

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 313 OF 2009

..... Friday this the 5th day of February, 2010

CORAM:

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

T.T.Achamma
Residing at Vellaringattu House
South Parur
Ernakulam District
Pin 682 320

... **Applicant**

(By Advocate Mr.M.R.Hariraj)

versus

1. Union of India represented by the
Secretary to Government of India
Ministry of Defence
New Delhi
2. Principal Controller of Defence Accounts (Pensions)
Allahabad
3. Defence Pension Disbursement Officer
Ernakulam, Perumannor P.O.,
Ernakulam

... **Respondents**

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 22.01.2010, the Tribunal
on ...5-2-10. delivered the following:

ORDER

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

The applicant is aggrieved by Annexure A-1 order whereby the
respondents have decided to recover from her Family Pension certain alleged
outstanding demand amounting to Rs.46,168/- on account of over payment of
pension paid to her husband which could not be recovered from her husband's
pension. By an interim order dated 26.05.2009 recovery was stayed.

2. Briefly stated, the applicant is the wife of late K.U.Ulahannan who was working as Slinger (semi skilled) Southern Naval Command, Kochi. He was proceeded against under CCS (CCA) Rules and was compulsorily retired with effect from 25.04.1996 pursuant to an enquiry. Appeal and Review Petitions filed by him were unsuccessful. However, his OA 1170/96 came to be allowed and the penalty order and appellate order as well as review order were all quashed. The respondents were, of course, given liberty to proceed with the disciplinary proceedings from the stage of closure of evidence. Annexure A-2 refers. This order was challenged by the respondents through O.P.No.30585 of 1999 during the pendency of which the said Ulahannan superannuated. The O.P was disposed of, taking into account the subsequent developments directing that the said Ulahannan would be deemed to be in service till his actual superannuation but would not be entitled to get wages during that period. Annexure A-3 refers. In the Pension Payment Order in respect of the applicant's husband an endorsement seems to have been made in respect of recovery of over payment. Vide Annexure A-6 the amount to be recovered was worked out at Rs.75,103/- When the said Ulahannan challenged the same vide OA 282/06 and recovery was stayed. Since the applicant's husband filed an interlocutory application before the High Court in respect of the above recovery also the Tribunal ultimately dismissed the OA 282/06 directing that no kind of recovery be made till the I.A was disposed of. The I.A filed by Ulahannan was however dismissed vide Annexure A-7 order. While so, Shri Ulahannan passed away due to cancer on 08.11.2007 and the applicant was paid the family pension thereafter vide Annexure A-10. It was by the impugned Annexure A-1 order that the respondents had sought to recover the alleged balance excess payment purported to have made to the husband of the applicant.

3. The applicant has challenged the action on the part of the respondents on the ground that the action is in violation of Article 14 and 16 of

the Constitution. It has been contended that Annexure A-1 order is without any authority. Family Pension cannot be adjusted for any dues whatsoever in respect of the husband of the applicant.

4. Respondents have contested the OA. According to them, the overpayment was not any miscalculation etc. but was made because the High Court's direction was that Shri Ulahannan may be deemed to have continued in service for superannuation in limited purpose of right to normal pension consequent to which the qualifying service of the applicant's husband was to be modified. This has resulted in a situation whereby certain overpayment made became recoverable which would have been recovered from the pension payable to Ulahannan had he been alive. However, he expired on 08.11.2007.

5. Counsel for applicant submitted that it is well settled that family pension is not an asset of the family pensioners' spouse nor is the same inheritable. It is a property of the specific family pensioner made available to such family pensioner as a welfare measure and in tune with the provisions of Article 21 of the Constitution of India. He has invited the attention of the Tribunal to the following decisions :-

- (a) 1991 1 SCC 725
- (b) 2004 2 KLT 174
- (c) Relevant provisions of Pension Act.

6. Counsel for Respondents submitted that the recovery of excess payment made to the husband of the applicant has not been made from the family pension of the applicant by virtue of the interim stay granted.

7. Arguments were heard and documents perused. Judgment in 1991 1 SCC 725 reads as under :-

In Violet Isaac (Smt) v. Union of India, (1991) 1 SCC 725,
the apex Court has held as under:-

"The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition."

5. In *Jodh Singh v. Union of India*, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed:

"Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.

8. Para 2 of KLT 2004 2 KLT 174 Vol.2 reads as under :-

"right to family pension is part of guarantee under Article 21 of the Constitution of India."

9. In addition to the above, the Apex Court in the case of *State of Bihar v. Pandey Jagdishwar Prasad*, (2009) 3 SCC 117, has been held that recovery of any excess payment after retirement is not permissible.

"It has been held in a catena of judicial pronouncements that even if by mistake, higher pay scale was given to the employee, without there being misrepresentation or fraud, no recovery can be effected from the retiral dues in the monetary benefit available to the employee."

On equitable ground, the Apex Court held that dearness relief on family pension paid to the family pension be not recovered. In the case of *Union of India v. Rekha Majhi, (2000) 10 SCC 659*, the Apex Court has held as under:-

"Moreover, it is stated that the respondent who is a widow is the lone bread earner of the family and her financial condition is not such as to pay back the excess amount she has already drawn. Under such circumstances, we are of the view that the recovery of excess pension paid to the respondent is not justified on legal and equitable grounds."

10. In view of the above decisions, this Tribunal has absolutely no doubt that the Family Pension of the applicant cannot be adjusted towards recovery of amount stated to be due from the applicant's husband. If the Department has to proceed for recovery, remedy lies elsewhere. As such, this OA is allowed. It is declared that the family pension of the applicant cannot be truncated on account of the recovery as proposed vide Annexure A-1. Annexure A-1 is thus quashed and set aside. Respondents are directed to make available the applicant her family pension without any deduction in this regard. No costs.

Dated, the *5th February, 2010.*


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr. K.B.S. RAJAN
JUDICIAL MEMBER