

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 168 of 2001

Monday, this the 19th day of March, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

1. T.K. Sarojini,
W/o Parameswaran Vaidyar,
Perumpilly House,
South Vazhakulam Post, Aluva-5Applicant

[By Advocate Mr. Rajesh Vijayan (represented)]

Versus

1. Union of India,
Represented through the Secretary,
Department of Posts, New Delhi.
2. Post Master General,
Central Region,
Cochin - 682 016
3. Post Master,
Aluva Head Post Office,
Aluva.Respondents

[By Advocate Mr. Govindh K. Bharathan, SCGSC (represented)]

The application having been heard on 19-3-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

Since the MA No. 224/2001 for condonation of delay is
dismissed, this OA is barred by limitation and is liable to be
dismissed as time barred.

2. Accordingly, the Original Application is dismissed as
time barred. No costs.

Monday, this the 19th day of March, 2001


A.M. SIVADAS
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.168/2001

Friday this, the 13th day of September, 2002.

CORAM:

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

T.K.Sarojini,
W/o.Parameswaran Vaidyar,
Perumpilly House,
South Vazhakulam Post,
Aluva-5. .. Applicant

(By Advocate Sri Rajesh Vijayan)

vs.

1. Union of India
represented through the
The Secretary,
Department of Posts, New Delhi.
2. Post Master General,
Central Region,
Cochin-682 016.
3. Post Master,
Aluva Head Post Office,
Aluva. ... Respondents

(By Advocate Sri C.Rajendran, SCGSC)

The Application having been heard on 27.6.2002, the
Tribunal on 13.9.2002 delivered the following:-

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

The short question that arises for consideration in
the Original Application is whether a pensioner can be
denied relief on pension for the period he was working as an
Extra Departmental Agent of the Postal Department and
getting ED allowance and DA thereon.

2. The facts which are relevant are as follows. The
applicant who retired from service on superannuation on 31st

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October, 1993 was appointed Extra Departmental Sub Post Master(EDSPM- for short), Marampilly with effect from 23.9.1994. She was relieved from the office of EDSPM in 1998. She was in receipt of a monthly pension of Rs.1066/-. She was also getting the ED allowance and DA thereon. Her grievance is that she was by a letter of the third respondent dated 23rd August, 1996 asked to refund a sum of Rs.13,673/- on the ground that she had been inadvertantly paid relief on pension from 23.9.1994 when he was receiving ED allowance and DA thereon and that her pension was unilaterally reduced to Rs. 285/- . As the applicant disagreed to refund the said amount and refused to sign papers without reading them as directed by the third respondent , the respondents were not paying her pension. She has a further grievance that she has not been paid ex-gratia payment due as per rules. In reply to her repeated representation claiming the arrears of pension, she was told by the impugned order Annexure A1 dated 9.12.99 that a sum of Rs.13, 673/- as overpayment towards relief on pension during 23.9.94 to 31.7.96 is due from her and that she could receive the arrears of pension and arrears of ED allowance due after adjusting the aforesaid amount. The applicant alleging that there is no justification for denying the allowance on pension to her just because she was employed as an ED Agent, has filed this application seeking to set aside Annexure A1 order and for direction to the

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respondents to pay her the entire arrears of pension, arrears of ED allowance due to her as also ex-gratia payment.


3. The respondents in their statements contend that applicant while she was in receipt of ED allowance and DA thereon from 23.9.94 to 9.9.96 on re-employment, the relief on civil service pension was also inadvertantly paid to her, that the overpayment amounting to Rs.13,673/-was required to be recovered from her, that a part of the overpayment was adjusted from arrears of pension and ED allowance from what become due consequent on revision, that amount of Rs.9181/- had to be further recovered, that after adjusting the arrears of pension from 1.1.96 to 30.11.97(Rs.3914/-) and arrears of ED allowance from 1.1.96 to 9.9.96 (Rs.2730/-) a balance of overpayment of Rs.2537/- has to be recovered from the pension due to the applicant from 1.1.99 onwards, that the applicant refused to take the pension after adjustment of the overpayment, that the pension was never reduced to Rs.285/- as stated by the applicant, that as the applicant had worked as ED Agent on provisional basis for a short time, she was not eligible to ex-gratia payment as per rules and that as per decision of the Govt. of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners Welfare dated 2nd July 1999, which is applicable to re-employed EDA also in terms of Rule 2(3) of CCS(Fixation of pay of re-employed pensioners) Orders, 1986, dearness relief on pension is to be paid to re-employed pensioners alongwith relief on their re-employment pay only

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w.e.f. July 1997 and that therefore the action taken by the respondent to recover the overpayment made to the applicant inadvertantly, is perfectly in order. It is further contended that in terms of ruling of the Supreme Court in various cases, relief on pension as also relief on re-employment pay cannot be drawn simultaneously. The respondents pray that the application which is devoid of merit may be dismissed.

4. I have gone through the pleadings and documents carefully and have heard Mrs.Sadhana Kumari, the learned counsel of the applicant and Sri C.Rajendran, the learned Central Govt. Standing Counsel.The applicant's counsel submitted that the applicant is not pressing the claim for ex-gratia payment.

5. There is no dispute on the facts that the applicant was working as EDSPM, Marampilly from 23.9.94 till 10.9.96, that during that period she was in receipt of civil service pension with relief as also ED allowance with the DA thereon. The relief on pension as also ED allowance and DA thereon was paid to the applicant during the period by the Department. It is also an admitted that that in August, the applicant was directed to repay a sum of Rs.13,673/- on the ground that she was wrongly paid relief on pension as also DA on allowance on the ED post during 23.9.94 to 31.7.96. It is further undisputed that part of the overpayment was



adjusted from the arrears of pension and ED allowance and the balance worked out Rs.9181/- was to be deducted from the pension of the applicant and that the arrears remain to be paid to the applicant as she did not agree to adjust the alleged overpayment .

6. Learned counsel of the applicant argued that as the pension of the applicant had not been considered while fixing the ED allowance of the applicant as it was not a full time re-employment, there is no rule or instruction which would justify the denial of relief on pension to a pensioner because she worked as an extra-departmental agent and got a small amount as ED allowance and D.A. thereon.

7. The learned counsel of the respondents argued that in view of what is contained in Govt. of India orders dated 2.7.99 (R2A) payment of relief on pension as also DA on re-employment pay simultaneously will be admissible only w.e.f. 18.7.97 and as the said order is applicable to those who get reemployed even as ED Agents according to Rule (2)(3) of the CCS(Fixation of pay of Re-employed Pensioners)Order,1986, the payment of DA on ED allowance as also relief on pension of the applicant during 23.9.94 till 31.7.96 inadvertantly , the decision to recover the undeserved overpayment is perfectly justified. Learned

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counsel further argued that the respondents stand is supported by the ruling of the Apex Court in Union of India vs. Vasudevan Pillay reported in 1995(1) KLT 410.

8. I have gone through the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners Welfare O.M. dated 2nd July 1999 (No. 45/73/97-P & PW(G)), copy of which is R2A regarding payment of dearness relief on pension to re-employed pensioners and employed family pensioners accepting the recommendations of the Vth Central Pay Commission in that regard. A reading of the order would clearly show that this order applies to re-employed pensioners whose pay on re-employment was fixed having regard to the pay before retirement or ignoring or not ignoring a part or whole or part of the pension. In the case of an ED Agent there is no fixation of pay under the provisions of Central Civil Services (Fixation of Pay of Re-employed Pensioners) Orders, 1986. ED Agents at the time when the applicant started employment as ED Agent on her retirement were paid a fixed ED allowance and DA thereon. There was no running pay scale for a pay fixation. Further according to clause (d) of sub-rule 4 of Rule 2 of the Central Civil Services (Fixation of Pay of Reemployed Pensioners) Rules, the rules are not applicable to "persons on casual service or daily-rated or part-time employment". An ED agent not being a full-time employee but only on part time employment, the provision of the said rules do not apply to a pensioner, getting employed as an ED Agent. The

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argument of the learned counsel of the respondents that ED Agents also will be entitled to get relief on pension during their employment only from 18.7.1997 under R2A as the same is applicable to them in view of Rule 2(3) of CCS(Fixation of Pay of Re-employed Pensioners) Orders, 1986, therefore has no force at all.

9. I have carefully perused the judgment of the Apex Court in Vasudevan Pillay's(1995 1 KLT 410) case. The Apex Court in that case was considering whether it was just to deny the relief on pension to reemployed pensioners including exservicemen and to employed family pensioners during such employment. The court noted that in Annexure A1 to the O.M. dated 22.4.1987 of the Ministry of Personnel "on the subject of grant of dearness relief to pensioners on the recommendations of the Fourth Central Pay Commission" it was stated that "dearness relief will be suspended when the Central Government pensioner is re-employed in the department/office of the Central Government". The Court held that de hors what had been laid down in clause (ii) of Rule 55-A of CCS Pension Rules, there were records to show that any person including exservicemen would not be entitled to dearness relief on pension on his re-employment "to any department/office of the Central Government". Ultimately the Court held -

"..... according to us, even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. This category of pensioners can rightfully be treated differently from those who do not get re-employed, and in the case of the re-employed pensioners it would be permissible in law to deny D.R. on pension inasmuch as the salary to be paid to them, on re-employment takes care of

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erosion in the value of the money because of rise in prices, which lay at the back of grant of D.R. as they got Dearness Allowance on their pay which allowance is not available to those who do not get re-employed."

(emphasis supplied)


It is evident from what is extracted above that the Hon'ble Supreme Court considered the validity of denial of relief on pension to those pensioners who got re-employed "in the department/office of the Central Government" getting a pay and dearness allowance thereon and held that it was valid. Although it has been held in Rajamma vs. Superintendent of Post Offices, (1977) 3 SCC 94, that ED Agent is holder of a civil post for application of Article 311 of the Constitution, in view of the fact that appointment as ED Agent is outside the regular department/office in a part time basis, and not on a pay scale, but only on a fixed allowance, such appointment cannot be held to be re-employment in the department/office of the Central Government in order to attract the provision for suspension of Dearness Relief on pension contained in the Annexure 1 to O.M. dated 22.4.1987 considered by the Apex Court. Since the allowance attached to ED post is a meagre one in comparison to pay or salary of an employee in the department, a pensioner employed as an ED Agent cannot be treated on par with a person re-employed in the department/office of the Central Government, and the erosion in many values cannot be fully taken care of by the meagre ED allowance which is fixed and DA thereon. The Apex Court has not in the case under citation considered whether a

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pensioner employed as ED Agent is or is not entitled to get relief on pension during the period he was in employment as ED Agent. Hence the decision in Vasudevan Pillay's case can well be distinguished and I hold that it does not apply to the situation in this case. Learned counsel of the respondent has not been able to bring to my notice any ruling to the effect that relief on pension can be suspended to a pensioner employed as an ED Agent.

10. In the light of what is stated above, I find that the respondents were not justified in holding that the applicant was not entitled to get relief on his pension for the period she was working as EDSPM, Marampilly and getting ED allowance and DA thereon.

11. In the result, the application is allowed in part. The impugned order Annexure A1 is set aside. Declaring that the deduction made by the respondents from the arrears of pension and ED allowance of the applicant is not sustainable and legal and that the decision of the respondent that a sum of Rs.13,673/- is recoverable from the applicant is invalid, I direct the respondents to pay all the arrears of pension and relief and ED allowance due to the applicant without making any deduction as expeditiously as possible at any rate within two months from the date of receipt of this order. No costs.


(A.V. HARIDASAN)
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. Annexure A1 Order dated 9.12.1999 passed by the respondent No.2, the Post Master General, Ernakulam.
2. Annexure A2 Copy of the application dt. 18.9.99 filed before the Vazhakulam Panchayat forum for social justice filed by the applicant herein.
3. Annexure A3 Copy of the relevant portion of the pension book of the applicant.

Respondent's Annexures:

1. Annexure R1A True photocopy of the letter dt. 5.3.99 issued by the Post Master, Department of Post, Alwaye.
2. Annexure R1A(E) True English translation of Annexure R1A.
3. Annexure R1B True copy of the letter dt. 4.1.2000 issued by the Senior Supdt. of Post to the General Secretary, Forum for Social Justice, Trivandrum.
4. Annexure-R1(c) True copy of provisional appointment order No.DB4/5 dated 22.9.94.
5. Annexure-R1(d) True copy of table of calculations of overpayment.
6. Annexure R2 A True copy of Order No. 45/73/97-P&PW(G) dated 2.7.99.