

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: **31 JAN 1994**

APPLICATION NO(s) OA 603/93

APPLICANTS:

D.L. Nagamane
TO.

RESPONDENTS:

S.P.O Channarayana

1. K.R. Anantha Murthy, NO. 40, 3rd Floor,
Sardar Patelappa Road, Bangalore-2.
2. Sri. M.S. Padmanabhaiah, Senior Counsel
for Central Govt High Court Building Block
3. The Superintendent, of Post offices
Channarayana Division Channarayana
4. Dy. Director of Accounts (Postal)
GPO Buildings II Floor Bangalore-1
5. The Chief Post Master General,
Karnataka Circle, GPO Buildings
Bangalore-1.

SUBJECT:- Forwarding of copies of the Orders passed by
the Central Administrative Tribunal, Bangalore.

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Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/, Passed by this Tribunal
in the above mentioned application(s) on 19.1.94.

Recd. for D.L. Nagamane

[Signature]

gm*

31.1.94

[Signature] 31/1/94

[Signature]
DEPUTY REGISTRAR
JUDICIAL BRANCHES.

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

O.A. NO.603/93

WEDNESDAY THIS THE NINETEENTH DAY OF JANUARY 1994

Shri Justice P.K. Shyamasundar ... Vice Chairman

Shri V. Ramakrishnan ... Member [A]

Kum. D.L. Nagamani,
D/o late D.J. Lakshmana Murthy,
Aged about 43 years,
Represented by her brother
and guardian,
Sri D.L. Madhava Murthy,
No.388, T.B. Approach Road,
Subashnagar Extension,
Nelamangala-562 123.

... Applicant

[By Advocate Shri K.R. Anantha Murthy]

v.

1. The Superintendent of Post Offices,
Channapatna Division,
Channapatna-571 501.
2. Deputy Director of Accounts [Postal],
G.P.O. Buildings,
III Floor, Bangalore-1.
3. The Chief Post Master General,
Karnataka Circle,
G.P.O. Buildings,
Bangalore-1.

... Respondents

[By Advocate Shri M.S. Padmarajaiah ..
Senior Standing Counsel for Central Government]

ORDER

Shri V. Ramakrishnan, Member [A]:

The applicant is a disabled daughter of a Government servant who retired on 31.12.1973 and who died on 19.11.1979. She has sought a direction that she should be given the benefit of family pension for the period from 9.3.1982 to 20.5.1987.

2. On the death of the Government servant in November 1979 one D.L. Sumithra who was his unmarried daughter was given family pension. This continued till 8.3.1982 when Sumithra became ineligible to be granted family pension on account of her age. The



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Government servant had a disabled daughter who in terms of proviso to Sub Rule 6 of Rule 54 of the CCS [Pension] Rules would be entitled for family pension for life subject to certain conditions irrespective of her age. This proviso was incorporated to the rule by notification dated 30.9.1974. The Department, however, did not extend the benefit of the proviso to the applicant on the ground that there is an executive instruction dated 20.5.1987 which is incorporated as Government of India decision No.6 below Rule 54 as in Swamy's Compilation 13th edition. The executive instruction referred to is dated 20.5.1987 and reads as follows:

"[6] Family pension throughout life admissible also to the physically/mentally handicapped children of those employees who retired/died before 30.9.1974.-1. Proviso to sub-rule [6] of Rule 54 of the CCS [Pension] Rules, 1972, stipulates that if the son or daughter of a Government servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 21 years in the case of a son and 24 years in the case of daughter[now 25 years in both cases] the family pension shall be payable to such son or daughter for life subject to the conditions laid down therein. The said proviso was incorporated in the said rule vide Notification No. 1[3]-E.V[B]/74, dated 20.9.1974, and came into effect from that date.

2. Representations have been received from various quarters for grant of family pension to the sons/daughters of Government servants/pensioners who are suffering from disorder or disability of mind, etc., where Government servants retired/died before 30.9.1974. The matter has been considered carefully and it has been decided that the benefit of family pension to the sons/daughters of Government servant who are suffering from any disorder or disability of mind or are physically crippled or disabled so as to render them unable to earn a living be extended to such sons/daughters of Government servants who retired/died before 30.9.1974.

3. These orders will take effect from 20th May, 1987 and no arrears will be admissible."

In terms of this executive instruction the applicant was given the benefit of family pension from 20.5.1987 but was denied that benefit from March 1982 when Sumithra ceased to be entitled for



family pension, till 20.5.1987.

3. We have gone through the Rule 54[6] including ~~to~~ the proviso. It does not support the contention of the Department that the benefit would be available only to dependents of ^{only} those Government servants who retired on or after 30.9.1974 when the amendment was notified. An executive instruction cannot override the express provision in the statutory rule nor can it take away ^{a benefit} what is legally admissible. However, we are unable to help the applicant for the reason that she has come up very late as the claim relates to the period from March 1982 to 1987 and she has moved us only towards the end of 1993 and there is no satisfactory explanation for the delay. In view of this we are not able to grant relief as sought for by the applicant on the ground of the applicant having approached us so late. We do, however, feel that keeping in view the fact that the applicant is mentally retarded since birth and she would have been able to enforce the legal right if she had gone to the proper forum in time, it is a fit case where the Government should examine her request sympathetically. We accordingly direct that in case a further representation is made on behalf of the applicant for grant of this benefit from March 1982 to 20.5.1987, the department should consider the same objectively and with sympathy. No costs.



TRUE COPY

Sd-
VICE
MEMBER [A]

bsv

Se Shauhar
31/1
**SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE**

Sd-
VICE-CHAIRMAN