

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 376/2000

Date of Decision

: 29<sup>th</sup> August-2001

Smt.G.D.Jadhav

Applicant

Shri J.M.Tanpure

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.K.Shetty

Advocate for the  
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? *yes*
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? *No*
- (iii) Library *yes*

*S.L.Jain*  
(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.376/2000

Dated this the 29<sup>th</sup> day of August 2001.

CORAM : Hon'ble Shri S.L.JAIN, Member (J)

Smt.Godabai Dattu Jadhav,  
W/o Late Dattu Raghunath Jadhav,  
Ex-Mazdoor of Central Ordnance Depot,  
Dehu Road, Ticket No.7903,  
R/At Chincholi, Post-Dehuroad,  
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 Ordnance Depot,  
Dehu Road, Pune.

...Respondents

By Advocate Shri R.K.Shetty

O R D E R

(Per : Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the applicant is entitled for family pension and Ex-gratia payment on account of the death of her husband with arrears and interest thereon at the rate of 18% p.a.

2. The applicant claims that Dattu Raghunath Jadhav was entertained as a Mazdoor on 19.1.1948 under the Respondent No. 2. Due to serious illness applicant's

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husband the said Dattu Raghunath Jadhav was admitted in the Government Hospital at Pune, expired on 20.10.1957 while in service. The applicant was paid Rs.600/- probably towards the CPF A/c No.41695 as he was a Member of I.O.F. W.P. Thereafter, the applicant's husband was discharged from his service on 25.3.1958 as he was absent because of his illness and his death was not intimated by anybody to the Respondent No. 2. As there were no rules, the applicant could not get family pension during that period. The applicant by her letter dated 22.9.1992 to the M.G.A.O.C. Headquarters, Southern Command with a copy to Respondent No. 2 asked for the grant of Ex-gratia payment which was replied by Respondent No. 2 vide letter dated 22.10.1992 (Exhibit-'A-3'). The applicant by her letter dated 30.11.1992 made the entitlement for Ex-gratia payment/pension to the M.G.A.O.C. Headquarters with a copy to the Respondent No.2 (Exhibit-'A-4') which was replied by Headquarters vide their letter dated 10.12.1992 (Exhibit-'A-5'). The applicant again requested for payment of pension/Ex-gratia payment vide letter dated December, 1992. After having received the Death Certificate, the claim was made. Hence, this OA. for the above said relief.

3. The claim of the applicant was resisted by the respondents on the ground that since there <sup>is</sup> absolutely no records <sup>of</sup> the service particulars of alleged husband of the <sup>wife</sup> wife-applicant herein, the respondents are unable to offer any valid comments on the OA. In view of the absence of the record, the respondents do not admit that there was an employee called Dattu Raghunath Jadhav in the service of the respondents. The respondents also

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do not admit that the applicant was or is the wife of Shri Dattu Raghunath Jadhav. The applicant claimed that her husband was discharged on 25.3.1958 whereas the application is filed on 21.5.2000, i.e. after lapse of 42 years from the date of alleged discharged. In view of Section 21 (2) of CAT Act, 1985 read with the decision of the Hon'ble CAT, Principal Bench reported in ATR 1986 (1) 203, Union of India vs. V.K.Mehra, the Tribunal has no jurisdiction to entertain this OA. The application suffers from limitation, laches and problem of identification of applicant or alleged husband in absence of the record. The application is frivolous. The OA. is liable to be dismissed with exemplary cost.

4. The death of the applicant's husband was neither intimated to the employer nor the applicant approached the Tribunal for such benefits from the date of her knowledge. Hence, prayed for dismissal of the OA. along with cost.

5. A.T.R. 1986 (CAT) 203, V.K.Mehra vs. The Secretary, Ministry of Information & Broadcasting, New Delhi, it has been held that Tribunal has no power to entertain a grievance arising prior to 1-11-1982 or to condone the delay in such a case. There cannot be any dispute regarding the said proposition of law.

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6. The learned counsel for the applicant relied on AIR 1985 SC 1196, Smt. Poonamal & Ors. vs. Union of India & Ors. and Premilobai Vishnu Dixit vs. State of Maharashtra and argued that the applicant is entitled to family pension in view of the declaration by the Apex Court. He has relied on Para 9 (i) of the said judgement, which is as under :-

"9. Today when the matter was taken up for final hearing another statement was submitted by Mr. B. Dutta on behalf of the Union of India. The Government of India submitted its clarification on the aforementioned three points which read as under :-

(i) Government are prepared to grant to the dependents, i.e. minor sons etc. of the pensioners governed under pre-1964 scheme the same pensionary benefits as are admissible to the dependents under the current pension rules."

On the basis of the said authority, the applicant claims family pension as said judgement was pronounced on 30.4.1985. The applicant claims that her right came into existence on the said date and the pension, family pension are recurring cause of action [redacted] and Tribunal has jurisdiction to decide the matter.

7. Family Pension Scheme 1964 applies to Government servant entering service in pensionable establishment on or after 1.1.1964. The applicant did not enter in service on or after 1.1.1964. It further applies to a Government servant who was in service on 31.12.1963 and covered by the provision of family pension for the Central Government employees contained in the Ministry of Finance, O.M. No. 9 (16)-E 1.5.63 dated 31.12.1963 as in force would be entitled to these rules. Thus, even the applicant is not covered in the said clause.

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8. Prior to Family Pension Scheme 1964, Family Pension 1950 was in force. A perusal of the said scheme makes it clear that a person is entitled to a pension, his family is entitled to family pension. Perusal of Rule 55 (2) makes it clear that a family Pension ~~shall~~ shall be granted for a period not exceeding 10 years to the family of Government servant ~~who~~ dies while in service   
 /after completion of not less than 20 years of service.

However, a provision has been made and the Government ~~is competent~~ <sup>grant</sup> such family pension in exceptional circumstances to ~~the~~ family of a Government servant ~~who~~ dies while in service after completion of not less than 10 years. The applicant's husband ~~who has not completed~~ 20 years of qualifying service is not entitled to pension, the applicant is not entitled to family pension. Even, the applicant's husband did not complete 10 years qualifying service. Hence, the applicant is not entitled to family pension.

9. After the pronouncement of the judgement referred above (AIR 1985 SC 1196 Smt. Poonamal & Ors. vs. Union of India & Ors. and Premilobai Vishnu Dixit vs. State of Maharashtra), the Government of India, Department of P & PW issued a Notification No. 2/18/87-P & PW (PIC) dated 20.7.1990 published as S.O.2388 in the Gazettee of India dated 6.9.1998 and Family Pension Scheme, 1964 is also extended from 27.9.1977 to Government servants on pensionable establishment who retired/died before 31.10.1963 as also to those who were alive on 31.12.1963

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but has opted out of 1964 Scheme. The applicant's husband never retired though he may be on pensionable establishment. There is no pleading that he has opted out for 1963 Scheme. Thus, even in view of the said Notification, the Family Pension Scheme 1964 is not applicable to the applicant.

10. Even the Apex Court judgement referred above applies to persons who were pensioners who governed under pre-1963 Scheme. As the applicant is not covered by Family Pension Scheme 1950, the applicant's husband was not a pensioners, the applicant is not entitled to family pension. The applicant is also not entitled for the Ex-gratia payment for the reason that the applicant's husband was not a pensioner.

11. Before I conclude, it is necessary to mention that the respondents have placed on record the rules for destruction of the records. It is worth mentioning that rules may exists on distruction of record but the respondents has to place on record that been in fact the rules have complied, i.e. in fact the record has been destroyed by placing the entries in respect of destruction of record.

12. In the result, I do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

*PL. JAIN*  
(S.L.JAIN)  
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

R.P.No.68/2001 in OA.NO.376/2000

Dated this the 19<sup>th</sup> day of October 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Smt.Godabai Dattu Jadhav

...Applicant

vs.

Union of India & Ors.

...Respondents

ORDER

{Per : Shri S.L.Jain, Member (J)}

This is an application under Rule 17 of the Central Administrative Tribunal (Proedure) Rules, 1987 for Review of the order passed in OA.NO.376/2000 on 29.8.2001.

2. I have carefully perused the grounds mentioned in Review Application contained in para 2,3,4 & 5. I am of the considered opinion that there is no mistake or error apparent on the face of the record. The underlying object of this provision is not to enable the court to write a second judgement. A mere repetition of the old and over-ruled arguments cannot create a good ground for review.

*Signature*

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3. In the result, I do not find any merit in Review Application. It deserves to be dismissed and is dismissed accordingly without notice to the other party by circulation. No order as to costs.

*S.L. Jain*  
(S.L.JAIN)

MEMBER (J)

*dt 19/10/01*  
Order/Judgment dispatched  
mrj. to Applicant Respondent (s)  
on 10/12/01

*MS*