

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 277/2010

Wednesday, this the 7th day of November, 2012.

CORAM

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

Sali M.Thomas, W/o late A.C.Thomas,
Amotil House, Omallur Post,
Pathananthitta District,
Presently residing at Panickers,
K.P. Vallom Road, Kadavanthra.

Applicant

(By Advocate Mr P.V.Mohanan)

v.

1. Union of India represented by its
Secretary, Ministry of Finance,
Department of Expenditure,
Central Pension Accounting Office,
Trikoot-II Complex, Bhikaji Gama Place,
New Delhi.
2. Assistant Director, Aviation Research Centre,
Government of India, P.O.Charbatia,
PIN-754 028, District Cattack, Orissa.
3. The Manager, State Bank of India,
Pathanamthitta Branch.
4. Deputy Director of Accounts,
O/o the Director of Accounts,
Cabinet Secretariat, East Block,
New Delhi.

Respondents

(By Advocate Mr Sunil Jacob Jose, SCGSC for R.1, 2 & 4)

(By Advocate Mr P Ramakrishnan for R.3)

**This application having been finally heard on 30.10.2012, the Tribunal on
07.11.2012 delivered the following:**

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

The applicant is a widow of late A.C. Thomas, who was earlier serving as JTO-1 at Atomic Research Centre (ARC for short) and who took voluntary retirement on 31-12-1981, after rendering 14 years of service in that organization. The said Thomas was earlier serving in the Indian Air Force from March, 1949 to August, 1967. At the time of his retirement from A.R.C., he was placed in the pay scale of Rs 775 – 1000 and his basic pay was Rs 900/- . His pension was fixed at Rs 556/- p.m. and family pension @ Rs 270/- upto 11-03-1993 and thereafter @ Rs 135/- . This amount was later on revised w.e.f. 01-01-1982 to respectively Rs 564/-, Rs. 276/- and Rs 138/- . The applicant's husband opted for commutation of pension which had been allowed.

2. Applicant's husband expired on 15-11-1996. At that time he had not completed 15 years of retired life. On his demise, the applicant could claim and get the family pension.
3. Vide order dated 10th April, 2002, the applicant's family pension had been fixed at Rs 1950/- which is 30% of the minimum of the pay scale of Rs 6,500 – 10,500/-.
4. The claim of the applicant is three fold – (a) Payment of pension duly arrived at by recalculating the same; (b) Payment of Family pension

by duly recalculating the same and (c) Restoration of commuted value of pension. As regards (a) above, the contention of the applicant is that pension in respect of pre-1986 retirees has to be worked out by arriving at the notional fixation of pay as on 01-01-1986, again, as on 01-01-1996 and on the basis of the slab system, the consolidated pension has to be worked out and w.e.f. 01-01-1996, the calculation should be based on para 4.1 of the O.M. dated 27th October, 1997. This was not done in the case of the pension of applicant's husband and the same calls for recalculation and payment of arrears arising therefrom.

5. As regards (b) above, the claim of the applicant is that in a similar way, for working out the family pension effective from 16-11-1996, the same calls for working out of the notional pay as on 01-01-1986, 01-01-1996 and fixation of corresponding family pension till 31-12-2005 and lastly, notional fixation of pay as on 01-01-2006 should be worked out in respect of her husband's pay and 30% thereof to be worked out. And, if the same be higher than 30% of the minimum in the pay scale attached to the post which her husband was holding on the date of his retirement, then the higher amount shall be paid as family pension. However, in her case, all that had been done was to arrive at 30% of the minimum of the basic pay attached to the post held by her husband.

6. Again, as regards (c) above, it is the case of the applicant that since the husband of the applicant expired in November, 1996, there must be restoration of the commuted pension as well.

7. Thus, the applicant has prayed for the following reliefs:-

- (i) To direct the respondents to fix and consolidate the family pension of the applicant at higher rate w.e.f. 16.11.1996 after notionally fixing the pay of late Shri A.C.Thomas as on 1.1.1986 and consolidate pension as on 1.1.1996 in the scale of pay of Rs.6600-10500 as a last drawn pay w.e.f. 1.1.1996 in accordance with Annexure A1, A2 and Annexure A3.
- (ii) To direct the respondents to restore the commuted portion of the pension either on completion of 12 years from 1.1.1982 as recommended by the Vth Central Pay Commission or 15 years from 1.1.1982 as had been done at the time of sanction of pension and to refix the family pension at higher stage by restoring the commuted value thereof.

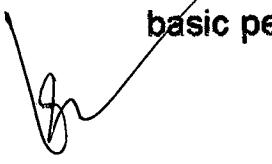
8. Respondents have contested the O.A. According to them, the applicant has been paid the exact amount of family pension and as regards restoration of commuted value, the same is not available as the husband of the applicant expired prior to completion of 15 years from the date of superannuation.

9. Counsel for the applicant has referred to various orders on the subject matter of pension, its fixation and revision and contended that the minimum pension and family pension should be worked out by working out the notional fixation of pay w.e.f. 01-01-1986 as also 01-01-1996 as well as

01-01-2006 and it is the higher amount (pension so calculated on the basis of the notional fixation of pay or 50% of the minimum in the pay scale admissible to the post that the husband of the applicant held at the time of his superannuation) that should have been made available. Instead, a short cut has been adopted by the respondents in fixing the family pension on a simple formula of 50% of the minimum in the pay scale without working out the notional fixation of pay. The applicant, who is running 78 years of age as on date, has thus been put to irreparable loss.

10. Counsel for the respondents submitted that the calculation is intact and the applicant is not entitled to any extra benefit.

11. Arguments were heard and documents perused. First as to the claim relating to pension of the husband of the applicant: It is to be noted here that the civil service of the applicant is only 14 years plus i.e. from 1967 to 1981. Presumably, his military services as per rules would have been taken into account in calculating the pension admissible to him. His initial pension was fixed at Rs 556/- which was later on enhanced to Rs 564 and corresponding revision has also been indicated in respect of family pension. There had been no quarrel about the same as the applicant's husband did not make any representation against it. In so far as consolidated pension is concerned, as on 01-01-1996, the same has to be calculated as per the formula contained in the Department of Pension & P.W. O.M. Dated 27-10-1997 (Annexure A1). This takes into account the basic pension as on 31-12-1995 as 'the Existing pension'. The applicant's



husband did not raise any objection about his pension drawn as on 31-12-1995 and the respondents had worked out the extent of consolidated pension by applying the formula as set out in the said order dated 27-10-1997 and arrived at a figure of Rs 3869/- . This amount, after catering for commuted pension of Rs 188 came to Rs 3681/- . This was the pension admissible to the husband of the applicant. The applicant claims that the calculation of consolidated pension has been made without taking into account notional fixation of pay as on 01-01-1986. Para 3.1(b) of order dated 27-10-1997 talks only of existing pension and para 4.1 stipulates that the pension/family pension of existing pre-1996 pensioners/family pensioners will be consolidated with effect from 01-01-1996 by adding together -

- (i) The existing pension/family pension
- (ii) Dearness Relief upto CPI 1510 i.e. @ 148%.
- (iii) Interim Relief I
- (iv) Interim Relief II
- (v) Fitment weightage @ 40% of the existing pension/family pension.

12. The above calculation does not speak about the notional fixation of pay as on 01-01-1986. As such, there is no requirement to arrive at the notional fixation of pay as on 01-01-1986.

13. The respondents have calculated the consolidated pension at Rs 3869 as stated in one of the earlier paragraphs. The husband of the

applicant was due the same and by order dated 10-04-2002, the same was to be paid to the applicant. There has been no mention in the OA about any non payment of the same. The agitation has been only with reference to the calculation. Thus, in so far as pension portion is concerned, no mistake has been committed by the respondents. Nor was there any complaint by the husband of the applicant during his life time. The applicant herself has not preferred any claim in this regard when the arrears of pension payable to her husband had been paid to her. That matter was over by 2002 itself. The applicant cannot agitate against the same at this distant point of time, as it is not a recurring cause of action, since payment of pension terminated by 15-11-1996 when the husband of the applicant expired. Hence, there is no question of revision of pension under any circumstances. Any claim made towards arrears at this distance of time would be hit by law of limitation. In this regard, the following decisions of the Apex Court would be appropriate to be referred to:-

(a) The Apex Court has in the case of *Union of India v. Tarsem Singh*, (2008) 8 SCC 648 discussed the point of limitation in a more descriptive manner and has summarised the same as under: -

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the

date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances.”
(Emphasis supplied)

(b) Again, in the case of **State of Madhya Pradesh v. Yogendra Shrivastava**, (2010) 12 SCC 538, the Apex Court has held as under:

“Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment. But in respect of grant of consequential relief of recovery of arrears for the past period, the

principle relating to recurring and successive wrongs would apply. Therefore the consequential relief of payment of arrears will have to be restricted to a period of three years prior to the date of the original application." (See M.R. Gupta v. Union of India and Union of India v. Tarsem Singh.)

14. Coming to the question of family pension, if there be any error in its calculation, the same could be rectified as the same, in accordance with the above decisions, would mean recurring cause of action and even arrears could be claimed for a period of three years from the date of application. It is now to be seen whether there is any error in calculation of the family pension of the applicant.

15. The pay scale of Rs 775 – 1000 had been revised in the wake of the Fourth Central Pay Commission to Rs 2000 – 3500 effective from 01-01-1986 and the same underwent an upward revision to Rs 6,500 – 10,500 w.e.f. 01-01-1996. The current pay scale to the above pay scale is Rs 9,300 – 34,800 with grade pay of Rs 4,200/-.

16. The applicant's husband being a pre-1986 pensioner, in the wake of the acceptance of the Fifth Central Pay Commission, the Government had accepted the recommendations of the Fifth Central Pay Commission in respect of pension, vide Office Memorandum dated 10-02-1998. The crux of the same is as under:-

"3. In the case of family pension, the notional pay as on 01-01-1996 shall be treated as pay last drawn by the deceased government employee/pensioner and family pension shall be calculated thereon at the rate in force as on 01-01-1986. This family pension shall be consolidated as on 1-1-1996 in accordance with the provisions contained in paragraph 4.1 of



the department's O.M. No. 45/86/97-P&PW(A) Part II dated 27th October, 1997.

4. it has been separately decided that with effect from 1-1-1996, family pension shall be calculated at a uniform rate of 30% of basic pay in all cases instead of slab system and shall be subject to a minimum of Rs.1275 and maximum of 30% of the highest pay in the government. It has also been decided that the benefit of increased the rate of family pension introduced with effect from 1-1-1996 may also be extended to pre-1996 family pensioners from the same date. Accordingly, in case of those pre-1986 pensioners whose family pension has been calculated on the notional pay under the slab system, family pension as on 01-01-1996 shall be recalculated at the rate of 30% of the notional pay as determined on 01-01-1986. The additional family pension becoming due on account of difference between family pension admissible under slab system and at a rate of 30% shall be added to the consolidated family pension worked out in accordance with the provision of para 3 above. The total of these two amounts i.e. Consolidated pension plus additional family pension shall be basic family pension with effect from 01-01-1996 and shall be subject to a minimum of Rs.1275 and a maximum of 30% of highest pay in the government as on 01-01-1996."

17. The above provision envisages payment of family pension to the following categories of family pensioners:-

- (a) Pre 1986 family pensioners.
- (b) Pre 1996 family pensioners (i.e. Those who became entitled to family pension from 01-01-1986 to 31-12-1995)
- (c) Post 1996 family pensioners.

18. The applicant belongs to the last category i.e. Post 1996 Family Pensioner. In that case, as the first sentence of para 4 of OM dated 10-02-1998 prescribes, family pension shall be calculated at a uniform rate of 30% of basic pay in all cases instead of slab system and shall be subject to a minimum of Rs.1275 and maximum of 30% of the highest pay in the

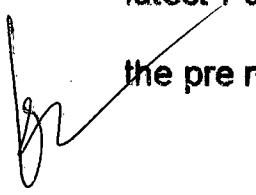


government. Since the above calculation involves 30% of basic pay, the same calls for working out of basic pay of the applicant's husband to be arrived at notionally as per the Revised Pay Rules, 1997 to work out the family pension admissible to the applicant w.e.f. 16-01-1996. The drill is as under:-

- (a) Pay as on the date of retirement was Rs 900/- in the scale of Rs 775 – 1000.
- (b) As per the table of concordance, this pay would correspond to average between 2600 and 2675 i.e. Rs 2638/- as per the fourth Pay Commission Recommendations.
- (c) The above pay would further be revised to the average between Rs. 7900 and Rs. 8100 i.e. Rs 8,000/-.

19. Thirty percent of the pay would cater for 2,400 and the applicant was entitled to pension at the above rate plus dearness pay. It is not known whether the same was paid to her or not. In any event, the applicant's claim for arrears has to be restricted to only three years prior to the date of her application. Hence, the above portion has to be ignored.

20. If the applicant's husband's pay notionally arrived at as on 01-01-1996 is Rs 8,000, said pay as per the VI Pay Commission recommendations, would undergo a further upward revision as per the latest Pay Rules to Rs 19,270 (concordant value equivalent to Rs 7,900 in the pre revised pay scale). 30% of the same works out to Rs 5701/- This



being more than Rs 4,050/- which is 30% of the minimum in the pay scale of Rs 9300 – 34800 plus G.P. of Rs 4,200/-, the applicant is entitled to the higher amount of Rs 6,701/- (Of course, the calculation could well be verified by the respondents and if any error subsists in working out the calculation of notional pay, the same be rectified) Obviously, the respondents have not undertaken the drill of calculating the notional pay to work out 30% thereof but adopted a short cut by working out only 30% of the minimum of the scale of pay plus Grade pay. As held by the Apex Court in the case of *Baldev Raj Chadha v. Union of India, (1980) 4 SCC 321*

21st A short cut may often be wrong cut.

(also see *S. Ramachandra Raju v. State of Orissa, 1994 Supp (3) SCC 424*, *Raj Kapoor v. State, (1980) 1 SCC 43*, *Sunil Batra v. Delhi Admn., (1978) 4 SCC 494*, *Union of India v. Jyoti Chit Fund and Finance, (1978) 3 SCC 607*, *Mumbai Kamgar Sabha v. Abdulbhai Faizullahabhai, (1976) 3 SCC 832*, *Municipal Council v. R. Narayanan, (1975) 2 SCC 497*).

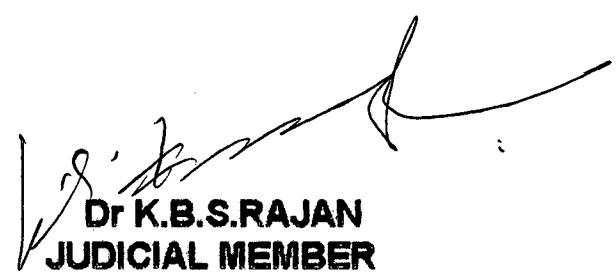
22. In so far restoration of pension is concerned, the period of 15 years not having been completed from the date of retirement till the date of demise of the applicant's husband, no restoration could be permissible.

23. In view of the above, the OA is disposed of with a direction to the respondents to work out the notional fixation of pay as on 01-01-1986, 01-

01-1996 and 01-01-2006 and calculate 30% of the notional pay as on 01-01-2006 so arrived and revise the basic family pension of the applicant. This together with dearness relief as admissible should be worked out. The applicant is entitled to arrears of the same w.e.f. 01-03-2007 i.e. three years anterior to the date of filing of the OA i.e. March, 2010

24. This order shall be complied with, within four months of the date of communication of the order.

25. No costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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