

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. 351 of 1997

Date of order : 8.8.2001

Present : Hon'ble Mr. D.Purkayastha, Member(J)

Hon'ble Mr. V.K.Majotra, Member(A)

1. Smt. Gouri Roy  
W/o Late Meghajyoti Roy,
2. Nilanjan Roy,  
S/o Meghajyoti Roy,
3. Dipanjan Roy,  
S/o Late Meghajyoti Roy,  
all residing at 24/1 Sunil  
Sen Sarani, Calcutta-28

... applicants.

Vs

1. Union of India through the  
Secretary, Deptt. of Statistics,  
M/o Planning, Govt. of India,  
New Delhi
2. The Chief Executive Officer,  
National Sample Survey Organisation,  
Sardar Patel Bhawan,  
1, Parliament Street, New Delhi
3. The Director, National Sample Survey  
Organisation, C Block, Pushpa Bhawan,  
3rd Floor, Hall No. 327,  
Madan Giri Road, New Delhi=62
4. The Joint Director, NSO (Field  
Operation Division, E. Zone),  
'Mahalanabish Bhavan', 164, Gopal  
Lal Tagore Road, 6th Floor,  
Calcutta-35
5. The Asst. Director (Z), Govt. of India,  
PM/o Planning, Deptt. of Statistics,  
NSO (FOD, EZ), 164, Gopal Lal Tagore Rd.,  
Calcutta-35.

... respondents

For the applicants : Mr. P.Chatterjee, Counsel

For the respondents : Mrs. U. Sanya, Counsel

O R D E R ( ORAL )

V.K.Majotra, A.M.:

The applicants have assailed the alleged arbitrary denial of  
the benefit of increase in pay arising out of crossing of Efficiency  
Bar (EB) in the pre-revised scale of Rs. 470-750/- w.e.f. 1.7.1  
in respect of deceased husband of applicant No. 1, late Meghaj

Roy, former employee of National Sample Survey Organisation (FOD), Calcutta, with consequential effect in the quantum of pension during the life time of the deceased employee and on family pension of applicant No. 1.

2. It is claimed that the deceased Govt. employee was due to cross the EB w.e.f. 1.7.82 at the stage of Rs. 530/- raising his pay to Rs. 550/- p.m. Vide order dated 13.12.95 (annexure-A1 colly.) based on the recommendation of the DPC, the deceased was allowed to cross the EB at the stage of Rs. 530/- in the pre-revised scale of Rs. 470-750/- raising his pay to Rs. 550/- w.e.f. 1.7.92. Later on, vide annexure-A1(colly.) dated 11.6.96, on the basis of the recommendation of review DPC held on 28/5/96, it was decided that the question of EB clearance by the deceased Govt. employee did not arise as he opted to get his pay fixed w.e.f. 1.1.1986 in the revised scale as per recommendation of the 4th CPC. Hence, his pay remained fixed on 1.1.86 as Rs. 1750/- and the order regarding crossing of EB issued earlier vide order of even number dated 13.12.95 was cancelled.

3. The applicants have claimed the followed reliefs :-

(i) order the respondents to make clearance of EB at the pre-revised scale w.e.f. 1.7.82 raising the pay of the deceased from Rs. 530/- to Rs. 550/-.

(ii) to further order or direct the respondents to give consequential effect of the revised pay in the pre-revised scale for giving the deceased the benefit of arrears of pay and allowances, refixation of pay in the revised pay scale under IVth CPC and other consequential benefits which will be now payable to the applicants as a consequence of death of Meghajyoti Roy.

(iii) to order or direct the respondents to make payment on account of not only arrears of pay and allowances arising out of correct fixation of pay but also the arrears of revised pension, and the DCRG and leave salary to the instant applicants as legal representatives.

(iv) the respondents be further ordered to fix the appropriate quantum of family pension for the wife of the deceased who is one of the applicants in the instant application with reference to the correct pension as may be calculated upon.

4. The respondents have contradicted the claim made in the OA. They have stated that around the time when the deceased employee was due to cross the EB at the stage of Rs. 530/- w.e.f. 1.7.82, a disciplinary proceeding was initiated against him for his misconduct during the period 12.10.81 and 20.10.81 and as he was not free from vigilance angle as on 1.7.82, he could not be allowed to cross the EB. On completion of enquiry, the deceased employee was reverted to the post of Investigator w.e.f. 10.5.85 as a measure of penalty and the case of crossing of EB was treated as closed. On appeal, vide letter dt. 11.6.86, his position was restored w.e.f. 10.5.85 and he was entitled to draw pay at the stage of Rs. 530/- w.e.f. 18.7.81 as if he had not been reverted. However, it was further decided to hold a de novo enquiry and till he was completely exonerated, his EB case was not to be considered. His pay was fixed at Rs. 1750/- on the basis of recommendation of 4th CPC w.e.f. 1.1.86 treating his old basic pay of Rs. 530/- as the basis. The disciplinary authority vide order dt. 30.3.88 awarded a punishment of withholding of three increments for a period of three years with cumulative effect. According to the respondents, the case of crossing EB by the deceased employee was considered by the DPC on four occasions from 31.1.89 to 28.1.95, but he was not found fit to cross the EB due to adverse entry in his ACRs upto 30.6.90. The DPC held on 28.11.95 allowed the deceased employee to cross the EB w.e.f. 1.7.92. But the review DPC held on 28.5.96 held that the question of EB clearance of the late employee did not arise as he had opted for the revised scale w.e.f. 1.1.86. Consequently, the order dt. 13.12.95 issued on the recommendation of the DPC held on 28.11.95 clearing the EB of the deceased employee w.e.f. 1.7.92 was cancelled. The respondents have further stated that the late employee was not found eligible for crossing the EB on



account of disciplinary proceeding being under contemplation at the relevant point of time in terms of OM dated 18.9.91.

5. We have heard the learned counsel of both sides and considered the materials available on record.

6. The learned counsel of the applicant stated that the deceased Govt. employee had not been cleared for crossing the EB on the ground that a disciplinary case was under contemplation against him. Relying on AIR 1991 SC 2010( UOI -vs- K.B.Jankiraman )at page 2019, he contended that in Civil Appeal No. 3021 of 1987, the Hon'ble Supreme Court held that a direction to convene DPC to consider the case of the aggrieved employee for crossing the EB on the basis of his confidential records at the relevant date without reference to the contemplated disciplinary proceeding was proper and valid. He further stated that the applicant No. 1's right to proper family pension is an independent right and therefore, she has sought that after allowing her late husband to cross the EB with effect from the due date i.e. 1.7.82, the quantum of family pension should be upscaled taking into account as if the late Govt. servant had crossed the EB w.e.f. 1.7.82 and also accordingly fixing his revised pay on the recommendations of the 4th & 5th CPCs. On the other hand, the learned counsel of the respondents contended that the cause of action in the present matter regarding non-crossing of EB by the deceased Govt. employee had arisen on 1.7.82. Accordingly, this Tribunal has no jurisdiction under the provision of the A.T.Act. Learned counsel for the applicants has, however, contended that as the respondents had decided to clear the deceased employee to cross the EB w.e.f. 1.7.92 as per order dated 13.12.95 (annexure-A1), the cause of action should be deemed to have arisen from 13.12.95.

7. We have considered the rival contentions of both sides. True that as per annexure-A1 dated 13.12.95, the late Govt. employee had been cleared to cross the EB at the stage of Rs. 530/- in the pre-revised scale of Rs. 470-750/- w.e.f. 1.7.92, but the same was cancelled vide order dated 11.6.96 (annexure-A1). In our view the

cause of action in the present matter is related to the crossing of EB by the deceased Govt. servant w.e.f. 1.7.82. Unless this question is adjudicated upon, the consequential claim of the applicant No. 1 to upscale her family pension cannot be considered at all.

8. Section 21 of the Administrative Tribunals Act, 1985 deals with limitation. It reads as follows :-

"21. Limitation. (1) A Tribunal shall not admit an application-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation, such as is mentioned in clause (b) of (2) of Section 20 has been made and a period of six months had expired thereafter, without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in subsection (1), where -

(a) the grievance in respect of which any application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause

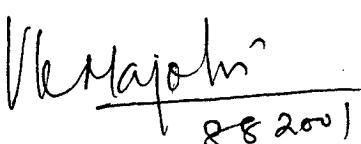


(a) or as the case may be, clause (b) of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in subsection (1) or subsection (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of (1), or as the case may be, the period of six months specified in subsection (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

9. The provision of sub-section 2(a) re-produced above is relevant in the present case. The late government servant was due to cross the EB from 1.7.82. This Tribunal was set up in November, 1985. The jurisdiction of the Tribunal can be related to a grievance which had arisen during the period three years immediately preceding the date on which the jurisdiction, power and authority of this Tribunal became exercisable under the Act. It implies that this Tribunal has the jurisdiction to deal with matters, the cause of action of which had arisen in November, 1982 or thereafter. In the instant case, the cause of action had arisen in July 1982. This Tribunal certainly has no jurisdiction in the matter. It is unfortunate that by a margin of a period of a few months, this matter has escaped Tribunal's jurisdiction.

10. The instant case being without our jurisdiction as discussed above, we cannot adjudicate in the matter and accordingly, the application is not maintainable before us.

  
(V.K. MAJOTRA)

MEMBER(A)

  
(D. PURKAYASTHA)

MEMBER(J)