

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.: 345/99

7.2.2000
Date of Decision :

Smt.P.B.Jadhav Applicant.

Shri J.M.Tanpure Advocate for the
Applicant.

VERSUS

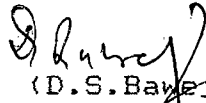
Union of India & Others, Respondents.

Shri R.R.Shetty for Advocate for the
Shri R.K.Shetty Respondents.

CORAM :

The Hon'ble Shri D.S.Baweja, Member (A)

- (i) To be referred to the Reporter or not ? x
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ? x
- (iii) Library x


(D.S.Baweja)
Member (A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.345/99

Dated this the 7th day of February 2000.

CORAM : Hon'ble Shri D.S.Baweja, Member (A)

Smt.Parvati Bandu Jadhav,
W/o. Late Bandu Rama Jadhav,
Ex-Mazdoor of Central Vehicle
Depot, Dehuroad, Dist. Pune.

...Applicant

By Advocate Shri J.M.Tanpure

V/S.

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Commandant,
Central AFV Depot,
Kirkee, Pune.
3. The Chief Controller of
Defence Accounts (Pensions),
Allahabad.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

O R D E R

{Per: Shri D.S.Baweja, Member (A)}

The applicant had earlier filed an OA.NO.1064/92 which was allowed as per order dated 22.2.1994. In pursuance of this order, the applicant submits that she has received the arrears of

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family pension from 9.11.1987 onwards on 25.5.1995. However, the applicant has not been given life time arrears of her husband's pension from 1.4.1969 onwards till he expired on 4.11.1987. The applicant thereafter made a representation dated 14.9.1999 for payment of the same. In this application, she also pointed out that an excess recovery of CPF benefit of Rs.13,133/- has been made as her husband had received only Rs.1500/- as CPF benefit. The representation of the applicant has been rejected but she has not received the copy of the same and therefore a notice dated 1.1.1999 was sent by her Advocate to Respondent No. 2 to furnish the copy of the reply rejecting her representation dated 14.9.1999 be furnished to the applicant. Feeling aggrieved by non payment of life time pension arrears of her husband, the applicant has filed the present OA. on 1.4.1999 seeking the following reliefs :-

- (a) to direct respondents to pay life time arrears of pension of her deceased husband from 1.4.1969 till 4.11.1987 alongwith 18% interest thereon.
- (b) 18% interest on arrears of her family pension from 1.8.1994 till 25.5.1995.
- (c) Refund of excess recovery of CPF from the arrears of family pension of the applicant.

2. The Respondents No. 1 & 2 have filed the written statement opposing the OA. It is the stand of the respondents that the relief prayed for in the present OA. has been already

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agitated upon in the earlier OA.NO.1064/92 as per order dated 22.2.1994. In view of this, the respondents contend that the present OA. is hit by the principles of res-judicata. The respondents also submit that as per the order dated 22.2.1994, the arrears of family pension have been paid to the applicant after deduction of CPF benefits paid to her late husband. It is stated that an amount of Rs.1565/- was paid to the late husband of the applicant as CPF contribution since the same was to be refunded by the applicant for being eligible for grant of family pension, an interest of Rs.12,942/- has been charged for the delay in return of Rs.1565/-. In view of this, the respondents plead that correct action has been taken to effect recovery in respect of CPF contribution.

3. Respondent No. 3 has filed a separate written statement and has taken the same stand as that of Respondents No. 1 & 2 that the present OA. is barred by principles of res-judicata.

4. The applicant has not filed any rejoinder reply for the written statement of both Respondents No. 1 & 2 and Respondent No. 3.

5. I have heard the arguments of Shri J.N.Tanpure, learned counsel for the applicant and Shri R.R.Shetty for Shri R.K.Shetty, learned counsel for the respondents.

6. The main contention of the respondents in opposing the OA. is that the applicant had sought the relief of payment of arrears of life time pension of the late husband in the earlier OA.NO.1064/92 and the same had not been allowed and therefore the applicant cannot agitate the matter again in a fresh OA. for the same relief. To support this contention, the respondents have brought on the record a copy of the OA. On going through the reliefs prayed for, we note that the applicant had prayed for the relief 8 (c) as under :-

" For the declaration that the Applicant is entitled to receive arrears of Pension in respect of her late husband w.e.f. 1.4.69 till 4.11.87 (i.e. the date of his death) and arrears of her own pension w.e.f 5.11.87 and also for the declaration that the Applicant is entitled to receive the DCRG."

7. The OA.1064/92 had been allowed as per order dated 22.2.1994. The operative portion of the order in para 5 is as under :-

" I find that the applicant is eligible for family pension and I direct the respondents to finalise the family pension of the applicant within two months from the receipt of a copy of this order and give all the pensionary benefits during that period. The applicant has already given an undertaking that she will make good the amount of the contributory provident fund. The C.P.F. benefits which have been received may be adjusted from the arrears of pension which would be payable to the applicant."

From the order dated 22.2.1994 as extracted above, it is apparent that the Bench had allowed the relief of only grant of family pension to the applicant subject to deduction of CPF amount paid to her late husband. The order nowhere mentions that

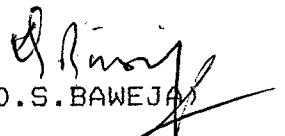
the applicant will be also entitled for the arrears of life time pension of her late husband. The learned counsel for the applicant strongly pleaded that the order implies the payment of life time pension also as the payment of CPF benefit can be recovered only from the pension to her late husband and not from the payment of applicant's arrears. After careful reading of the order, I am unable to find the order as interpreted by the counsel for the applicant. As brought out earlier, the applicant had sought a specific relief of payment of arrears of life time pension of the late husband of the applicant and this relief has not been specifically allowed while passing the final order in para 5. If the relief prayed for is not granted or no findings are recorded on the said relief, then it is to be taken that the said relief has not been granted. The grant of such a relief cannot be read in between the lines and interpreting the order at a later date. If the applicant felt that the relief prayed for has not been specifically granted, then he had the option to seek remedy through review application. In the present case, there is no such averment that a review application has been filed at any time for seeking clarification of the order. In view of these observations, I am not persuaded to accept the contention of the respondents that the relief prayed for with regard to payment of life time pension arrears of the late husband in the present OA. is an issue which has been already considered in the earlier OA.No.1064/92 and therefore the present OA. attracts the principles of res-judicata.



8. The second relief prayed for by the applicant is with regard to excess recovery of CPF of Rs.13,133/-. The respondents have brought out that the late husband was paid CPF of Rs.1565/and for the delay in refund an interest of Rs.12,942/- has been charged. Since the refund is being made at the time of payment of the pension arrears, the recovery of the interest till that date cannot be faulted. The contention of the applicant that this CPF amount could be recovered from the lift time pension arrears of the husband only and that too for a period of 3 years is also not tenable. As is clear from the order dated 22.2.1994 as extracted above, the applicant has to refund the amount of CPF benefit received by the late husband before the arrears of pension are paid to her. In view of this, I am unable to find any merit in this relief prayed for by the applicant.

9. The 3rd relief prayed for is with regard to payment of the interest for delay in pension from 1.8.1994 till 25.5.1995. Firstly, the claim for interest is time barred as the present OA. has been filed on 1.4.1999 after a period of 4 years after receipt of payment on 25.5.1995. Further, the order dated 22.2.1994 does not envisage any payment of interest in case the payment is delayed beyond the period for implementation. If the Order dated 22.2.1994 does not provide for payment of interest beyond the stipulated period, then issue of grant of interest for delay in payment if any cannot be agitated as a fresh cause of action. Therefore, even on merits this claim is not sustainable.

10. In the result of the above, the OA. is not only hit by principles of res-judicata but devoid of merit also and therefore the same is dismissed. No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

mrj.