

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 140/2011

Thursday, this the 13th day of October, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

K.Radha, W/o late P.C.Achuthan Nair,
Gowrisankaram, C8, Hill View Nagar,
Puduppariyaram.P.O., Thanavu,
Palakkad District.Applicant

(By Advocate Mr V Rajendran)

v.

1. Union of India represented by the Secretary,
Ministry of Communication & IT,
Department of Posts, Dak Bhavan,
Sansad Marg, New Delhi-110 001.
2. Director of Accounts (Postal), Kerala Circle,
14th Floor, GPO Building, Trivandrum-695 001.
3. Superintendent of Post Offices,
Manjeri Division, Manjeri, Malappuram.Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

This application having been finally heard on 10.10.2011, the Tribunal on 13.10.2011 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is the widowed daughter of one late Krishnankutty Menon, who retired as Postmaster in 1959 and expired on 11-12-1960. She has been granted family pension vide Annexure A-1 PPO wherein the quantum prescribed was Rs 1913 plus Relief admissible from time to time per month upto 31-12-2005 and Rs 3,500/- plus admissible Dearness relief w.e.f. 01-01-2006. In fact, prior to

family pension and she had expired in 1984. Vide Annexure A-3, the total amount of family pension paid to the applicant is Rs 4,545/-. This amount, according to the applicant is less than the entitled amount, in that the father of the applicant retired as Post Master and the extent of family pension should be 30% of the minimum of the scale of pay plus grade pay as family pension. The same should be incremented with the extent of dearness relief as well, whereas, it is only the minimum of Rs 3,500 that had been sanctioned to the applicant. Hence the claim of the applicant is as under:-

- (i) To issue an order setting aside Annexure A-5 and A-6 to the extent they refuse to sanction the due family pension to the applicant;
- (i)(a) Issue an order to set aside Annexure A-13 order;
- (iii) To issue an order directing the 2nd respondent to revise the family pension of the applicant in accordance with the revised scale of pay of the post held by her deceased father at the time of his retirement and disburse the same including arrears thereof expeditiously;
- (iv) To issue an order directing the 2nd respondent to consider Annexure A-8 representation expeditiously and pass appropriate orders in accordance with law within a time frame to be specified by this Tribunal with notice to the applicant.

2. Respondents have contested the O.A. According to them, the records held by them were not sufficient to ascertain as to whether the applicant's father was holding the post of HSG Postmaster at the time of his retirement and hence full details were called for from the applicant and the same could not be furnished by the applicant. Para 5 of the reply refers.

3. In their additional reply the respondents have added some documents whereby it is seen that the as per Book of Information, Palakkad H.O. Came into



existence w.e.f. 01-07-1943 and the establishment register shows the date of creation of the post of Postmaster Palakkad as 04-01-1948. Hence it is to be presumed that the office was an HSG HO during December 1959. The applicant's father in fact retired as Postmaster Thrissur/Officiating Post Master Palghat at the time of retirement. According to the respondents presumably, the post of Post Master at Thrissur and Post Master at Palghat had different status in December, 1959. Candidly, the respondents have stated, "Under the above circumstances, this office is unable to arrive at a decision as to the status of the Post offices and grades of the postmasters of Trichur/Palakkad HPOs in December, 1959 and hence unable to fix the family Pension based on Pay applicable to the grade of the Postmaster held during December 1959.... Under the above circumstances, the applicant's prayer in the OA may be decided by the Hon'ble C.A.T."

4. At the very outset, the respondents deserve commendation for their candidness as invariably there would always be resistance to the claim of an individual and prayer would be only to dismiss the OA, whereas, in the instant case, the respondents have placed the entire facts and in view of the fact that they could not decide the extent of family pension admissible, have left the decision to the CAT. The Counsel for the respondent too equally deserves appreciation as such a statement cannot but be with the suggestion of the counsel.

5. Coming to the issue involved, the fact that the applicant's father retired as Officiating Postmaster at Palakkad is not in dispute. Documents furnished with the additional reply also would go to show that the post of Postmaster at Palakkad was one of HSG grade.



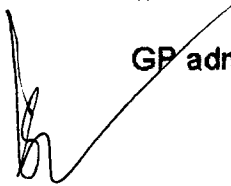
6. Law is settled in regard to benefit of doubt. It is always in favour of the individuals. In fact, even regulations refer to such benefit of doubt being given to the individuals, as for example, in the case of attributability of disability, vide Regulation 423 of the Regulations for medical Services of the Armed Forces, 1983, for the purpose of determining whether the cause of a disability or death is or is not attributable to service, If the evidence is so strong against an individual as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt. If on the other hand, the evidence be so evenly balanced as to render impracticable a determinate conclusion one way or the other, then the case would be one in which the benefit of doubt could be given more liberally to the individual, in cases occurring in field service/active service areas.

(Union of India v. Surinder Singh Rathore, (2008) 5 SCC 747, at page 750 :

Union of India v. Keshar Singh, (2007) 12 SCC 675, at page 678)

7. In election matters, benefit of doubt is given to the candidate in respect of nomination, vide *Sitaram Jivabhai Gavali v. Ramjibhai P. Mahala, (1987) 2 SCC 262, at page 273.*

8. Thus, it can safely be stated that the applicant should be paid the family pension taking into account the fact that her father at the time of his superannuation was holding the post of Officiating Post Master, Palakkad, which was of the grade of HSG. As such family pension should be 30% of the pay plus GP admissible to the said post of HSG Postmaster.



9. Had there been no doubt at all in regard to the grade of the post held by the applicant's father, the applicant's claim would have been allowed as prayed for. However, in the event of benefit of doubt being the deciding factor, it is to be seen as to when from the applicant should be granted the family pension @ 30% of the pay of HSG Postmaster. It has been held by the Apex Court in the case of **Government of India vs K.V. Swamination (1997) 10 SCC 190** that where the claim is allowed on the basis of benefit of doubt the pension (freedom fighters) should be granted not from the date of application but from the date of the order. This decision has been referred to in the subsequent case of **Union of India vs Kaushalaya Devi (2007) 9 SCC 525**. We may safely borrow the above decision in deciding the date of entitlement of family pension at the rate claimed by the applicant.

10. Thus, the OA is **allowed** to the extent that the applicant shall be paid the family pension taking into account the status of the applicant's father at the time of retirement as HSG Postmaster. The enhanced pension shall be admissible to the applicant from the month of October, 2011. Respondents are directed to issue necessary amendment to the PPO within a period of two months from the date of receipt of certified copy of this order.

11. Under the circumstances, there shall be no orders as to costs.


Dr K.B.S.RAJAN
JUDICIAL MEMBER

trs

140/11

5.1.12

KBSR/KN

C-II

18. Mr. Thomas Mathew Nellimoottil
Mr. Nirmal Jain for Mr. V Rajendran


MA 1222/11

Two months time as prayed for is granted to the respondents to comply with the order. MA is accordingly allowed.


KN(AM)


KBSR(JM)

asp


2/6/12

Order issued

