vyas brought to my notice the Rule 55 of the C.C.S. (pension) Rules, which stipulates payment of dearness relief on pension / family pension and according to which only reemployed pensioner and persons absorbed permanently in Corporation/Company/Body/Bank are ineligible to draw dearness relief on pension/family pension during the period of such reemployment. There is no specific rule saying that family pension to the pensioner already in employment of Government Service either in Central or State is made ineligible for the drawal of dearness relief. The family pension is not a bounty, but a property inherited by the widow in whatever circumstances she may be and she cannot be denied the relief associated to that pension/family pension.

3. Shri S.S. Vyas, learned counsel for the respondents brought to my notice the preliminary objection of the case being barred by limitation. He said that the widow commenced drawing her family pension in 1974 and the recoveries for the excess payments on account of dearness relief was ordered and completed by 1982, as such cause of action arose much before the constitution of this Tribunal under the Administrative Tribunals Act, 1985, and this cannot be reopened now. He also cited a case at (1995) 29 ATC 180 Union of India & Others v. G. Vasudevan Pillai & Others, by which it has been held by the Hon'ble Suprme Court that anybody employed after the death of a Government servant, who was a pensioner, cannot enjoy the dearness relief which has already built in the salary/pay drawn by such an employed official/widow. He strenuously tried to impress

that the expression "employed" in the Hon'ble Supreme Court's order also covers a serving official/widow in any Government service. 1/10

4. I have given due consideration to the pleadings, averments and arguments of both the parties. As far as the rules are concerned, it has been clearly stated that a Government servant who is entitled to a family pension shall be given family pension if either of the two dies as per Rule 54 (11) of the C.C.S. (Pension) Rules. Rule 55 does not specifically mention that such pensioner / family pensioner will not be eligible for dearness relief while he/she continues in Government service. I am in respectful agreement with the order passed by a Division Bench of the Madras Tribunal and I find the arguments totally irrefutable. The only question which arises now is why did the applicant keep silent on the recoveries when it was ordered by the respondents in 1980 and completed in 1982 and why she came to this Tribunal only after the judgement of Madras Bench of the Tribunal was made known to her. Shri S.S. Vyas rightly said that a judgement in another O.A. cannot be a basis for the claim and hence such a claim must not be admitted. While I generally agree with the argument advanced by him, I also cannot overlook the fact that this is a case regarding a recurring cause of action in the shape of pension which the applicant draws month to month. However, keeping in view the fact that the applicant is already a serving person, who is drawing both her pay and dearness relief attached thereto, I am not convinced that she should get the dearness relief on family pension for the period 1974 onwards. To meet the ends of justice, I think it is sufficient if she is allowed to draw the dearness relief from the date she filed the representation to the Department. The O.A., therefore, partly succeeds. The applicant is entitled to payment of dearness relief to the family pension sanctioned to her as per rules and the same shall be effective from the date she filed the representation before the Department / Authority.

5. Orders accordingly. Respondents shall comply with these orders within two months of the receipt of the same. No costs.

*N.K. Verma*  
( N.K. VERMA )  
Member (Adm.)

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JL

Part II and III destroyed  
in my presence on 27/5/02  
under the supervision of  
section officer ( ) as per  
order dated 19/3/02

Section officer (Record)  
J