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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 167 of 1995.

Dated this Wednesday the 5th day of January, 2000.

Smt. Prayagbhai Vaman Utpat. Applicant.

Shri P. A. Prabhakaran, Advocate for the applicant.

VERSUS

Union of India & Others. Respondents.

Shri S. S. Karkera for Advocate for the
Shri P. M. Pradhan, Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

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

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

Re�ardm
(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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

Smt. Prayagbai Vaman Utpat,
residing at -
1743, Utpat Galli,
Bandharpur,
Dist. Solapur.

... **Applicant.**

(By Advocate Shri P.A. Prabhakaran)

VERSUS

1. Union of India through
The Secretary,
Department of Postal Services,
Dak Tar Bhavan,
New Delhi.
2. Director,
Postal Services,
Bombay Region,
Mumbai.
3. Sr. Suptd. of Railway Mill Service,
Bombay Sorting Division,
Phaltan Road,
Opp: Crawford Market,
3rd floor, Bombay. ... **Respondents.**

(By advocate Shri S.S.Karkera for
Shri P.M. Pradhan).

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant claiming family pension. Respondents have filed reply. We have heard Shri P.A. Prabhakaran, the Learned Counsel for the applicant and Shri S.S. Karkera for Shri P.M. Pradhan, Counsel for respondents. The

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applicant is the mother of S.V. Utpat, who was a Sorting Assistant in the Postal Department. Since he was a lunatic, he was retired on medical grounds by granting invalid pension with effect from 30.01.1978. The said pensioner died on 27.07.1985. He was a bachelor. He died leaving his parents. After the death of the pensioner, his father, namely - the applicant's husband, made a claim for family pension. It came to be rejected by order dated 10.10.1988. Applicant's husband died in 1992. Now the applicant, who is the wife of the deceased pensioner, has staked her claim for getting family pension. The applicant has also challenged the legality and validity of the rule which denies family pension to the parents of the deceased employee. It is stated that the applicant is entitled to family pension under Central Civil Services (Extra Ordinary Pension) Rules, 1937.

2. The respondents' case is that the application is barred by limitation, delay and laches. Since Shri S. V. Utpat was suffering from mental disorder, he was medically unfit to continue in service and hence, on the basis of medical certificate he was declared as 'unfit' and though he was not entitled for pension since he had not put in the required number of qualifying service, his case was treated as a special case for pension and, accordingly, the Government sanctioned invalid pension to Mr. Utpat, after relaxing the condition regarding minimum qualifying service. This was not a case of granting pension under the Extra Ordinary Pension Rules but this is a case



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of granting pension under the normal rules by relaxing the qualifying service for the purpose of pension. The applicant being the mother of the deceased employee, is not entitled for any family pension under the rules.

3. The short point for consideration is, whether the applicant is entitled to family pension or not ?

4. Mr. Utpat was granted pension under the normal pension rules, namely - C.C.S. (Pension) Rules, 1972. The only thing is that he did not have the minimum qualifying service for getting pension but that was regularised by the Government as a special case. It appears that Mr. Utpat had remained absent for quite a long period due to his mental disorder and that is how he did not have minimum qualifying service for getting pension under the rules. There is no dispute that under the C.C.S. (Pension) Rules, it is only the wife and thereafter the minor children who are entitled to claim family pension. The parents are not entitled for family pension at all. That is why the Learned Counsel for the applicant contended that this must be treated as pension granted under the Extra Ordinary Pension Rules and once it is so held, then the parents being the legal heirs, are entitled to get family pension as provided under the 1937 Rules. There is no dispute that if the pension granted to Mr. Utpat was an Extra Ordinary Pension under the 1937 Rules, then the applicant will be entitled to family pension.

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5. We have perused the 1937 Rules. It is called as Central Civil Services (Extra Ordinary Pension) Rules. It is a pension which is granted if there was disability or death caused as a result of the employment in Government service. There must be some connection between the disability and the Government service or in the case of death, ^{death} and Government service. In the present case, we are concerned about the disability, namely - the mental disorders of Mr. Utapt for which he has been granted pension. The question is, whether there was any connection between Utpat's mental disorder and the employment. There is no allegation in the pleadings that Mr. Utpat acquired this disease of mental disorder due to his employment in Postal Department. No such allegation is made and no material is placed before us to show that there is any connection between the mental disorder and the employment under the Government. In some cases, there may be some disease which may be aggravated due to employment and even in such a case also, there will be connection between disability and employment. For instance, a person may be having some bronchitis problem but if he works in a factory where there is lot of dust, the disease may get aggravated and in the course of time, he may incur a disability and as a result of which he may not be able to continue in employment. In such a case, he may be granted disability pension under this Extra Ordinary Pension Rules because the disease is aggravated as a result of employment in a particular factory. Therefore, there must be nexus or connection between the disability on one hand and employment on the other. This is clear from Rule 3-A of the 1937 Rules.

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In the present case, there is neither pleadings nor any material on record to show that mental disorder of Utpat had anything to do with the nature of employment in the Postal Department. Therefore, this is not a case where the pension granted to Mr. Utpat was under the Extra Ordinary Pension Rules. We may also note that under the Extra Ordinary Pension Rules, the words used are "Grant of award by the Government in case of disability or death as a result of employment", which means, it is an award of compensation due to disability sustained by an official as a result of employment. But in the present case, there is no such allegation and therefore, this cannot be a case of grant of award or pension under the Extra Ordinary Pension Rules.

6. The Learned Counsel for the respondents has placed before us the concerned office file which clearly shows that pension was granted to Mr. Utpat under the ordinary pension rules, namely - C.C.S. (Pension) Rules, 1972. Since he did not have the minimum required qualified service even to get that pension, the Government was pleased to relax the condition and grant pension. Once it is shown and held that it is a case of grant of ordinary pension under the ordinary rules, then admittedly, the parents are not entitled for family pension. Under the ordinary pension rules, it is only the wife and in her absence, the minor children who are entitled for family pension.

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7. The applicant has challenged the legality and vires of this discrimination between Extra Ordinary Pension and Ordinary Pension. No sufficient allegations are made to challenge the vires of the rule. In the case of Extra Ordinary Pension, even after putting one or two years of service, an official is entitled to pension because his disability is caused due to employment and in case of death due to employment, his legal heirs are entitled to get the award. But in the case of pension under the Ordinary rules, unless an official has put in ten years, he will not get pension at all. For the purpose of a family pension under the ordinary rules, it is only the wife and thereafter the minor children are made eligible.

These are two different types of cases and, therefore, different rules are made for extra ordinary pension and ordinary pension. Since they are covered by different rules and pension is granted under different grounds, there cannot be any uniformity in both the rules. It is purely a policy matter whether to grant family pension only to wife or to parents or others. There is no material before us to hold that in providing different heirs for getting family pension under the two rules is discriminatory, as alleged by the applicant. The pension is granted under a particular rule. If under the rule a particular person is not entitled to pension, he cannot claim the same.

8. Arguments were also addressed on the question of limitation, delay and laches. Since on merits we have reached

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the conclusion that applicant is not entitled to get family pension as per rules, we need not go into the question of limitation or delay and laches.

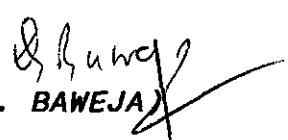
9. At the time of arguments it is brought to our notice that recently on the recommendations of the Fifth Pay Commission, the Government has since amended the rules even under the Ordinary Pension Rules that dependent parents could also be brought as persons eligible for family pension. A Government Order has been issued to this effect dated 05.03.1998. Then there is a clarification by the Government vide order no. 45/51/97-P & P.W. (E) dated 21.07.1999 where it is stated that even if the pensioner had died prior to O.M. dated 05.03.1998, then the dependent parents will be entitled to family pension w.e.f. 01.01.1998 subject to fulfilling other conditions mentioned in the O.M. dated 05.03.1998. As already stated, it is purely a policy matter and now on the recommendations of the Expert Body like the Fifth Pay Commission, the Government has amended the rules by including dependent parents as also being eligible for family pension by O.M. dated 21.07.1999. It applies to even such cases where the pensioner had died prior to 05.03.1998. Therefore, now it is open to the applicant to make a representation to the Government claiming family pension under the O.M. dated 05.03.1998 provided she comes within the parameters laid down in that O.M. for getting family pension. On such ^{representation} recommendations being made, the Government should consider

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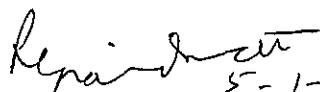
(A)

the same as per the terms of O.M. dated 05.03.1998 and subsequent clarificatory order dated 21.07.1999 and then decide whether the applicant is entitled to family pension or not. In case the Government holds that applicant is entitled to family pension in view of the amendment of these rules, then the Government can grant whatever family pension permissible to the applicant w.e.f. 01.01.1998 as mentioned in the clarificatory order dated 21.07.1999. Since the applicant is a widow, aged about more than 70 years, it is desirable that the Government should dispose of the said representation within a period of three months from the date of receipt of representation.

10. In the result, the application is disposed of subject to observations made in para 9 above. No order as to costs.


(D. S. BAWEJA)

MEMBER (A).


(R. G. VAIDYANATHA)
5-1-2000

VICE-CHAIRMAN.

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