

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 498/99

Dated the 5th day of November, 1999.

CORAM

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Smt. T.K.Kaussallia
P.P.O. 85/SL/TVM
W/o Late C.Velu, Retired Postman
Kandassankadavu
Chakkalaparambil House
Kandassankadavu P.O.
Trichur.

...Applicant

(By advocate Mr P.N.Santhosh)

Versus

1. Union of India represented by
Secretary, Department of Post
Government of India
New Delhi.
2. The Chief Postmaster General
Thiruvananthapuram.
3. The Postmaster
Trichur Head Office
Trichur Division
Trichur.

...Respondents.

(By advocate Mr P.Vijayakumar)

The application having been heard on 8th October, 1999,
the Tribunal delivered the following on 5th November, 1999.

ORDER

HON'BLE MR G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicant in this OA is the widow of late C.Velu who
was a postman under the respondents. She has approached
the Tribunal through this OA aggrieved by A-2 order dated
24-11-98 advising her that she was not eligible for family
pension and she would be paid only Rs. 50/- per month as
medical allowance.

2. Late Shri Velu while as a pensioner passed away in 1970
and as a consequence the family pension payable was divided
in equal share between the applicant and another widow by
name Kunhikali. The applicant was being paid her share of

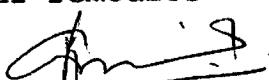


family pension under P.P.O.No.85/SL/TVM through Kamdassankadavu post office. According to the applicant, Smt Kunhikali also passed away on 3-4-82 leaving no eligible child and as a consequence on and with effect from 4-4-82 the share of family pension which was being received by Kunhikali was not paid to anybody. Referring to Rule 54 (7) of the Central Civil Services Pension Rules, 1972 the applicant submitted that she is entitled to receive the full family pension w.e.f. 4-4-82. She stated that she did not get any response from the authorities to the several representations submitted by her. Finally she submitted A-1 representation dated 12-6-98 addressed to Senior Superintendent of Post Offices, Trichur requesting for payment of full pension which was rejected by A-2 letter dated 24-11-98 issued by the third respondent. According to the applicant, A-2 was totally arbitrary, discriminatory and contrary to law and violative of Articles 14, 16, 41 and 300A of the Constitution. She further pleaded that in terms of Rule 54 (7), family pension when payable to more widows than one, it should be paid to the widows in equal shares and in terms of the proviso to Rule 54 (7) (a) (ii) on the death of a widow who is not survived by any eligible child her share of the family pension would not lapse but would be payable to other widows in equal shares or if there was only one such other widow, in full to her. She submitted that at the time of the demise of Kunhikali she was not survived by any eligible child and, therefore, according to the above instructions her share of the family pension would not lapse and in the result the applicant would be eligible for family pension in full from the date next after the date of demise of late Kunhikali. Referring to A-2, she submitted that A-2 was without application of mind and non-speaking in nature. She prayed for the following reliefs in para 8 of the OA:



- a) Call for the records leading to issue of A-2 and quash the same.
- b) Declare that the applicant is entitled to get full family pension w.e.f. 4-4-82 with consequential benefit including arrears thereof.
- c) Direct the respondents to grant the benefit of the declaration in para 8(b) above including arrears thereof with 18% interest from the date from which arrears fell due.
- d) Award costs of and incidental to this application and
- e) Pass such other orders or directions as deemed fit and necessary in the facts and circumstances of the case.

3. The Superintendent of Post Offices, Trichur Division filed reply statement on behalf of all the respondents as authorised by them. Respondents in the reply statement resisted the claim of the applicant. It was submitted that on the date of death of Kunhikali on 3-4-82, the first wife of Velu, according to Rule 54 (7)(a)(ii) of C.C.S.(Pension) Rules as it then existed, her share of family pension ceased to be payable. Amendment to the said provision enabling the surviving co-wife to receive the share of family pension drawn by wife of the deceased came into force with effect from 29-1-91 only. Since the same did not have retrospective effect, the amended rule would not enable the applicant to claim the share of Kunhikali which ceased to be payable on her death on 3-4-82. In the above context they filed the extract of Rule 54 (7)(a)(ii) of CCS (Pension) Rules, 1972 as it existed on 3-4-82 and Ministry of Personnel, Public Grievances and Pension, Department of Pension & Pensioners Welfare Notification No.1/17/90-P&PW dated 29-1-91 as Annexures R-3(a) and R-3(b) respectively. They submitted that as the other widow expired on 3-4-82 in terms of Rule 54 (7) of CCS (Pension) Rules, 1972 as it then existed, the applicant was not entitled to receive the full family pension with effect from 4-4-82. They further submitted that the claim for pension said to be due since 1982 and made permissible only as per amended rule 1991 was barred by limitation. They further submitted that the applicant has not availed all departmental remedies before approaching the Tribunal. They



prayed for dismissal of the OA.

4. Heard learned counsel for the parties. Learned counsel of the applicant submitted that even though in 1982 there was no provision under the Rule for payment of the share of family pension of a deceased widow in the absence of any children to her to the surviving widow and her children, and that portion of the family pension was to lapse, with effect from 1991 when an amendment to the Rule had been made providing that the same would not lapse and become payable to the surviving widow and her children denying the same to the applicant in this case for the sole reason that Smt Kunhikali died in 1982 would be discriminatory. In this context, he relied on the judgement of the Hon'ble Supreme Court in the case of Smt. Poonamal and others Vs. Union of India and others reported in (1985) 3 SCC 345.

5. Learned counsel for the respondents took me through the pleadings in the reply statement. He relied on the judgement of the Hon'ble Supreme Court in the case of Kasturi Vs. State Bank of India, reported in Kerala Law Times (1999) (2) KLT SN-15 and submitted that as per the ratio of the judgement in this case the applicant cannot claim the benefit of the Government's order of 1991 when the first widow had died in 1982 and her portion of the family pension had already lapsed.

6. I have given careful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have perused the documents brought on record.

7. In my view the only issue to be decided in this case is whether the benefit of the amended provisions to Rule 54 sub rule 7 which came into force on 29-1-91 will operate in the case where one of the widows had died prior to 29.1.91.



Rule 54(7)(a)(ii) as it existed prior to 29-1-91 was as follows:

"On the death of a widow her share of the family pension shall become payable to her eligible child, provided that if that widow is not survived by any child, her share of the family pension shall cease to be payable."

From the Swamy's Pension Compilation incorporating CCS Pension Rules (14th edition 1998), Rule 54 (7) after amendment in 1991 is as follows: (Amendments made/provisions inserted in 1991 are indicated with *).

"7(a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child:

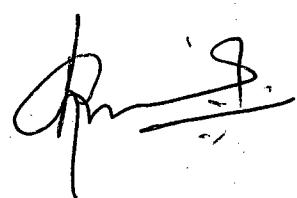
*(1) Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

*(2) Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and/or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

(c) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been so divorced.

*(3) Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible in equal shares, or if there is only one widow or child, in full, to such widow or child.



(d) Where the family pension is payable to twin children it shall be paid to such children in equal shares:

Provided that when one such child ceases to be eligible his/her share shall revert to the other child and when both of them cease to be eligible the family pension shall be payable to the next eligible single child/twin children."

In the case of Smt Poonamal & others Vs. UOI & others, (1985) 3 SCC 345) relied on by the learned counsel for the applicant, the Hon'ble Supreme Court held as under:

"Since the family pension scheme has become non-contributory effective from September 22, 1977 any attempt at denying its benefit to widows and dependents of Government servants who had not taken advantage of the 1964 liberalisation scheme by making or agreeing to make necessary contribution would be denial of equality to persons similarly situated and hence violative of Article 14. If widows and dependents of deceased Government servants since after September 22, 1977 would be entitled to benefits of family pension scheme without the obligation of making contribution, those widows who were denied the benefits on the ground that the Government servants having not agreed to make the contribution, could not be differently treated because that would be introducing an obvious classification among those who would be entitled to similar treatment."

8. In that case, the Court was considering the case of a group of widows of erstwhile Government servants who were not in receipt of family pension whose husbands-Government servants-had not agreed to make contribution in accordance with the 1964 scheme. Subsequently, on the basis of the observations of the Court, the Government agreed to grant the arrears of family pension from September 22, 1977 the date on which contribution of 2 months emoluments had been dispensed with, to such widows.

9. Learned counsel for the respondents cited Kasturi's case reported in 1999 (2) KLT SN-15 in support of the pleas of the respondents. The full text of this judgement V.Kasturi Vs. Managing Director, State Bank of India and another is reported in AIR 1999 SC 81. In this context, it is worthwhile to reproduce para 20 to 22 of this judgement:



"20. It is now time for us to take stock of the situation. From the aforesaid resume of relevant decisions of this Court spread over years to which our attention was invited by learned counsel for the respective parties, the following legal position clearly gets projected.

Category I

21. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time by subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara's case (AIR 1983 SC 130) (Supra) would cover this category of cases.

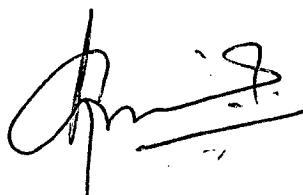
Category II

22. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such a new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decision of this Court covering such second category of cases are Commander, Head Quarter, Calcutta v. Capt. Biplbendra Chanda (1997) 1 SCC 208: (1997) AIR SCW 2564 (Supra) and Govt. of Tamil Nadu V. K. Yayaraman, (1997) 9 SCC 606: (1997) AIR SCW 1434 (Supra) and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit."



10. Hon'ble Apex Court in the above case rejected the case of the appellant Kasturi stating that he fell in category II and respondents are relying on this rejection. But accepting such an interpretation of the respondents will be making two classes of surviving widow family pensioners on the basis of the date of death of one of the widow family pensioners: i.e. whether it had occurred prior to 29.1.91 or after 29.1.91. Such a classification among the surviving widow family pensioners cannot be made. Such a view had been expressed by the Hon'ble Apex Court in Smt. Poonamal's case referred to earlier. In para 21 of Kasturi's case the same has been stated again in the case of pensioners. Thus on the basis of the law laid down by the Supreme Court in the above case, the submissions made by the learned counsel for the applicant relying on the earlier judgement gets strengthened. In fact the judgement cited by the learned counsel for the respondents actually supports the case of the applicant. Therefore, I am of the view that the applicant in this case - a family pensioner - would be governed by the principle enunciated in para 21 of the judgement in Kasturi's case and would be covered by the beneficial provisions of the amended Rule 54 (7) of CCS (Pension) Rules, 1972 and she will be entitled to get the share of the family pension of late Kunhikali from 29.1.91 in addition to her own.

11. Another point raised by the learned counsel for the respondents was the question of limitation. Family pension is a monthly payment and cause of action arises every month when it is received. Therefore, the question of limitation does not arise as far as correct payment of family pension is concerned but arises only in regard to payment of arrears.

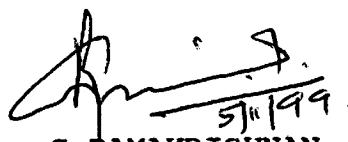
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12. In view of the foregoing, A-2 dated 24-11-98 in so far as it denies the full family pension to the applicant is set aside and quashed and I hold that the applicant is eligible for full family pension from 29-1-91 onwards. As a result the applicant is also eligible to receive the full medical allowance sanctioned by the Government from the due date. As regards arrears of the difference between the full family pension and what was received by her, she is eligible for the same for a period of three years worked backwards from the date of filing of this OA viz. 27-4-99.

13. Respondents are directed to make payment of arrears accrued to her on account of the family pension as above and the arrears of medical allowance with interest @ 12% per annum from the dates they became due to the last date of the month previous to the date of payment within three months from the date of receipt of a copy of this order.

14. The OA stands partly allowed as above with no order as to costs.

Dated 5th day of November, 1999.



5/11/99
G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

aa.

Annexures referred to in this order:

A-2: True copy of letter No. AN2/FP-233 dated 24.11.98 issued by the postmaster, Trichur HO, Trichur.

A-1: True copy of the representation dated 12.6.98 addressed to the Sr. Supdt. of Post offices, Trichur Division.

R3(a) True copy of the extract of Rule 54(7)(a)(ii) of CCS (Pension) Rules 1972 as existed on 3.4.82.

R3(b) True copy of Notification No. 1/17/90-P&PW dated 29.1.91 issued by the Ministry of Personnel, PG Pension.

R3(c) Letter No. 3174/Pen. 5/PPO No. 85/SL/TVM issued by Dy. Director of A/cs Postal, Trivandrum.