

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 500/92
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DATE OF DECISION 29.9.92.

Smt KK Gowri and 3 others _____ Applicant (s)

Mr M. Rajagopalan & CC Suresh Advocate for the Applicant (s)

Versus

Union of India (Secy. Min. of Defence) and 3 others Respondent (s)

Mr NN Sugunapalan _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. PS Habeeb Mohamed - Administrative Member

&

The Hon'ble Mr. AV Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *NO*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *NO*
4. To be circulated to all Benches of the Tribunal ? *NO*

JUDGEMENT

(Hon'ble Shri AV Haridasan, JM)

The common grievance of the applicants is that the respondents have illegally denied to them the relief on family pension on the sole ground that they are now employed. The facts are like these:

2. On the death of the husbands of the applicants, who were employed under the NPOL, the applicants were granted family pension. Subsequent to that, the applicants 1 & 2 were appointed as Helper Last Grade and applicants 3 & 4 were appointed as LDC in the NPOL on different dates.

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The applicants were receiving family pension through the 3rd respondent. After their ~~employment~~, the respondents are denying the applicants the relief on family pension payable to them on the ground that they are employed. Alleging that the denial of relief on family pension to the applicants on the sole ground that they are employed is arbitrary, illegal and unjustified, the applicants have filed this application for the following reliefs:-

- (i) To direct the respondents to pay the relief payable to the applicants on their family pension during the period of their employment;
- (ii) to direct the respondents to return the entire pension relief of the applicants suspended so far;
- (iii) to declare that any classification of family pensioners as employed and unemployed for the purpose of denying the pension relief, is arbitrary and unconstitutional; and
- (iv) to grant such other relief deem fit. 

It has been averred in the application that as the family pension is paid for the benefit of the entire family, it is unjust and illegal to take away a portion of that for the reason that one of the beneficiaries got employed.

It has also been averred that as the family pension is not taken into account in fixing the pay of the applicants, there is no justification for denial to them the relief on family pension.

3. Though the respondents were given opportunities for filing reply statement, they did not do so and when the application came up for final hearing, the counsel on either side submitted that as the identical question has been decided by this Tribunal in OA 282/90, this case also can be decided in line with the above decision.

4. We have carefully perused the pleadings and documents and heard the counsel. We have also perused a copy of the judgement in OA 282/90.

5. In OA 282/90, the applicant who was employed under the Government of Kerala as a Clerk, was granted family pension on the death of her husband who was an employee under the Southern Railway. When the relief on family pension was stopped on the ground that she was employed in the service of the Government of Kerala, on the basis of the directions contained in the Government of India, Ministry of Finance OM No.22(8)-E.V(A)/75 dated 13th February, 1976 and No.13(6)-E.V(A)/76 dated 6th April, 1976 and in the Government of India, Ministry of Railways letter No.F(E)III.75 PN.1/8, dated 18th March, 1977, the applicant challenged the constitutional validity of the instructions. Considering the rival contentions in the case, the Bench of which one of us, the Judicial Member, was a party observed as follows:-

"Family pension would be payable to the family of a deceased Govt servant as per provisions of Rule 54 of the Civil Services(Pension) Rules. As per the provisions of this rule the quantum of family

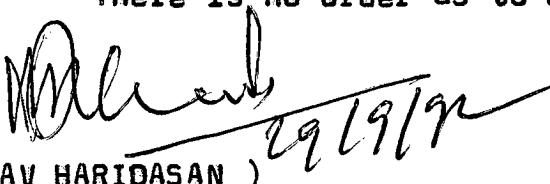
pension is dependent on the basic pay of the Govt servant and the length of his service. It has absolutely no relation to the number of dependent members in the family and the financial position of the family. The quantum of family pension would be the same if two Govt servants with identical service conditions die and if in one case, the family is possessed of substantial properties yielding sufficient income for the luxurious living of the family and in the other the family has nothing to fall back upon apart from the family pension. Similarly there is nothing in the CCS (Pension) Rules which would suggest that, if a recipient of a family pension is employed there should be a reduction in the pension or in the relief on pension. The family pension payable to the family of a deceased Govt servant has absolutely no bearing on the question whether the recipient of the family pension is employed or unemployed. Family pension is granted to the family of the deceased Govt servant not solely as a welfare measure but also in consideration of service rendered by the Govt Servant during the period while he was in service. So the family pension also cannot be considered as an exgratia payment or a bounty. Family pension therefore is a property earned by the recipient and deprival of such property either in part or in whole without observing the due process of law has to be struck down as unreasonable and unjust. It is well settled by now that relief on pension is an adjunct of pension. As the salary of the recipient of family pension is not fixed taking into account of the family pension, the fact that the recipient of the family pension is an employee under the Govt receiving a regular salary cannot be considered as a ground to deprive him of a portion of the pension or the pension relief. In a case where one or more members of the family in receipt of family pension is or are employed in private sector undertakings or in business and are earning substantial income the relief on pension is not suspended on account of they being so employed. But even if one member of the family who is a recipient of the family pension is employed either in the State Govt or in Central Govt or in any company or corporation owned by such Govt though in the lowest post, as per the instructions at R1(A) and R2(A) the relief on pension is to be suspended during the period when the recipient of the family pension is thus employed. This discrimination to our mind is highly arbitrary and unreasonable. Since the instructions contained in Annexure-R1(A) and the clarification contained in Annexure R2(A) are only in the nature of administrative instructions which have no statutory force and since they purport to abridge the statutory benefit conferred by Rule 54 of the Civil Services (Pension) Rules, we are of the view that these instructions are unsustainable."

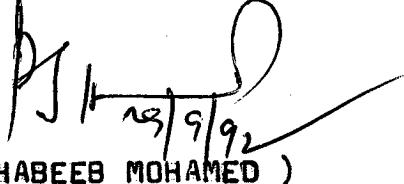
We are in agreement with the above rulings of this Tribunal on the very same subject. The action on the part of the respondents in denying relief on family pension to the

applicants on the ground that they are employed in an establishment under the Government of India, is arbitrary, illegal and discriminatory.

6. Therefore, we allow the application, declare that any classification of family pensioners as employed and unemployed for the purpose of denying the relief on pension is arbitrary and unconstitutional and direct the respondents to pay the relief payable to the applicants on their family pension during the period of their employment and to refund the entire relief on family pension of the applicants which has been so far recovered or suspended within a period of two months from the date of communication of this order.

7. There is no order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER


(PS HABEEB MOHAMED)
ADMINISTRATIVE MEMBER

29.9.1992.

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