

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE: 3.8.93

O.A. 458/93

V. Valsala Kumari
Sr. Accountant
PF 26, Office of the
Accountant General (A&E)
Thrissur, Kerala State

Applicant

VS.

1. Union of India represented by the
Secretary, Ministry of Finance
New Delhi
2. Accountant General
(Audit & Establishment), Kerala
Trivandrum
3. Deputy Accountant General
Audit & Establishment
Trichur, Kerala

Respondents

Mr. P.N. Krishnankutty Achan

Counsel for
applicant

Mr. C. C. Thomas, ACGSC

Counsel for
respondents

CORAM

THE HON'BLE MR. N. DHARMADAN JUDICIAL MEMBER

JUDGMENT

MR. N. DHARMADAN JUDICIAL MEMBER

Learned counsel for applicant submitted that the case is covered by the judgment of the Full Bench of this Tribunal in TAK 732/87 which was followed in O.A. 282/90.

2. The relief claimed in this application filed under section 19 of the Administrative Tribunals' Act reads as follows:

- a) to direct the respondents to pay the relief payable to the applicant on her family pension during the period of her employment.
- b) to direct the respondents to return the entire pension relief of the applicant suspended and recovered so far.
- c) to extend the benefit of the principles laid down in the judgment in O.A. No. 282/90 and TAK 732/87 to the applicant
- d) to grant such further or other reliefs as this Hon'ble Tribunal deems fit and

e) It is only proper that the decision of the Central Administrative Tribunal is implemented forthwith and the petitioner granted the reliefs that she is entitled to."

3. According to applicant she is the wife of the Govt. employee who worked under the third respondent and died on 3.2.76. Thereafter, on compassionate ground the applicant was given appointment w.e.f. 7.7.76 under the dying in harness scheme. Along with family pension, applicant was also receiving relief on pension from 8.7.76 to 31.4.78. When applicant knew about the Full Bench decision in TAK 732/87 she filed a representation which was rejected by Annexure A-4 order taking the view that no orders permitting the drawal of dearness relief on family pension to employees who are in receipt of family pension have been issued by GOI consequent on the ruling of Central Administrative Tribunal. Hence, the applicant is not eligible for dearness relief on family pension.

4. Respondents have filed reply raising the contention that applicant has not availed of the alternative remedy and the Full Bench judgment in TAK 732/87 has been stayed by the Supreme Court in SLP No. 117/90 dated 22.1.90; hence the original application is to be dismissed.

5. Having heard learned counsel on both sides, I am satisfied that both the contentions raised by the respondents cannot be sustained in view of the fact that this case is already covered by the Full Bench judgment of the Tribunal in TAK 732/87.

6. Regarding the contention that the said decision is pending before the Supreme Court; hence the case is to be rejected, I am of the view that since the respondents have no case that the facts in this case are distinguishable ^{from} ~~from~~ the facts of TAK 732/87. We are consistently taking the ~~the~~ view that so long as the Full Bench decision has been neither ~~set aside~~ nor overruled by the Supreme Court,

it is binding on this Tribunal.

7. Regarding the other contention that the applicant had not exercised the alternative remedy available to her at the appropriate time, this Tribunal in similar cases rejected the contentions and entertained the original applications. Hence, I reject that contention also.

8. In this view of the matter, I allow the original application and declare that the applicant is entitled to relief on family pension during the period of her re-employment. I further direct respondents to disburse to the applicant the entire pension relief of the applicant suspended and recovered so far vide Annexure A-1 order.

9. There shall be no order as to costs.


3.8.93

(N. DHARMADAN)
JUDICIAL MEMBER
3.8.93

kmm

List of Annexures

1. Annexure A-1 : Memo dated 24.8.78
2. Annexure A-4 : Memo dated 29.6.92