

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 106 199 3.

DATE OF DECISION 24.2.93

M.P. Omana and others Applicant (s)

Mr. K.S. Bahuleyan Advocate for the Applicant (s)

Versus

The Sr. Postmaster, Ernakulam Respondent (s)  
Head Post Office, Ernakulam and others

Mr. S. Krishnamurthy, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N. DHARMADAN JUDICIAL MEMBER

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
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

MR. N. DHARMADAN JUDICIAL MEMBER

The learned counsel for the applicants submitted that the case of the applicants is covered by the judgment of this Tribunal in O.A. 719/92, O.A. 1034/92, etc. and hence, this case can be allowed. The learned counsel for respondents is not in a position to dispute the statement of the learned counsel for applicants and distinguish the facts of the case with those of the cases referred to above so as to take a different view.

2. Applicants are widows who got compassionate appointment after the death of their husbands. All these persons were getting family pension including Dearness Relief. Later the relief portion of the pension was suspended on the ground of their compassionate appointment on the death of their husbands. In the case of the first applicant the dearness

relief on family pension paid for the period from 1.10.75 to 6.4.76 was recovered by the Department. Similar recoveries were made from the family pension of other applicants as well. Under these circumstances, representations were filed by the applicants for continued payment of relief portion of the family pension. Those representations were rejected as per Annexures A-2, A-3 and A-4 orders. Under these circumstances, they have filed this application under section 19 of the Administrative Act with the following reliefs:

- "i) to direct the respondents to pay the dearness relief on family pension to the applicants despite the fact that they have subsequently been employed;
- ii) to direct the respondents to pay the arrears of dearness relief on family pension forthwith;
- iii) to issue any other order or direction, which this Tribunal may deem fit and proper in the circumstance of the case.."

3. This application was admitted in 20.1.93 and the respondents were directed to file their reply statement within 3 weeks with a copy to learned counsel for applicant who may file rejoinder within a week thereafter. The case was accordingly posted for final hearing today. No reply has been filed by the respondents even today.

4. Having heard learned counsel for both sides, I am of the view that this application can be disposed of following earlier judgment in O.A. 1034/92. The relevant portion is extracted below:

"... The Supreme Court has held in Deokinandan Prasad v. State of Bihar, AIR 1971 SC 1409, that "pension is not a bounty payable on the sweet will and pleasure of the Government and that on the other hand the right to pension is a valuable right vesting in a Government servant." In that case Tribunal struck down the sub clause (ii) of Rule 55-A as violative of Article 14 of the Constitution of India and held as follows:

"...It acts like a stabilizer to keep the pension intact in spite of the change in the purchasing power of the rupee. If the dearness relief is not paid, the persons concerned will get a diminished pension in terms of real value and pension being a right cannot be diminished indirectly. Pensioners are getting dearness relief against price rise as per sub-clause (i) of Rule 55-A;

sub clause (ii) of the same Rule which denies dearness relief on pension to a category of pensioners, namely the re-employed, is an unreasonable discrimination since the price rise is the same for all pensioners. So sub-clause (ii) of Rule 55-A is violative of Art. 14 of the Constitution and hence not enforceable.

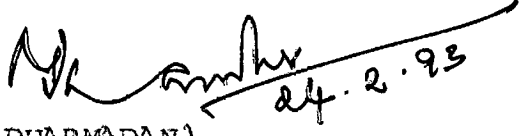
In the result, the respondents are directed to continue to pay dearness relief on pension to the applicants. The application is allowed. No costs.

5. This Tribunal considered the validity of the executive orders issued by the Government, having similar wordings contained in OM dated 17.1.77 relied on by the respondents in their reply for objecting the claim of the petitioners, and struck down the same on the ground that they are in the nature of administrative instructions and arbitrary having no statutory force and they abridge the statutory benefits conferred on the persons eligible for family pension under Rule 54 of CCS (Pension) Rules."

5. In the result, I allow the application and direct the respondents not to deduct the dearness relief on family pension payable to the applicants. They may also disburse to the applicants the dearness relief portion of the family pension already deducted/recovered from them. This shall be done within a period of three months from the date of receipt of a copy of this judgment.

6. The application is accordingly allowed.

7. There shall be no order as to costs.

  
(N. DHARMADAN)  
JUDICIAL MEMBER  
24.2.93

kmm