

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Date of decision: 16-8-1993

Original Application No.48 of 1993

1. K Sumathy
2. MV Valsala
3. UK Bhanumathy - Applicants

Mr PV Mohanan - Counsel for the applicants

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1. Union of India represented by its Secretary, Ministry of Personnel, Public Grievances & Pension, New Delhi-110 001.

2. The Director General, Indian Council of Agricultural Research, Krishi Bhavan, Dr. Rajendra Prasad Road, New Delhi-110 001.

3. The Director, Central Institute of Fisheries Technology, Matsyapuri P.O. Cochin-682 029.

4. The Senior Finance & Accounts Officer, Central Marine Fisheries Research Institute, Dr. Salim Ali Ahamed Road, Cochin-682 031. - Respondents

Mr George CP Tharakan, SCGSC - Counsel for the respondent-1

Mr Jacob Varghese - Counsel for the respondents 2 to 4

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HON'BLE MR N DHARMADAN, JUDICIAL MEMBER

JUDGEMENT

N DHARMADAN, JUDICIAL MEMBER

The learned counsel for applicant submitted that this case is covered by the earlier judgement of this Tribunal in OA-282/90 dated 25.11.1991, reported in

5

Smt E Manikkam V. The Post Master, Tirur, Malappuram, 1992(1) (CAT) SLJ, 589 which was followed in a batch of cases recently by this Tribunal in OA-206/93 and connected cases on 23.7.1993.

2. All the applicants are wives of government employees who died while in service. They were given compassionate appointment considering the family position. They are receiving family pension after the death of their husbands. When the relief on adhoc pension was withheld they have jointly filed this application on 6.1.1993 under Section 19 of the Administrative Tribunals Act with the following prayers:

- "(a) To declare that the applicants are entitled to get adhoc relief on family pension with effect from the date on which it was suspended.
- (b) To direct the respondents to grant adhoc relief on family pension retrospectively and to continue to pay the same with arrears.
- (c) To direct the respondents to consider and dispose of Annexure-I, II and III in accordance with law."

3. The learned counsel for respondents admitted that this case is covered by the earlier decisions, but contended that the effect of the amendment of Central Civil Services(Pension)Rules, which is produced as Annexure-R2, has not been considered in the earlier cases. All the facts stated in the application are admitted by the respondents in their reply.

4. I have gone through the amendment. By an amendment dated 29.1.1991, Rule 55-A has been introduced. The relevant clause(ii) of the above rule reads as follows:

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"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."

5. It is only after the said amendment the basic judgement in OA-282/90 was pronounced by this Tribunal on 25.11.1990. However, it appears that this amendment was not brought to the notice of this Tribunal at the time of pronouncement of the judgement. The reasoning in para-4 of the judgement covers the argument of the learned counsel for the respondents based on the present amendment also. I am of the view that the effect of the reasoning of this Tribunal has not been nullified by the introduction of a new section with the wordings as referred to in clause(ii).

6. The learned counsel for applicant also submitted that clause(ii) of Rule 55-A cannot be applied to the applicants because the applicants are not re-employed persons under the Central Government. They were employed on compassionate ground after the death of their husbands. The amended clause says:

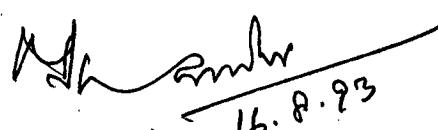
"... a pensioner is re-employed under the Central or State Government.." shall not be eligible for dearness allowance on pension during the period of such re-employment. Here in the instant case, since the applicants were given compassionate appointment, they are not re-employed persons coming within the purview of clause(ii) of the amended rule, even if it is held that the amendment has nullified the reasoning in the judgement.

7. The respondents have not given any answer to the above contention of the applicants. It is admitted by them that the applicants are not re-employed employees under the Central Government or State Government in order to apply the amended clause(ii) of Rule 55-A.

8. Hence under these circumstances of the case, I accept the contention of the applicants that the amendment will not apply to the applicants. In this view of the matter, the judgement referred by this Tribunal in OA-282/90 applies to the facts of this case.

9. Accordingly, I allow the OA declaring that the applicants are eligible to get adhoc relief on family pension with effect from the date on which the same was suspended or withheld from them. I also direct the respondents to disburse to the applicants the arrears in this behalf within a period of four months from the date of receipt of a copy of this judgement.

10. The OA is accordingly allowed as above. No costs.


(N DHARMADAN)
JUDICIAL MEMBER
16-8-1993

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