

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

O. A. No. 253 of 1993.

DATE OF DECISION 21-4-1993

Mrs. N Saraswathy & 3 others Applicant (s)

M/s M Rajagopalan & Advocate for the Applicant (s)
B Vijayakumar

Versus

UOI represented by Secretary Respondent (s)
M/o Defence, New Delhi & 2 others

Mr KL Joseph, ACGSC Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. AV MARIOASAN, JUDICIAL MEMBER

~~The Hon'ble Mr.~~

1. Whether Reporters of local papers may be allowed to see the Judgement ? *✓*
2. To be referred to the Reporter or not ? *m*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *m*
4. To be circulated to all Benches of the Tribunal ? *✓*

JUDGEMENT

No reply statement has been filed. The learned counsel for the respondents seeks further time to file reply. In view of the fact that the matter is covered by a ruling of this Bench and also because sufficient time has been granted to the respondents to file reply statement, I disallow the request for adjournment. The learned counsel for the respondents is allowed to address arguments in line with the stand taken by the Government in OA-282/90.

2. The applicants 4 in number *✓* are widows of ex-employees in the Naval Base who died in harness. The applicants are employed in Naval Base. They are also recipients of family

pension. Their common grievance is that the respondents have on the ground that they are employed, denying to them the relief on their family pension. The applicants contend that there is absolutely no justification for withholding of the relief on their family pension since there is absolutely no nexus between the relief on their family pension and the pay and D.A. which they receive by virtue of their employment. Though the association of the family pensioners made representations to the respondents requesting that the relief on their family pension may be disbursed to them, there was no response. It was in these circumstances that the applicants have filed this application praying that the respondents may be directed to pay the applicants the relief on their family pension and to refund to them the entire amount of relief so far suspended.

3. The learned counsel appearing for the respondents argued that since the applicants are being prayed ~~for~~ dearness allowance on their basic pay, to grant them relief of family pension would amount to granting double benefit which is not really intended by the rules. I am not at all impressed with this argument. The quantum of family pension is not determined taking into account the size of the family or the financial background of the family. Consideration for determining family pension is the length of service of the employee as also the pay scale. The poverty or affluence of the family is not a factor consideration in fixing the family pension. But the Government issued an order that in case the recipients of a family pension gets employed, he/she need not be paid relief on the family pension since D.A. would be paid ~~xxxxxx~~ on the basic pay. This order was under challenge before this Bench of the Tribunal in

OA-282/90. This Bench of the Tribunal of which I was a member, considering all the aspects felt that there is absolutely no justification or warrant for such a direction because there was absolutely no nexus between the pay and allowances and the family pension and relief thereon in the case of a person who is employed as well as in recipient of a family pension. The quantum of family pension and the relief thereon is not at all an aspect taken into account in fixing the pay of the recipient of family pension. There is practically no relationship between the employment of the recipients of the family pension and the fact that same person is the recipient of family pension. However, since the pay of the recipients of family pension was fixed without any reference to the family pension, I am of the view that there is absolutely no justifiable reason why the recipients of the family pension should be deprived of the relief on that pension just for the reason that he or she is also employed. It is curious that if a family possessed of substantial properties yielding sufficient income able to get on even without any assistance from any quarters, would receive the family pension and the relief thereon without any deduction while the family of a last grade employee will lose the relief on the family pension if the recipient of the family pension is employed in the lowest rung of service in a Group 'D' post. This aspect also was considered in the judgement in OA-282/90. Finding that such a direction is unreasonable and unconstitutional,

the instructions of the Government of India was set aside in argument of the that ruling. The learned counsel for the respondents does not persuade me to take a different view in the matter. Therefore following the dictum laid down in OA-282/90, I find that the applicants are entitled to get the relief on their family pension during the currency of their employment.

4. In the result the application is allowed. It is declared that the applicants are entitled to get the relief on their family pension during the period of their re-employment. The respondents are directed to pay the applicants the entire family pension and the relief thereon and to refund to them whatever amount of relief has been so far withheld or suspended from their family pension receipt of a copy within a period of two months from the date of this order.

No order as to costs.


(AV HARIDASAN)
JUDICIAL MEMBER
21-4-1993

trs

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

CPC 172/93 in OA 253/93

Monday, this the 6th day of December, 1993.

C O R A M

HON'BLE MR JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

1. Smt. N Saraswathy,
W/o C Sivarajan,
R & D Residential Complex,
Cochin--6.
2. Smt. Margaret Francis,
W/o MP Francis,
Moonjappilly,
Palarivattom, Cochin--25.
3. Smt. Lincy,
W/o SZ Valavy,
Valavi House XL/356,
Cochin--18.
4. Smt. KK Seethamani,
W/o KP Rajappan Nair,
Kunduvelil House,
P.O. Nettoor, Ernakulam.

....Petitioners

By Advocate Shri M Rajagopalan.

Vs.

1. Shri KA Nambiar, Secretary,
Ministry of Defence, New Delhi.
2. Smt RS Khan,
Controller of Defence Accounts (Pension),
Allahabad.
3. Shri Gopalakrishnan,
Defence Pension Disbursing Officer,
Ernakulam.

....Respondents

By Advocate Sh CN Radhakrishnan, Addl Central Govt Standing Counsel

O R D E R

CHETTUR SANKARAN NAIR (J), VICE CHAIRMAN.

Alleging disobedience of the orders of this Tribunal in OA 253/93 petitioners moved this Contempt Petition. Shri S Krishnaswamy, Assistant Controller of Defence Accounts has sworn an affidavit stating:

"necessary steps have been taken to implement the judgement of the Hon'ble Tribunal, and orders have been issued to release the amount."

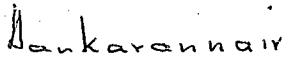
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contd.

2. We record this submission. Payment, if not already made, will be made within four months. Contempt Petition is disposed of on the basis of the undertaking.

Dated the 6th December, 1993.


PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN

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