

CENTRAL ADMININISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.234/2000 & OA No.433/2000

Thursday this the 5th day of September, 2002.

CORAM

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

OA No.234/2000

1. Smt.Vijayamma
W/o Late K.G.Balakrishnan
Lower Division Clerk, MES No.134386
O/o the Chief Engineer
Naval Base, Kochi.
2. Smt.Veroni Sussanna
W/o Late M.I.Felix
Peon, M.E.S. No.187033
O/o the Chief Engineer
Naval Base, Kochi.
3. Smt.K.P.Sarala Devi
W/o Late V.M.Radhakrishnan
Peon, MES No.187080
O/o the Chief Engineer
Naval Base, Kochi.
4. Smt. A. Leela
W/o Late Rajappan
Peon, MES No.187887
O/o the Garrison Engineer (1)
R&D Kakkanad, Kochi.

Applicants.

(By advocate Ms. K.Indu)

Versus

1. Union of India rep. by its
Secretary, Ministry of Defence
New Delhi.
2. Chief Controller of Defence Accounts (Pension)
Allahabad.
3. Defence Pension Disbursing Officer
Ernakulam.
4. Defence Pension Disbursing Officer
Thrissur.

Respondents.

(By advocate Mr.R.Prasanth Kumar, ACGSC)

OA No.433/2000

P.K.Kanakamma
Superintendent, E/M Grade-II
C/o Garrison Engineer
Electrical/Mechanical, Kochi
Naval Base, Kochi.

Applicant

(By advocate Mr.C.S.Manu)

-2-
Versus

1. Union of India rep. by its Secretary, Ministry of Defence New Delhi.
2. The Controller of Defence Accounts (P) Allahabad.
3. The Branch Manager Canara Bank, P.T.P.Nagar Thiruvananthapuram.
4. The Secretary Ministry of Personnel, Public Grievances & Pensions Department of Pension & Pensioners Welfare Lok Nayak Bhavan New Delhi.

Respondents.

(By advocate Mr.N.Mahesh, ACGSC for R1, 2 & 4)

Both these applications having been heard together on 13th August, 2002, the Tribunal on this the 5th day of September, 2002 delivered the following:

O R D E R

HON'BLE MR.G.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in both these Original Applications are the same, these Original Applications were heard together and are being disposed of by this common order.

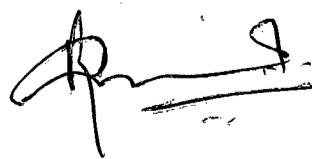
OA 234/2000

2. Applicants, four in number, are employed widows of ex-servicemen. According to the averments of the applicants in the OA, they were granted family pension for the defence service rendered by their husbands. The respondents suspended the relief on family pension on the basis of certain orders of the first respondent. They approached this Tribunal challenging the dispensation of the reliefs. This Tribunal allowed those OAs. The same was challenged by the first respondent before the Hon'ble Supreme Court. The Hon'ble Supreme Court allowed the



S.L.P. along with pension relief cases of re-employed ex-servicemen. On the basis of the judgement of the Hon'ble Supreme Court, the respondents again suspended the pension relief of those who were employed. They also started recovering 1/3rd of the family pension relief already paid to them earlier, from the minimum family pension of the applicants. Applicants claim that the Hon'ble Supreme Court even though allowed the appeals by a common judgement declaring that the order suspending the pension relief was legal, nothing was said about the recovery of the pension relief already paid. According to them, the said point was never raised by the respondents but after the judgement the second respondent issued orders to the pension disbursing authorities to start recovery of the pension relief paid earlier. According to the applicants, another batch of cases of family pensioners G.L.P(C) No.6248 to 50 of 1993 were taken up for disposal by the Hon'ble Supreme Court. Then the initiation of the recovery was brought to the notice of the Supreme Court. The Hon'ble Supreme Court directed the respondents not to recover the pension relief already paid to the family pensioners in those applications. While so, the National Ex-Service Coordination Committee who was one of the respondents in the appeals before the Hon'ble Supreme Court, filed a review petition against the judgement. The Review Petition No.1002/95 in Civil Appeal No.1809/93 was dismissed. The Hon'ble Supreme Court observed in the judgement as follows:

"We would however desire the Union of India to apply mind to the question whether ex-servicemen could be treated differently from others in so far as the matter at hand is concerned, in view of their service conditions said to be not attractive. In this we would also desire the Central Government to sympathetically consider the question of non realization of the amount already disbursed to re-employed ex-servicemen on the above said account."



According to the applicants, while the question of allowing the employed pensioners to draw the pension relief with their pension/family pension was under consideration of the first respondent, the second respondent issued orders for recovery the pension relief paid earlier. This Tribunal stayed the recovery of the pension reliefs paid earlier to the applicants. In the meanwhile, first respondent passed A-1 O.M. dated 2.7.99 allowing the family pensioners to draw pension relief with effect from 18.7.97. Accordingly the OA was closed with liberty to agitate if the applicants were aggrieved by the orders issued by the Ministry of Defence. Pursuant to the orders of this Tribunal the applicants approached respondents 3 & 4 requesting for pension reliefs on their military pension. They were informed that as per A-1 order, all those whose pay was not fixed at the minimum of the scale on re-employment were not entitled to get the pension relief. They were informed that they should get a certificate from the present employer showing that their entire pension was ignored and their pay was fixed at the minimum of the scale. Not only that they were told by respondents 3 & 4 that they had instruction from the 2nd respondent to recover the pension relief paid earlier on the basis of the judgement of this Tribunal from the basic pension they were entitled to. They claimed that denial of pension relief and the recovery of the relief paid earlier was legally unsustainable. According to them, A-1 issued by the first respondent stated that the dearness relief on family pension in cases where this was withheld had to be disbursed in the case of employed widows. However, in clause 3 (e) restrictions had been imposed that the orders would be

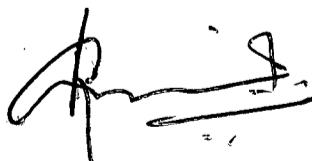
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effective only from July 18, 1997 and on that basis respondents 2 to 4 were not releasing the pension relief due to the applicants and they were trying to recover the earlier paid dearness relief from the present dearness relief. They claimed that the respondents could not either recover the earlier or the present pension relief. This was illegal and incorrect. Clause 3 (e) in A-1 to the extent it gave prospective operation to A-1 was incorrect and illegal. Reliefs ought to have been granted from the dates from which it was originally due. Applicants had to be granted the relief of family pension consequent on the 5th Central Pay Commission in lumpsum. Respondents were arbitrarily trying to recover the same. The said action was incorrect, illegal and was clear violation of Articles 14 & 16 of the Constitution. Accordingly they sought the following reliefs through this OA:

- i. To direct the respondents not to recover the dearness relief on family pension already paid to the applicants.
- ii. To direct the respondents not to recover arrears of family pension relief due to the applicants consequent on the 5th Pay Commission.
- iii. To direct the respondents to release any dearness relief withheld as a recovery of the old payment.
- iv. To declare that the applicants are entitled to dearness relief from the date from which it was due and that no recovery can be effected.
- v. To set aside Clause 3(e) of Annexure A1, to the extent the benefit of Annexure A1 is granted prospectively from 18.7.97.

And

- vi. To issue such other direction, order or declaration as this Hon'ble Tribunal deem fit and proper in the facts and circumstances of this case.

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OA 433/2000

3. Applicant in this OA, aggrieved by Clause 3(e) of A-1 office memo dated 2.7.99 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners Welfare by which 1st respondent had restricted the benefit of dearness relief on family pension with effect from 18.7.97 filed this Original Application seeking the following reliefs:

- i. To quash Clause 3(e) of Annexure A-1 to the extent the benefit of A-1 is granted prospectively from 18.7.97.
- ii. To direct the respondents not to recover the dearness reliefs on family pension already paid to the applicant.
- iii. To direct the respondents not to recover arrears of dearness relief on family pension due to the applicant consequent on the 5th Pay Commission Report.
- iv. To direct the respondents to release any dearness relief withheld as a recovery of the old payment.
- v. To declare that the applicants are entitled to dearness reliefs on family pension from the date on which the family pension became payable and that no recovery can be effected after effecting the payment.
- vi. To direct the respondents to disburse the dearness relief on family pension to the applicant which became due from 18.7.97.

and

- vii. To issue such other direction, order or declaration as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case.

4. According to the averments of the applicant in the OA, on the death of her husband on 18.9.87 while he was working under the Army Service, she was appointed as Superintendent in the Military Engineering Service on 1.7.88 on compassionate grounds. She was also getting family pension with dearness relief as per



pension payment order issued by the 2nd respondent. Even after the compassionate employment, she was getting dearness relief on family pension. Later the respondents stopped the payment of dearness relief on family pension to those who were employed and started recovery of the dearness relief already paid. The said action of the respondents was challenged in the Hon'ble Supreme Court and the Hon'ble Supreme Court in Union of India & others Vs. G.Vasudevan Pillai & others reported in 1995 (2) SCC 32 upheld the decision of the first respondent. However, subsequently the Hon'ble Supreme Court in Union of India & others Vs. Smt.Gulabgouri P.Pandya & others (SLP (C) No.6248-6250 of 1995) held that "amount already paid to the respondents under the head of dearness reliefs on family pension would not be recovered from them". Later, the Hon'ble Supreme Court was pleased to observe in the Review Petition No.1002/95 in Civil Appeal No.1809 of 1993 as follows:

"We would however desire the Union of India to apply mind to the question whether ex-servicemen could be treated differently from others in so far as the matter at hand is concerned, in view of their service conditions said to be not attractive. In this we would also desire the Central Government to sympathetically consider the question of non-realisation of amount already disbursed to re-employed ex-servicemen on the above said accepted."

5. Meanwhile, the second respondent issued orders for recovery of the dearness relief already paid. Similar OAs were filed by similarly placed persons. While the said OAs were pending, first respondent issued A-1 O.M. dated 2.7.99. In the light of A-1 O.M., this Tribunal closed the OA as per order dated 8.12.99 with liberty to agitate, if the applicant was aggrieved by the order issued by the Ministry of Defence and by the



implementation of those orders. In Clause 3 (e) of the said order the same was made effective only from 18.7.97. Third respondent had informed the applicant that the second respondent had instructed him to recover the dearness relief earlier paid. Applicant submitted A-2 representation dated 21.10.99 to the third respondent requesting him to disburse the said amount. Even after A-2, the third respondent had not disbursed the dearness relief due to the applicant from 18.7.97 onwards. Under the circumstances, she filed this OA seeking the above reliefs, alleging that the recovery of dearness relief already paid to the applicant on family pension was unjust, unfair and unjustifiable. Clause 3(e) of A-1 was illegal and unsustainable to the extent it gave prospective operation. First respondent ought to have given effect to the same with retrospective effect. Clause 3 (e) was discriminatory and hence violative of Article 14 of the Constitution of India. If dearness relief was allowable to employed family pensioners, there was no reason for not allowing the same to employed family pensioners prior to 18.7.97. It was all the more illegal to recover the amount paid earlier.

6. In OA 234/2000, respondents' counsel filed a statement in which it was submitted that the question of recovery of over payment of dearness relief from re-employed ex-servicemen/family pensioners had been examined by the first respondent and that by R-1 communication dated 30.11.2000 it had been decided to initiate necessary recovery of over payment of the dearness relief. Applicants filed rejoinder.

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7. Respondents filed reply statement in OA 433/2000 resisting the claim of the applicant. It was submitted that the matter regarding payment of dearness relief to re-employed defence pensioners and also to family pensioners had since been decided by the 1st respondent after taking into consideration the recommendations of the 5th Central Pay Commission and it was the policy decision of the Government to implement those recommendations with effect from 18.7.97 vide A-1 letter dated 2.7.99. The intention of the Government order was explicit so far as payment of dearness relief on family pension was concerned. Refund of the recovery on account of dearness relief drawn by the petitioner prior to 18.7.97 was not justified. There was no discrimination or violation of Article 14 of the Constitution.

8. Heard the learned counsel for the parties. Smt. Indu, learned counsel for the applicants in OA 234/2000 argued the matter extensively and submitted that the ruling of the Apex Court in Union of India & others Vs. G. Vasudevan Pillai had only upheld the non-admissibility of the dearness relief on pension and nothing had been mentioned about the recovery of the relief paid earlier. When the recovery aspect was brought to the notice of the Supreme Court in SLP No. 6248-50 of 1995 filed by family pensioners, the Hon'ble Supreme Court had directed the respondents not to recover the relief already paid. She submitted that the respondents were aware of the Supreme Court order in SLP(C) NO. 6248-50 of 1995 dated 1.12.95 whereby the Supreme Court had considered the question of recovery of the dearness relief earlier paid and had held that no recovery was to

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be effected. She further submitted that the contention of the respondents that they were doubtful whether the facts and circumstances of the applicants herein and the applicants in the above referred SLP were the same was untenable in that they were not able to distinguish the case at hand for being denied similar relief. She further submitted that the applicants were not given any notice regarding the recovery.

9. Learned counsel for the applicants in OA 433/2000 Shri C.S.Manu submitted that the recovery was being done without giving any notice to the applicant. He also submitted that the Hon'ble Supreme Court in Union of India & others Vs. Smt.Gulabgouri P.Pandya & others had held that the amount already paid to the respondents under the head of dearness reliefs on family pension would not be recovered from them.

10. Learned counsel for the respondents Shri Prasanth Kumar in OA 234/2000 and Shri N.Mahesh in OA 433/2000 took us through the counsel's statement and reply statement respectively and reiterated the points made therein. Sri Prasanth Kumar also cited the order of this Tribunal in OA No.211/2000 dated 25.1.2001 and the common order dated 30.11.2000 in OA No.623/2000 and other OAs. He also referred to R-1 order dated 30.11.2000 in OA No.234/2000 and submitted that in the light of the said order and the orders of this Tribunal in the above OAs and the judgement of the Hon'ble Supreme Court in Vasudevan Pillai's case, the applicants' claims were without any basis and the OA was liable to be dismissed.

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11. We have given careful consideration to the submissions made by the learned counsel for the parties, the pleadings of the parties and have perused the documents brought on record.

12. We find that the applicants are basically aggrieved by the non payment of arrears of Dearness Relief (DR for short) on family pension from 18.7.97. What we find from the applicants' averments in the Original Applications is that when they were advised about the instructions of the second respondent to recover the pension relief paid earlier on the basis of the judgement of this Tribunal, from the dues payable by A-1 OM, they filed these Original Applications seeking the reliefs stated in the respective Original Applications. Therefore, we frame the following two issues for adjudication in these two OAs:

- (i) Whether para 3 (e) of A-1 O.M. making the said O.M. effective from 18.7.97 for payment of Dearness Relief to employed family pensioners prospectively is illegal and deserved to be quashed.
- (ii) Whether the decision to recover the Dearness Relief already paid to the applicants is required to be interfered with by this Tribunal.

13. According to the applicants, Clause 3 (e) of A-1 O.M. was illegal and unsustainable to the extent it gave prospective operation because when the first respondent had decided to grant the Dearness Relief to employed family pensioners, the same should have been given with retrospective effect. Clause 3(e) was discriminatory and hence violative of Article 14 of the Constitution. According to the respondents, the cut off date fixed by Government was based on its resources and policy decision.

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14. On considering the rival pleadings, we find that the applicants except making an averment that para 3 (e) is violative of Article 14 of the Constitution of India have not placed any materials to show how the said clause is discriminatory. Whenever a party approaches this Tribunal challenging the vires of an order of the Government on the ground of discrimination, it is necessary for that party to place sufficient materials before this Tribunal in support of his plea. In the absence of such material, the plea of discrimination is liable to be rejected. In this case, on going through A-1 O.M. in toto, we do not find anything therein to conclude that it is discriminatory in any way. We find that all employed family pensioners have been made eligible for Dearness Relief on family pension from 18.7.1997. It is not that only those family pensioners who got employed after 18.7.97 would be eligible for relief on family pension. In this view of the matter, we do not find any substance in the plea of discrimination.

15. The next issue is why the date is 18.7.97. There is no dispute that A-1 OM had been issued on 2.7.1999. It is now well laid down that any Statute, Rule or Order will be prospective in operation from the date of publication/issue unless the said Statute/Rule/Order itself provides for its retrospective operation. It is also well accepted judicially that it is within the competency of the legislature/executive to make a Statute/Rule prospective or retrospective from a particular date. In this case, A-1 had been made retrospective with effect from 18.7.97 only by para 3 (e). According to the respondents, the date 18.7.97, had been fixed taking into consideration the

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financial resources and other service and administrative matters. It is a policy decision. Thus the position that emerges is that when OM is dated 2.7.99, in the normal course, the same would be effective only from 2.7.99 i.e. the employed family pensioners would be eligible for Dearness Relief on family pension only with effect from 2.7.99. But the respondents had made it retrospective with effect from 18.7.97. If the relief sought for by the applicants is granted it would mean that the OM would become effective from 2.7.99. But what the applicants want is that this Tribunal should make it retrospective in operation. The applicants are not entitled for such a relief. By seeking such a relief, what in effect the applicants are seeking is that this Tribunal make an OM making the applicants eligible for Dearness Relief from the date of their appointment. This cannot be done firstly because in such a case this Tribunal would assume the role of the Rule Making Authority. Secondly in the judgement in the case of Union of India & Others Vs. G.Vasudevan Pillay & Others (1995) 2 SCC 32 Hon'ble Supreme Court had already examined the question "Whether denial of DR on family pension on employment of dependents like widows of the ex-servicemen is justified or not". The Hon'ble Apex Court held:

"Denial of DR on family pension.

In some of the cases, we are concerned with the denial of Dearness Relief on family pension on employment of dependents like widows of the ex-servicemen. This decision has to be sustained in view of what has been stated above regarding denial of DR on pension on re-employment in as much as the official documents referred on that point also mention about denial of DR on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependents on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done."



16. In the light of the above, this Tribunal cannot now again hold that the applicants are entitled for DR on family pension retrospectively. Accordingly we answer issue No.(i) in the negative.

17. When we have held that there is nothing illegal in para 3(e) of A-1 OM, it follows that the applicants are not entitled for DR on family pension prior to 18.7.97. Further as already extracted by us in G.Vasudevan Pillay case (Supra) Hon'ble Apex Court found that the denial of DR on the pension of employed family pensioners was legal and just. Learned counsel for the applicants relied on the portion extracted by them in the OA reportedly from the judgement of the Hon'ble Supreme Court in the case of Union of India & Others Vs.Smt.Gulabgouri P. Pandya and others [SLP(C) 6248 to 6250 of 1995]. In spite of time being given, the above judgement was not placed before this Tribunal. Counsel for the applicants also submitted that both of them had not seen the judgement. The counsel for the respondents had also not seen the judgement. Under such circumstances, the applicants cannot get any relief on the basis of the said judgement. A party who relies on a judgement and quotes the same as precedent should cite the reference or place an authentic copy of the judgement before this Tribunal apart from showing that the factual details are similar and hence the ratio/dictum laid down would be applicable. In these OAs the above were not done. Strangely the learned counsel for the applicants were relying on a judgement which they themselves had not seen.

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18. Lastly the counsel for the applicants submitted that the applicants did not get any notice of the proposed recovery and hence the recovery was violative of principles of natural justice. We find no force in this plea because admittedly the applicants had approached this Tribunal earlier when DR on family pension was stopped, this Tribunal allowed the OAs which was taken up by the department by filing SLP in the Hon'ble Supreme Court; The Hon'ble Supreme Court upheld the action of the respondents. When the denial of DR had been gone into by the Hon'ble Supreme Court where they were parties. the applicants now could not say that principles of natural justice had been violated.

19. We also find from R-1 letter dated 30.11.2000 in OA 234/00 that the first respondent had examined the issue of non-realisation of amount of Dearness Relief already paid to re-employed ex-servicemen in consultation with I.A.(Def.) and Department of Pension & Pensioners Welfare. The decision was stated in R-1 as follows:

"I am directed to refer to the Office of the CGDA U.O.No.5137/AT-P dated 17.4.2000 regarding grant of Dearness Relief to ex-servicemen - vacation of Stay Orders. The issue of non-realisation of amount of Dearness Relief already paid to re-employed ex-servicemen has been examined in consultation with I.A.(Def) and DP&PW. It has been decided that Dearness Relief already paid in cases where the pensioner or the family pensioner is no longer alive may be written off but in respect of all others recovery is inescapable as otherwise it would tantamount to discrimination amongst pensioners and may not be legally tenable.

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It is requested that necessary instruction may be issued for initiating the recovery of over payment of Dearness Relief from re-employed defence pensioners expeditiously. Wherever Court/CAT Stay exists against the recovery of over payment of Dearness Relief, Govt. Counsel and other concerned authorities may be advised to take necessary action to get the stay vacated before resorting to recovery.

SD/-

I. K. Haldar
Under Secretary to the Govt. of India"

20. According to the applicants, as Hon'ble Supreme Court had not specifically ordered recovery, the respondents could not order recovery. We find no force in this plea in view of the fact that Review Petition 1002/95 in CA 1809/93 National Ex-Servicemen Co-ordination Committee & Others Vs. Controller of Defence Accounts & Others [1996 (10) SCC 496] had been dismissed by the Hon'ble Supreme Court and the above consideration had been done pursuant to he said judgement.

21. In the light of the above, regarding the second issue, we hold that the decision of the the respondents to effect recovery of the Dearness Relief already paid to the applicants cannot be faulted and does not call for any interference.

22. In the result, we hold that the applicants in these two Original Applications No.234/00 and OA 433/00 are not entitled for any of the reliefs sought for. Accordingly we dismiss these two Original Applications. No costs.

Dated this the 5th day of September, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

aa.



G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

Annexures in OA 234/2000

1. Annexure A1:

True copy of the order No.45/73/97-P&PW(G) dated 2.7.99 issued by the 1st respondent.

2. Annexure R1:

True xerox copy of communication No.7(1)/95/D(Pens/Sers) dated 30.11.2000 issued by the first respondent's offie.

Annexures in OA 433/2000

1. Annexure A1:

True copy of the memorandum No.45/73/97/P&PW(G) dated 2.7.99 issued by Ministry of Personnel, Public Grievances & Pensions, New Delhi.

2. Annexure A2:

True copy of the representation dated 21.10.99 submitted by the applicant to the 3rd respondent.