

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.587/1996

Tuesday this the 8th day of July, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

K.A.Kunjukutty,
W/o (Late) Kunjukunju,
Group D, Omalloor PO,
Charuvukalayil, Muttathukonam PO,
Elavunthitta. ..Applicant

(By Advocate Mr. R.Sreeraj for MR Rajendran Nair)

Vs.

1. The Post master, High Selection Grade I,
Pathanamthitta.
2. Union of India represented by Secretary
to Government, Ministry of
Communications, New Delhi. .. Respondents

(By Advocate Mr. Haridasan for Mr.George Joseph)

The application having been heard on 8.7.1997, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant's husband died on 20.7.81 while serving as Postal Assistant in Omalloor Post Office. Employment assistance on compassionate grounds was given to the applicant and she was appointed on a Group D post with effect from 10.7.82. As the applicant got reemployed the relief on family pension was denied to her from 10.7.82. This action was challenged by the applicant before this Tribunal in OA.283/94. In the said application the applicant sought reliance of the decision of the Tribunal in similar applications like OAs 710/92, 836/93, 1862/93, 106/93 and 336/93 etc. The respondents contended that the department had taken up the matter before the Hon'ble Supreme Court in Special Leave Petition and therefore the matter had not become final. However, it was held that the

pendency of a Special Leave Petition did not stand in the way of the Tribunal following the dictum laid down in the earlier decisions. The Tribunal by its order dated 1.8.94 preferred to follow the precedents and allowed the Original Application directing the respondents to grant relief on family pension including arrears to the applicant within three months from the date of the order. However, it was specifically provided in the order as follows:

"In the event of the Supreme Court declaring the law to the contra applicant will repay the amounts received by them. Parties will suffer their costs."

Special Leave Petitions filed by the respondents in similar cases were allowed and the orders passed by the Tribunal on identical issues were reversed by the Hon'ble Supreme Court in its judgement in Union of India Vs. Vasudevan Pillai, 1995(2) SCC 32. It was held that the re-employed pensioners and those who were in receipt of family pension and are employed under the Government would not be entitled to relief on the pension/family pension during their employment. Before the decision in Union of India Vs. Vasudevan Pillai was rendered pursuant to the judgment in O.A.283/94, a sum of Rs.30,822/- was paid to the applicant as arrears of relief on family pension from 10.7.82 to 30.6.95. The amount was paid to the applicant on her undertaking that the same would be refunded in case a contrary view would be taken by the Supreme Court. Now that the Supreme Court has taken the contrary view, the first respondent has issued the impugned order dated 17.4.96 that the amount of Rs.30,822/- paid as relief on family pension to the applicant from 10.7.82 to 30.6.95 should be credited in one lump and directed action to be taken to credit the amount in enforcement of the undertaking given by the applicant. This order dated

17.4.96 (A-1) is under challenge in this application filed by the applicant.

2. The impugned action is assailed mainly on the ground that no appeal was filed against the order in OA.283/94 and that as the payment was made to the applicant on the basis of the Tribunal's Order and not on account of any fault on her part, the respondents are not justified in recovering the amount. Reliance is placed by the applicant on the decision of the Supreme Court in Shyam Babu Verma Vs. Union of India (1994) 27 ATC 121, Tek Chand Dhanial Vs. Union of India (1994) 27 ATC 673.

3. I have heard the learned counsel for both the parties and have perused the pleadings and the other material available on record. The Tribunal in its order in O.A.283/94 pursuant to which the amount of Rs.30,822/- was paid to the applicant had not adjudicated the issue on merits independent of the decision rendered in the earlier cases. It followed the earlier decisions as binding precedents on the ground that the pendency of Special Leave Petitions would not stand in the way of the precedents being followed. However, the Tribunal made it very clear that in the event the Supreme Court takes a contrary view, the amount if paid to the applicant would be refunded. It was on the basis of this Judgment that a sum of Rs.30,822/- was paid to the applicant. It is not in dispute that in Union of India Vs. Vasudevan Pillai, 1995(2) SCC 32 the Supreme Court has held that those who are in receipt of family pension are not entitled to get the relief on family pension while they are in employment of the government. This is a contrary view as opposed to the view taken in the judgment of the Tribunal in O.A.283/94. In terms of the judgment in OA 283/94 and also on the basis of the undertaking given by the applicant, the applicant is not entitled to claim that the amount is not refundable by her. The

reliance placed on the judgment of the Hon'ble Supreme Court in Shyam Babu Verma's case and Tek Chand Dhanial's case are misplaced because the facts of the case bear no similarity to the facts of the case on hand. In the instant case the applicant had given a specific undertaking that in the event of the Supreme Court taking a contrary view she would refund the amount paid to her. Further more in the judgment pursuant to which the amount was paid to her itself it was provided that in case a contrary view is taken by the Supreme Court the amount paid to the applicant shall be refunded.

4. The learned counsel for the applicant argued that in Union of India vs. Smt. Gulabgouri P. Pandya and others arising out of SLP(C) No. 6248-50/95 a copy of which is marked as A-3, the Supreme Court had directed that the amount already paid to the respondents under the head of Dearness Relief on family pension would not be recovered from them and that the facts of this case being identical a similar view has to be taken in this case also. We are not informed about the facts of the case arising out of SLP 6248-50/95. We do not know whether payments were made on the basis of an order or without dispute by the respondents. If Dearness Relief was paid to employees of the Government on the family pension for a long time by the government without compulsion, and for no reason attributable to the employees it may be unfair after a long time to order the employees to refund the whole amount. It may under such circumstances the Hon'ble Supreme Court could hold so, to do justice to the applicants before it. Therefore as the facts in the case under citation are not known, it is not possible to conclude that the facts are identical with the facts of this case. Further, in view of the specific provision in the judgment in OA 283/94 and in view of the specific undertaking given by the applicant, whatever is stated in Union of India and others

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Vs. Smt. Gulabgouri P.Pandya and others have no application to the facts of this case.

5. In the result and in the light of what is stated above, I find little merit in this application and I dismiss the same. Parties will suffer their costs.

Dated the 8th day of July, 1997.


A.V. HARIDASAN
VICE CHAIRMAN

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LIST OF ANNEXURES

Annexure A1: True copy of the letter No.C/Misc/Pen.
dated 17.4.1996 issued by 1st respondent
to the applicant.

Annexure A3: True copy of the order dated 1.12.1995
in S.L.P.(C) No.6248-50 of 1995 by the
Hon'ble Supreme Court of India.

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