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Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 827/89.

Date of Decision : 26.11.99.

~~T.A. No. -~~

Smt. K. Dharmavathi Petitioner.

Shri M.P. Chandra Mouli Advocate for the
petitioner (s)

Versus

Govt. of India, rep. by its Secretary, Respondent.

Min. of Personnel, Public Grievances & Pension, Dept.,

New Delhi-110003 others

Shri N.V. Ramana, Addl. CGSC Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. R. Balasubramanian : Member(A).

THE HON'BLE MR.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

HRBS
M(A).

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.827/89.

Date of Judgment 26.11.1991.

Smt. K.Dharmavathi

.. Applicant

Vs.

1. Govt. of India,
rep. by its Secretary,
Min. of Personnel,
Public Grievances &
Pension Dept.,
New Delhi-1.

2. Flag Officer
Commanding-in-Chief,
Eastern Naval Command,
Visakhapatnam-14.

3. The Controller of
Defence Accounts,
(Navy Pension),
Allahabad-U.P.

4. The Material Supdt.,
Material Organisation,
Eastern Naval Command,
Visakhapatnam-8.

.. Respondents

Counsel for the Applicant : Shri M.P.Chandra Mouli

Counsel for the Respondents : Shri N.V.Ramana, Addl. CGSC

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A).

This application has been filed by Smt. K.Dharmavathi against the Govt. of India, rep. by its Secretary, Min. of Personnel, Public Grievances & Pension Dept., New Delhi-1 and 3 others under section 19 of the Administrative Tribunals Act, 1985 praying for payment of family pension from 14.11.83 together with interest at 12% p.a. on the arrears from the respective due dates.

2. Shri K.Veerabhadra Rao served the Army for over 24 years from April, 1943 to August, 1967. On his retirement he was sanctioned a sum of Rs.49/- as pension. After his retirement Shri K.Veerabhadra Rao served the Civil post of Asst. Store Keeper in Eastern Naval Command, Visakhapatnam ~~and in~~ ^{and}

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~~and~~
December, 1968 he was promoted as Store Keeper from 9.11.79. While working as Store Keeper in the Naval Stores Department, Eastern Naval Command, Visakhapatnam he expired on 14.11.83. After his demise, his widow, the applicant herein, submitted her husband's pension book, legal heir certificate and death certificate to the concerned Sub Treasury Officer in January, 1984 itself. From the subsequent correspondence between the Officer-Incharge, Madras Regiment Records (Records Officer for short) and the Material Superintendent, Eastern Naval Command, Visakhapatnam (Material Superintendent for short), the applicant came to know that family pension has been recommended on Civil side at Rs.200/- p.m. from 15.11.83 to 14.11.90 and at Rs.100/- p.m. 15.11.90 onwards. The same was reported to have been forwarded to the C.D.A.(P), Allahabad and the P.P.O. was awaited. She had, in the meantime, made out a case to the concerned authorities for special family pension. The C.D.A.(P), Allahabad intimated her that she ^{was} ~~is~~ entitled only for ordinary family pension. It was also stated that sanction of Civil family pension as recommended by the Material Superintendent at Rs.200/- p.m. upto 14.11.90 and at Rs.100/- p.m. beyond that date was approved. It was also intimated that in view of the ^{higher} ~~mere~~ family pension her case for Military pensionary entitlements was being closed. Nothing happened subsequently and after protracted correspondence involving the Records Officer, the Material Superintendent and the C.D.A.(P), Allahabad she was informed by an order dated 31.8.89 that the family pension claim had been finalised. What was finalised was ordinary Military family pension and not the Civil pension she was asking for. Aggrieved, the applicant prays that directions be given for payment of Civil pension at the rates purported to have been recommended and under consideration i.e., at Rs.200/- p.m. upto 14.11.90 and at Rs.100/- p.m. beyond that date.

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3. The respondents have filed a counter affidavit and oppose the application. It is intimated that the Records Officer vide his letter dated 22.10.84 informed the applicant that a Civil family pension at Rs.200/- p.m./Rs.100/- p.m. had been sanctioned. It is also stated that after protracted correspondence the applicant was made to understand that she was not entitled to Civil family pension since her ^{deceased} husband failed to exercise his option for Civil family pension in terms of Govt. of India Decision No.II under Rule 54(13-A) of the C.C.S.(Pension) Rules, 1972 (Pension Rules for short). It is also pointed out that the deceased official was in receipt of Military pension. After the recommendation to the C.D.A.(P), Allahabad for sanction of appropriate family pension on verification of service records it was found that the deceased official had not during his life-time exercised option electing either the C.C.S.(Pension) Rules or the pension under Military rules. It is, therefore, their contention that in terms of sub-rule 13-A(iii) under Rule 54 of the Pension Rules she was eligible only for the normal Military pension. It is also stated that Shri K.Veerabhadra Rao had submitted a certificate dated 21.7.81 that he was not willing to opt for his former Military service for pension/gratuity and that it is clear from the certificate that he was not willing to opt for Civil pension.

4. I have examined the case and heard the learned counsels for the rival sides. The question to be decided is whether the widow is eligible for Civil pension at Rs.200/- p.m. upto 14.11.90 and at Rs.100/- p.m. thereafter. The entire question is hinging on whether during his life-time, the late Shri K.Veerabhadra Rao had opted for Civil pension or not. The respondents rely on sub-rule 13-A(iii) of Rule 54. From a reading of sub-rule 13-A(iii) of Rule 54 it is seen that only if he opts to retain Military pension for the past Military service he has to again exercise a second option for family pension. If, however, there is no second option it is to be

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deemed that the second option is only for family pension under the Military rules. The respondents have not stated anywhere that he has opted for Military pension. On the other hand, sub-rule 13-A(iv) of Rule 54 indicates that if on confirmation in Civil service or Civil post the official has opted to surrender Military pension and count in lieu thereof Military service for Civil pension, he shall be governed by family pension under this rule. ~~This is all when the official is confirmed.~~ There is no indication whether he ^{was} confirmed or not. If he had been confirmed, at the time of confirmation the authority issuing the order of substantive appointment should, alongwith such an order, require in writing the Govt. servant to exercise the option as required under Rule 19(2)(a). There is no evidence that the respondents had done this and the deceased official/cannot be blamed if he has not exercised any option in the light of his confirmation. If, on the other hand, he was still temporary in the Civil post when he died, sub-rule 13-A(i) of Rule 54 would be applicable ^{and} ~~since~~ this rule states that ^{if he dies} ~~while~~ holding a Civil post in a temporary capacity in the course of re-employment his family may be allowed to opt for the family pension. The widow was all the time pursuing the case of Rs.200/- p.m. upto 14.11.90 and Rs.100/- p.m. thereafter indicating thereby that she had opted for Civil pension. I also find vide Annexure 5 a certificate dated 21.7.81 given by Shri K.Veerabhadra Rao that he had declared thereby that he was not willing to opt for his former Military service for pension/gratuity. The respondents refer to this and contend that he was not willing for Civil pension. I fail to understand this interpretation. The late Shri K.Veerabhadra Rao had, while not positively stating that he wants Civil pension, indicated indirectly that he wants Civil pension

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Copy to:-

1. Secretary, Ministry of Personnel, Public Grievances & Pension Department, Govt. of India, New Delhi-1.
2. Flag Officer, Commanding-in-Chief, Eastern Naval Command, Visakhapatnam-14.
3. The Controller of Defence Accounts, (Navy Pension) Allahabad-(U.P.):
4. The Material Superintendent Material Organisation, Eastern Naval Command, Visakhapatnam-8.
5. One copy ^{to} M.P.Chandra Mouli, 1-7-139/1, S.R.Nagar, Golconda X Roads, Mushirabad, Hyderabad.
6. One copy to Shri. N.V.Ramana, Addl.CGSC CAT Hyd.
7. Copies to all Reporters as per the Standard Ltr of C.A.T.
8. One spare copy.

Rsm/-

31/12/91

by declaring that he was not willing to opt for his past Military service for pension/gratuity. This is the only ^{late} indication of the official available.

5. The applicant has enclosed a number of circulars of the Govt. of India on the subject of family pension. The tenor of all these circulars is to help the bereaved families ~~with the~~ ^{no} ~~positive~~ indication that unless there is something strongly against the case a helpful view should be taken. This is also ~~in~~ keeping with the basic objectives of a benevolent Government. In this background and with the only certificate available from the late Shri K.Veerabhadra Rao, I conclude that the widow is entitled to the Civil pension she has been asking for. I, therefore, direct the respondents to pay her the family pension at Rs.200/- p.m. from 15.11.83 to 14.11.90 and at Rs.100/- p.m. from 15.11.90 onwards.

6. The applicant has also prayed for interest at 12% p.a. on the arrears due to her. There is no provision in the rules for payment of interest on the pension amount due. There is no doubt that the applicant, a widow, had been put to considerable hardship in the absence of any pension whatsoever thanks to the protracted correspondence among the various agencies. While, therefore, not ordering the interest she has prayed for, I direct the respondents to pay all the pensionary ^{of} arrears within a period of three months from the date of receipt of this order alongwith commencement of family pension. There is no order as to costs.

R. Balasubramanian
(R. Balasubramanian)
Member(A).

26th
Dated November, 1991.

8/3/91
Dy.Registrar(Judl.)