

O.A.No. 1018/94

DT. 29/

CORAM:

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI
VICE-CHAIRMAN

For the reasons recorded in
the Judgment in O.A.306/94 (copy
seperately kept on record of this O.A.)
The O.A. stands dismissed subject
to Liberty mentioned in the order
(see operative order in the copy
of the Judgment) with no order as
to costs. CA to be treated as
seperately decided.

M.G. Chaudhari

HMGJ(J)
VC

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

O.A.No./F.A.No.....1018 of 1994

Smt- Rehana Khalid Applicant(S)

VERSUS

& Dir. Accounts Officer, (B&S) Su'bad Respondent(S)
auth

Date	Office Note	Orders
19.8.94		Admit. Post the case along with other similar cases. HRR m(a)

N
19/8

12/10

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

ORIGINAL APPLICATION NO. 1018 CF 1994

Smt. Rehman Khaled Applicant (S)

VERSUS

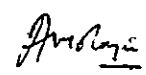
Sy. Dist. Accts. Officer, Sec'y.
Secbad & another

RESPONDENT (S)


The Application has been submitted to the Tribunal by
Sri Krishna Devan Advocate under
section 19 of the Administrative Tribunal 1 Act 1985 and same
has been scrutinised with reference to the points mentioned in
check list in the light of the provisions contained in the
Administrative Tribunal (Procedure) Rule, 1987.

The application is in order and may be listed for
admission on -8/4


Scrutiny Asst.


Deputy Registrar (Judl.)

11. Have legible copies of the annexure duly attested been filed. *SS*
 12. Has the Index of documents been filed and pagination done properly. *SS*
 13. Has the applicant exhausted all available remedies. *SS*
 14. Has the declaration as required by item No.7 of form I been made. *SS*
 15. Have required number of envelopes (file size) bearing full address of the respondents been filed. *SS*
 16. (a) Whether the relief sought for, arise out of single cause of action. *SS*
(b) Whether any interim relief is prayed for. *SS*
 17. In case an MA for condonation of delay in filed, is it supported by an affidavit of the applicant. *SS*
 18. Whether this case can be heard by single Bench. *SS*
 19. Any other point.
 20. Result of the Scrutiny with initial of the scrutiny clerk. *SS*
- Page 36 filed*


~~Section Officer.~~

Deputy Registrar.

Registrar.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

Dairy No. 2153

Report in the Scrutiny of Application.

Presented by Dr. Krishna Datta Date of Presentation 16/8/94
Applicant(S) Relaxation deal
Respondent(S) Sr. Dist. Health Officer, Sak. Sec. bap
Nature of grievance DS on RL 2 brother
No. of applicants one No. of Respondents Two

CLASSIFICATION.

Subject. D.R. on (No) Department. Railway (No)

1. Is the application in the proper form, (Three complete sets in papers/books form in two compilations) S
2. Whether name, description and address of all the parties been furnished in the cause title. S
3. (a) Has the application been duly signed, and verified. S
(b) Have the copies been duly signed. S
(c) Have sufficient number of copies of the application been filed. S
4. Whether all the necessary parties are impleaded. S
5. Whether English translation of documents in a language other than English or Hindi been filed. —
6. Is the application in time, (See Section 21) S
7. Has the Vakalatnama/Memo of Appearance/authorisation, been filed. S
8. Is the application maintainable, (U/s 2, 14, 18, or U.R. 8 etc) S
9. Is the application accompanied IPO/DD, for Rs.50/- S
10. Has the impugned orders Original/duly attested legible copy been filed. S

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

I N D E X S H E E T

O.A.No. 1018 of 1994

CAUSE TITLE

Smt. R. Khaled

VERSUS

Sr. Dist. Accounts Officer, (B&I) Subed & Asst

Sl.No.	Description of documents	Page No.
1.	Original Application	156
2.	Material Papers	5 to 7
3.	Vakalat	1.
4.	Objection Sheet	—
5.	Spare Copies 2 (Two)	
6.	Covers 2 A	

Reply statement filed by Mr.
G. & Sengani on 11/1/96

Dearness Relief on Family Pension

Req: To declare that the applicant is entitled to the payment of Dearness Relief on family pension.

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL :: A.P.

HYDERABAD

O.A.

1018 / 14

Railway

Between :

Smt. Rehana Khaleel

AND

The Sr. Divisional Accounts Officer
(Broad Gauge), Rail Nilayam,
Secunderabad and another



Applicant

Respondents

CHRONOLOGICAL DATE OF EVENTS

S.No.	Description	Page Nos.
	<u>Application</u>	1 to 4
1.	Copy of the Pension Payment Order No.SCR/SCB/1991/F- -B/9117 issued by Office of Sr. DAO/BG/SC.	5 to 6
2.	Copy of letter of FA&CAD's office, Rail Nilayam, Secunderabad, No. APN/SC dated 23.5.1991.	7
3.	Copy of the leaves of State Bank of India, S.B.A.No.4848587. <u>deleted</u>	8

Hyderabad,

Date : 16-8-94

[Signature]
COUNSEL FOR THE APPLICANT.

Recd.
I. Subramanyam
for S.E. 14
16/8/94.

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL :: A.P.

HYDERABAD

O.A

1018 / 94

Between :

Smt. Rehana Khaleel

... Applicant

AND

The Sr. Divisional Accounts Officer
(Broad Gauge), Rail Nilayam,
Secunderabad and another

... Respondents

DATE OF EVENTS

S.No.	Date	Description
1.	06.02.91	Date on which the husband of the applicant passed away.
2.	06.02.91	Date on which the respondents have sanctioned family pension plus Dearness Relief to the applicant.
3.	18.06.92	Date on which the applicant was appointed in Railways on compassionate grounds.
4.	June 1992	Month from which the respondents have discontinued the payment of Dearness Relief on the Pension payable to the applicant.

Hyderabad,

Date : 16-8-94


COUNSEL FOR THE APPLICANT.

IN THE COURT OF THE CENTRAL ADMINISTRATIVE TRIBUNAL :: A.P.

HYDERABAD

O.A.

1018/94

Between :

Smt. Rehana Khaleel, W/o. Khaleelur
Rehman, aged 42 years, working as
Clerk, AENS Office, Kurnool Town, A.P.

... Applicant

AND

1. Sr. Divisional Accounts Officer (S.A.O.)
(Broad Gauge), Rail Nilayam,
Secunderabad.

2. The General Manager, South Central
Railway, Rail Nilayam, Secunderabad.

... Respondents

The address for services of all notices is that of his
Counsel :

Mr. Krishna Devan, Advocate, & G. RAJANI KUMAR)
H.No.2-2-1107/172/3, Tilaknagar, Advocate
Nallakunta, Hyderabad - 500 044.

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE :

The application is preferred against the discontinuation of the payment of Dearness Relief on family pension.

2. JURISDICTION OF THE TRIBUNAL :

The applicant declares that the subject matter of the present application is within the jurisdiction of this Hon'ble Tribunal under Section 14 of the Administrative Tribunal Act, as the applicant is working as Clerk in the jurisdiction of the respondents herein.

3. LIMITATION :

The applicant further declares that the application is within the period of limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985 as the applicant has filed representation against the order of the respondents dated 23.5.1991.

(Contd...2)

4. BRIEF FACTS OF THE CASE :

(a) The husband of the applicant was working as T.M. Foreman, Khazipet Jn., and having worked for over 16 1/2 years died on 6.2.91. Consequently, the respondents vide P.P.O.No.SCR/SCB/1991/F--B/9117 had sanctioned family pension @ Rs.1,160/- and also Dearness Relief at the rates chargeable from time to time. Thus, family pension of Rs.1,160/- plus Dearness Relief of Rs.592/- was being paid to the applicant from 7.1.91 and was being distributed through State Bank of India, Tungabhadra Industrial Factory Campus Branch, Kurnool, -- A/c.No.48/8589. While so, the applicant was appointed on compassionate grounds as Junior Clerk in Asst. Engineers Office, Kurnool Town, with effect from 18.6.92. In accordance with the orders passed in the P.P.O.No. (last paragraph in the order), the respondents have paid only family pension excluding the Dearness Relief on the ground that the applicant is being appointed as Clerk and hence not eligible for Dearness Relief. Thus the applicant is getting a family pension of Rs.1,160/- only and is deprived of the Dearness Relief at the rates applicable from June 1992 onwards. The decision of the respondents in discontinuing the payment of Dearness Relief on family pensioners has been impugned in a batch of cases before various Benches of the Tribunal. The grievance of the applicant is also similar to the cases which were already admitted in which case the Tribunal at Madras, Ernakulam and Hyderabad Benches held that "Family pensioners though working in Central or State Government Undertakings are entitled for the payment of Dearness Relief and the family pension."

(b) The grievance of the applicant is similar to that of the batch of cases and hence the applicant is also constrained to approach the Hon'ble Tribunal seeking the extention of the

benefit of the judgements of the Tribunal's Benches. Therefore, the application may be allowed at the admission stage with usual directions.

5. GROUND'S FOR RELIEF :

(a) The O.A. is covered by the judgements of the Hon'ble C.A.T., Hyderabad Bench in O.A.No.1116 of 1993 and also in O.A.No.303 of 1994 and hence the benefit given therein may be extended to this O.A. and disposed of with usual directions.

6. DETAILS OF EXHAUSTED REMEDIES :

The decision of the respondents to discontinue the payment of Dearness Relief to the applicant is already impugned and the O.A.s are also allowed by the Tribunal's Benches also in a batch of cases. The case of the applicant is also common and the relief prayed for is covered by those decisions and hence the applicant having found no effective alternate remedy has approached the Hon'ble Tribunal seeking the extension of the judgements of the Hon'ble Tribunal.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT :

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of which this application has been made before any Court of Law or any other authority or any other such bench of this Hon'ble Tribunal and nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR : MAIN RELIEF :

It is, therefore, prayed that the Hon'ble Tribunal may be pleased to :

- a) declare that the applicant is entitled to the payment of Dearness Relief at the rates in force on family pension from June 1992 onwards.

b) direct the first respondent to pay arrears of Dearness Relief on family pension from August, 1993 onwards (one year prior to the date of filing of the O.A.) within one month from the date of receipt of the orders.

c) and to pass such further or other orders as this Hon'ble Tribunal may deem fit and proper.

9. INTERIM RELIEF :

It is, therefore, prayed that this Hon'ble Tribunal may be pleased to expedite the hearing of the main O.A.

10. PARTICULARS OF POSTAL ORDER :

1. Name of the Post Office : Vidhana Sabha, Hyderabad
2. Amount of Postal Order : 50/-
3. Date and No. : 16-8-94 no. 08 355760

11. LIST OF ENCLOSURES :

- i) Vakalatnama ii) Postal Order for Rs. 50/-
iii) Material Papers iv) Covers, Pads & Acknowledgements

L.P.O./B.C./D.D./Remover

VERIFICATION

I, the above named applicant, do hereby verify that the contents of paras 1 to 5 are true to my personal knowledge and paras 6 to 11 are believed to be true on legal advice of my Counsel and that I have not suppressed any material facts.

Hence, verified this 7th day of August, 1994 at Hyderabad, A.P.

SIGNATURE OF THE COUNSEL

Date : 16-8-94

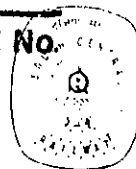
SIGNATURE OF THE APPLICANT

Rehana Khaled

SOUTH CENTRAL RAILWAY

Ann. No.

PAGE No.



PENSION PAYMENT ORDER

OFFICE OF SR.DAO/BG/SC.
DATE:

1000 DISTRIBUTION THROUGH NATIONALISED BANKS/POSTOFFICES.
(DISBURSER'S AND PENSIONER'S PORTION.)
P.P.O NO:SCR/SCB/1991/F- -E/ 9117

CATEGORY OF PENSION:
HEAD OF ACCOUNT:FAMILY.
13-410-99NAME OF THE PENSIONER:
W/O LateSmt.REHANA KHALEEL
Sri.KHALEELUR RAHMAN
T.M.FOREMAN / KZJDESIGNATION/STATION:
DATE OF DEATH:

06-02-1991

RELIGION:

ISLAM

D.O.BIRTH OF PENSIONER:

01-07-1952

PAYING BRANCH:

STATE BANK OF INDIA

TIF CAMPUS

KURNOOL

ACCOUNT NUMBER:

48/8589

FAMILY PENSION OF Rs. 1160 /- WITH EFFECT FROM 07-02-1991 TO
06-02-1998 AND Rs. 580 /- WITH EFFECT FROM 07-02-1998
TILL HER DEATH OR REMARRIAGE WHICHEVER IS EARLIER. RELIEF AT THE RATE OF
51 % ON FAMILY PENSION IS APPLICABLE. SUBSEQUENT REVISIONS ON
RELIEF AS ANNOUNCED BY THE GOVERNMENT ARE ALSO APPLICABLE.

RESIDENTIAL ADDRESS:

H.NO.49-1-73

MADDUR SUBBAREDDY NAGAR
KURNOOL 518 002.

PERSONAL IDENTIFICATION MARKS:

A MOLE ONE INCH LENGTH ON THE LEFT CHEEK ADJACENT TO THE LEFT EAR
A SMALL BLACK MOLE BELOW THE RIGHT CHEEK.

SIGNATURE OF THE PENSIONER.
TO BE TAKEN AT THE TIME OF FIRST PAYMENT.

A. UNTILL FURTHER ORDERS ON THE EXPIRATION OF EVERY
MONTH PAY TO Smt.REHANA KHALEEL THE SUM OF Rs. 1752 /-
(Rs. ONE THOUSAND SEVEN HUNDRED AND FIFTY TWO ONLY) BEING THE FAMILY
PENSION OF Rs. 1160 /- (Rs. ONE THOUSAND ONE HUNDRED AND SIXTY ONLY)
AND RELIEF Rs. 592 /- (Rs. FIVE HUNDRED AND NINETY TWO ONLY)
WITH EFFECT FROM 07-02-1991 TO 06-02-1998 AND RS. 580 /-
(Rs. FIVE HUNDRED AND EIGHTY ONLY) AS FAMILY
PENSION, PLUS RELIEF APPLICABLE AS PER EXTENT ORDERS W.E.F. 07-02-1998
TILL HER DEATH OR REMARRIAGE WHICHEVER IS EARLIER.

B. RELIEF IS APPLICABLE AT THE RATE OF 51 % ON FAMILY PENSION.
SUBSEQUENT REVISIONS ON RELIEF AS AND WHEN ANNOUNCED BY GOVERNMENT
ARE ALSO APPLICABLE.

RELIEF MAY BE STOPPED IF THE PENSIONER GETS AN APPOINTMENT IN ANY
CENTRAL/STATE/SEMI/QUASI GOVERNMENT ESTABLISHMENT W.E.F THE DATE OF APPOINTMENT.

COUNTERSIGNED.

SR.DIVL.ACCOUNTS OFFICER(BG)SC.

FOR F.A.A.C.A.O /SC RAILWAY SECUNDERABAD

0003381

TRUE COPY

ADVOCATE

SOUTH CENTRAL RAILWAY

OFFICE OF THE SENIOR DIVISIONAL
ACCOUNTS OFFICER (BG) SEC. BAD.



NO. A/PN/SC 9117

DATED:

THE ACCOUNTS OFFICER (PENSION)
FA & CAO'S OFFICE/SC RAILWAY/SECUNDERABAD.

SUB: DISBURSEMENT OF PENSION TO RAILWAY PENSIONERS THROUGH
PUBLIC SECTOR BANKS. PENSION AUTHORISATION IN FAVOUR OF
Smt. REHANA KHALEEL W/O
Sri. KHALEELUR RAHMAN : DESIGNATION/STATION : T.M. FOREMAN/KZJ
EXPIRED ON 06-02-1991

I AM TO FORWARD HERewith PENSION PAYMENT ORDER IN FAVOUR OF
Smt. REHANA KHALEEL FOR ONWARD TRANSMISSION TO THE FOLLOWING LINK BRANCH
DULY ATTESTED TOGETHER WITH THE SPECIAL SEAL OF THE DESIGNATED FA & CAO.

NAME AND ADDRESS OF THE LINK BRANCH:
STATE BANK OF INDIA
MAIN BRANCH
KURNOOL

NAME AND ADDRESS OF THE PAYING BRANCH:
STATE BANK OF INDIA
TIF CAMPUS
KURNOOL

ACCOUNT NUMBER: 48/8589

THE DEBIT MAY BE PASSED ON TO FA & CAO/SC ON RECEIPT OF THE DEBIT ADVICE
FROM RESERVE BANK OF INDIA/STATE BANK OF INDIA VIDE 10.1 OF THE SCHEME.

ENCL:

1. P.P.O (DISBURSOR'S & PENSIONER'S PORTIONS
2. COPY OF PHOTOGRAPH/JOINT PHOTOGRAPH
3. SPECIMAN SIGNATURE DULY ATTESTED
4. THUMB IMPRESSIONS OF THE PENSIONER'S DULY ATTESTED
5. AN APPLICATION FROM PENSIONER'S AS IN ANNEXURE I.

FOR SR. DIVL ACCOUNTS OFFICER (BG) SC.

SETTLEMENT CASE NO: 43/91-92

P.F. NO: 03470039

COPY TO DRM/P/BG/SC WRF. TO HIS LETTER NO. SCP/500/DNR/E/91 DT. 18-04-1991.
THE EMPLOYEE'S QUALIFYING SERVICE FOR PENSIONARY BENEFITS IS 16.5 YEARS.
CRG HAS BEEN WORKED OUT AND PAID BY THIS OFFICE. THE PENSION AND FAMILY
PENSION IS AUTHORISED AS PER THE P.P.O ENCLOSED.

COPY FOR INFORMATION TO:
Smt. REHANA KHALEEL W/O Sri. KHALEELUR RAHMAN
H.NO. 49-1-73
MADDUR SUBBAREDDY NAGAR
KURNOOL 518 002.

COPY TO FA & CAO/SC RAILWAY/SECUNDERABAD FOR INFORMATION.

FOR Sr. DIVISIONAL ACCOUNTS OFFICER/BG/SC

0003376

TRUE COPY

P.V.

ADVOCATE

1873/200

Anx. No.

2

PAGE No.

7

SOUTH CENTRAL RAILWAY

F A & C A O 'S OFFICE,
RAIL NILAYAM, SECUNDERABAD.

DATED: 23 MAY 1991

TO
THE MANAGER (LINK BRANCH)
STATE BANK OF INDIA
MAIN BRANCH
KURNOOL

SIR,

SUB: DISBURSEMENT OF PENSION TO RAILWAY PENSIONERS
THROUGH PUBLIC SECTOR BANKS.

I AM TO FORWARD HERewith THE UNDERMENTIONED PPO TOGETHER
WITH ITS ENCLOSURE AND REQUEST YOU TO ARRANGE PAYMENT OF PENSION THROUGH THE
PAYING BRANCH MENTIONED THEREIN DULY ADVISING THIS OFFICE AND THE
PARTIES CONCERNED.

1. PENSION PAYMENT ORDER NO & DATE:

SCR/SCB/1991/ 1873 /B/ 9117

2. NAME OF THE PENSIONER.
Sri.KHALEELUR RAHMAN

Smt.REHANA KHALEEL W/O

3. NAME OF THE OFFICE ISSUED PPO.

SR.DAO/BG/SC'S OFFICE.

4. NAME OF THE PAYING BRANCH.

STATE BANK OF INDIA
TIF CAMPUS
KURNOOL

YOURS FAITHFULLY,

FOR F A & C A O / SC.

ENCL:

1. P.P.O (BOTH THE HALVES)

2. COPY OF PHOTOGRAPH/JT.PHOTOGRAPH.

3. SPECIMEN SIGNATURE DULY ATTESTED.

4. THUMB IMPRESSION OF THE PENSIONER DULY ATTESTED.

COPY FOR INFORMATION TO: Smt.REHANA KHALEEL W/O Sri.KHALEELUR RAHMAN
A.NO.49-1-73

MADDUR SUBBAREDDY NAGAR
KURNOOL 518 002.

SR.DAO/BG/SC.

TRUE COPY

ADVOCATE

0003379

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH
AT HYDERABAD.

O.A. No. 1018 of 1994

Between:

Smt. Rehena Khaleel

Applicant

and
The Senior Divisional Accounts Officer,
~~The Bikaner Railway Manager (R)~~
South Central Railway
Secunderabad & ~~Others~~ Another

Respondents

REPLY-AFFIDAVIT FILED BY THE RESPONDENTS.

I, K. THIAGARAJAN S/o LATE V. KRISHNA SWAMY

aged about 43 years; Occupation: Government Service,
resident of Secunderabad, do hereby solemnly and sincerely affirm and state as under.

2. I am working as Senior Divisional Personnel Officer
in South Central Railway, Secunderabad Division
and therefore well acquainted with the facts of the case.
I am filing this Reply-Affidavit on behalf of the respondents as I am authorised to do so.

3. I submit that I read the application filed by the applicant in O.A.No.1018 of 1994 and the material allegations made therein are not true and correct and do not disclose any valid or tenable grounds to grant the relief prayed for in the O.A. The material allegations made therein which are not specifically admitted in this Reply-Affidavit shall be deemed to have been denied by the respondents and the applicant is put to strict proof of each of the averments so made.

4. It is submitted that the applicant's husband by

1st

and page:

No. of correns:

ATTESTOR

सहायक कार्मिक अधिकारी द.म.रे सिक'बाद
Asst. Personnel Officer, S.C.Rly. SC

DEPONENT

वरिष्ठ मंडल कार्मिक अधिकारी
द.म.रे सिक'बाद

3. Divisional Personnel Officer
S. C. Railway, SC,

name Rahman Khaleel worked as T.M.Foreman at Kazipet and died on 06-02-1991. A sum of Rs.1160/- per month was sanctioned as Family Pension to the applicant as per Pension Payment Order No.SCR/SCB/1191/F-B/9117

(ANNEXURE-R-I). The applicant was also eligible for Dearness Relief on her family pension at the rates applicable from time to time. The family pension with Dearness Relief thereon has become payable to the applicant from the date following the death of her husband i.e. from 07-02-1991. Since the applicant opted to receive family pension through State Bank of India, Tungabhadra Industrial Factory Campus Branch, Kurnool, under A/c No.48/8589, the payment of Family Pension was arranged accordingly.

5. It is submitted that the applicant herein was appointed as Junior Clerk in the office of the Assistant Engineer, South Central Railway, Kurnool Town from 8-6-1992 on compassionate grounds. Since the applicant was appointed in Railway Service, she is eligible only for Family Pension and Dearness Relief thereon is not admissible from 8-6-92 onwards. It is submitted that as per Railway Board's instructions in letter No.F(E)111-75 PN/1/8 dated 18-3-1977 (ANNEXURE-R-II), payment of Adhoc Relief and Graded Relief should be suspended when a person is appointed in any Department/Office of the Central Government or a State Government etc. Also as per Sub-Rule-(21)(ii) of Rule-75 of Railway Services(Pension) Rules, 1993 (Re-produced below), the family pensioner who is appointed in Central/State Govt. Service is not entitled for Dearness Relief on Family Pension.

2nd page;
No.of Corrs:

ATTESTOR

सहायक कार्मिक अधिकारी द.प.रे सिक'वाद
Asst. Personnel Officer, S.C.Rly. SC

DEPARTMENT

श्रीष्ठ मेडल कार्मिक अधिकारी
द.प.रे सिक'वाद

Sr. Divisional Personnel Officer
S. C. Railway, SC.

"Rule-75(21)(ii) - If a pensioner is re-employed under the Central or a State Government or a Corporation Company Body or Bank under such Government in India or abroad including permanent absorption in such Corporation, Company, Body or Bank, he shall not be eligible to draw dearness relief on pension or family pension during the period of such re-employment." Hence the applicant herein is not eligible for any Dearness Relief on the Family Pension from the date of her appointment to Railway service i.e. 8-6-1992.

6. The respondents are aware of the Judgements delivered by the Hon'ble Tribunals Bench at Madras, Ernakulam and Hyderabad. Though the grievance of the applicant herein is similar to that of the Batch cases, it is submitted that Dearness Relief could not be paid to the applicant who is receiving Family Pension as she has been appointed to Railway Service. As the Judgements of some of the Tribunal Benches allowing payment of Dearness Relief on Family Relief notwithstanding appointment in Government service are against the Rules and Policy of the Government of India, the Railways filed SLPs before the Hon'ble Supreme Court and secured Interim orders staying the operation of such Judgement vide xerox copy enclosed as (ANNEXURE-R-III). It is further submitted that the Hon'ble Supreme Court of India had decided the similar aspect in favour of the Union of India in U.O.I. Vs Vasudevan Pillai, Ex.Servicemen's case 1995 3 CC(L&S)396. As this matter is similar to the above decided case by the Apex Court and in as much as there is no violation of Railway Rules and Constitutional provisions, the O.A., is not tenable and it is liable to be dismissed.

3rd page:
No. of Corrnrs:

ATTESTOR

सहायक कार्मिक अधिकारी द.म.रे सिक'बाद
Asst. Personnel Officer, S.C.Rly., SC

DEPONENT

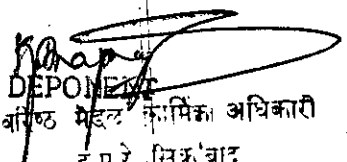
वरिष्ठ मंडल कार्मिक अधिकारी

द.म.रे सिक'बाद

Jr. Divisional Personnel Officer
S. C. Railway, SC.


7. In view of the facts mentioned above, it is prayed that the Hon'ble Tribunal may be pleased to dismiss the O.A. No.1018/94 as devoid of merit and pass such other order or orders as the Hon'ble Tribunal deems fit and proper.

4th & Last page;
No. of corrnrs:


DEPONENT
वरिष्ठ मंडल कार्यालय अधिकारी
द.म.रे. सि.क.वा.द.
Sr. Divisional Personnel Officer
S. C. Railway./SC.

Solemnly affirmed and signed
on this 13th day of October,
1995 at Secunderabad.

BEFORE ME.


ATTESTOR
वरिष्ठ मंडल कार्यालय अधिकारी द.म.रे. सि.क.वा.द.
Sr. Personnel Officer, S.C. Ry. SC.

// Annexure P- I //

1. Railway Servant quitting service on or after 1.5.1968 governed by SRPF have been given an opportunity to opt for liberalised Pension Rules, including the benefit of Family Pension Scheme, 1964 by 31-12-1968.
(S.C. Rly. S.C. No. 222/68)
2. It was further extended upto 31-03-1969.
(S.C.Rly. S.C. No. 39/69)
3. Fresh option extended to pre-1938 Railway Servant to come over Pension rules within target date 22.01.72
(S.C.Rly.S.C. No.120/71)
4. Option to staff who are in service/ quit service on or after 15-07-1972 governed by SRPF can come over to Pension rule extended by 21-10-1972.
(SC.Rly. S.C. No. 180/72)
5. Option to come over to Pension to Railway Servant who ~~was~~ are in service on 15-07-1972 extended upto 21-10-1972.
(S.C.Rly. S.C. No. 235/72)
6. Option to come over to Pensionable service has been extended upto 30-07-1975.
(S.C.Rly.S.C. No. 128/74)
7. The last date ~~to~~ to come over to Pension extended upto 30-06-75.
(S.C.Rly.S.C.No. 40/75)
8. The date of option for Pension extended upto 31.12.1975.
(S.C. Rly.S.C. No.94/75)
9. Last date for option was exte-nded upto 30-06-1976.
(S.C.Rly.S.C. No. 199/75)
10. It was ext-ended upto 31-12-1976.
(S.C.Rly. S.C. No. 124/ 76)
11. Last date ~~for~~ for Pension extended upto 30-06-77
(S.C.RLY. S.C.No. 2/77)
12. Last date for Pension extended upto 31.12.1977
(S.C.Rly. S.C. No.88/77)
13. Last date for Pension extended upto 30-06- 1978
(S.C.Rly. S.C. No.73/78)
14. Last date for Pension exte-nded upto 31.12.1978.
(S.C. Rly. S.C.No. 92/78)

Memo of appearance *filed*
on 26-12-1994.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:
HYDERABAD BENCH: AT HYDERABAD

O.A.No. 1018 of 1994

Between:

Smt. Rehena Khalsel Applicant
and

The Senior Divisional
Accounts Officer,
South Central Railway,
Secunderabad & another ... Respondent.



Reply Statement filed by the
Respondents

1 -1-1996

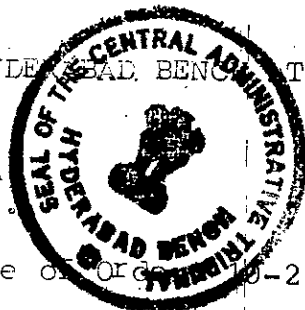
G.S. Sanghi,
M. Veeresham,
Advocates,
302- Law Chambers,
IIIrd Floor, Land Mark Centre
Siddamber Bazar, Hyderabad.

*may be filed
as
1/1/96*

3. The respective applicants are widows of Govt. employees working under the respective respondents and who died in harness. These widows are receiving family pension. Most of them however have been appointed in Govt. employment in varying posts on compassionate grounds and are working on regular pay scales and some were already in service. They are receiving dearness relief on their pay. Prior to their compassionate appointment they were being paid dearness relief on the family pension. On their being appointed to the Govt. Service (on compassionate ground) the respondents however stopped payment of dearness relief on the family pension applying Rule 55A(ii) of the CCS(Pension) Rules treating them as re-employed pensioners. This action is subject matter of challenge in these applications.
4. Individual facts in the instant O.A. (i.e. 306/94) may be illustratively noted in order to understand the precise nature of the grievance of the applicants.
5. Smt. B. Ankamma (Applicant) is the widow of late B. Ranganna who was working as Telephone Operator and died in harness on 31-10-91. Smt. B. Ankamma drew family pension at Rs. 575/- p.m. w.e.f. 1.11.91 and would have drawn the same @ Rs. 375/- from 1.11.98 vide the pension order dt. 20.7.92 and authorisation order dt. August, 1992 (annexures 2 and 3). She was being paid dearness relief at the prescribed rate on the pension of Rs. 575/- until 28.11.92. She was appointed to Group 'D' w.e.f. 28.4.92 on compassionate ground. Thereupon vide PPO No. TDM/KNL/23 issued by the 3rd respondent payment of dearness relief on the pension was stopped from 28.11.92. She submitted a representation on 9.2.94 but the same was rejected. Hence the applicant has filed the instant O.A. on 11.3.94. She seeks a direction to the respondents to restore the dearness relief on the family pension from 28.11.92 and pay the arrears. The principal contention is that Rule 55A(ii) is discriminatory and violative of Article 14 of the Constitution of India.
6. The respondents have not filed counter. Hence the facts may be taken as undisputed.
7. Facts in other OAs are similar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD, BENCH AT HYDERABAD

O.A.NO. 306/94
(with batch of 81 O.A.
listed in Schedule).



Date of Order 10-2-97.

Between:

Smt. B. Ankamma.

and

Applicant.

1. Union of India, rep. by
Telecom. District Manager,
Kurnool, Kurnool Dist.
2. Director of Accounts (postal),
A.P. Circle, Hyderabad.
3. Postmaster, Kurnool HPO, Kurnool.

Respondents.

Counsel for the Applicant: Sri K.S.R. Anjaneyulu.

Counsel for the Respondents: Sri N.R. Devraj, Sr. CGSC.
Sri G. Parameswara Rao, SC for IA & AD

CORAM:

HON'BLE SRI JUSTICE M.G. CHAUDHARI : VICE-CHAIRMAN

J U D G M E N T

(Per Hon'ble Sri Justice M.G. Chaudhari : Vice-Chairman.

....

This O.A. and other cases in the batch involve a ~~few~~ common question of law for determination. Hence submissions of the learned counsel representing respective applicants and the respective respondents in the batch have been heard together. The following counsels argued on behalf of the applicants:

Messrs. K.S.R. Anjaneyulu, K. Venkateswar Rao,
T.V.V.S. Murthy, P.E. Vijayakumar, Krishna Devan,
S. Ramakrishna Rao, G.V. Subba Rao, M.P. Chandramouli,
Krishna Mohan Rao, N. Raman, P. Jaya Rao,
V. Rama Rao and V. Purga Rao.

On behalf of the respondents Sri N.R. Devraj, Sr. CGSC. and Sri G. Parameswara Rao, SC for IA & AD addressed the arguments.

2. The list of cases in the batch is set out in the Schedule appended to this judgment.

12. The provisions under the rules material for present purpose may now be noted. Pension is a retirement benefit. Rule 5 of the CCS(Pension) Rules (Hereinafter referred as Rules) provides that a claim to pension or family pension shall be regulated by the provisions of the said rules where a Govt.servant retires(etc.) or dies-from the date of currence of the event, Rule 3(1) (o) as amended on 5.2.91 provides that pension includes gratuity but does not include dearness relief. Dearness relief is defined in Rule 3(1) (cc) to mean relief as defined in Rule 55A. The said Rule 55A was inserted on 9.2.91 and defines dearness relief as relief against price rise as may be granted to the pensioners and family pensioners in the form of dearness relief at the rates and subject to conditions as may be specified by the Central Government from time to time.

13. 'Family pension' is defined in Rule 3(1)(f) to mean Family Pension, 1964 admissible under Rule 54 but does not include dearness relief. Rule 54 provides for Family Pension, 1964. Sub Rule 2 provides for payment of family pension to the family of the deceased Govt.servant at the prescribed rates. Under Rule 54(14) wife in the case of a male Govt.servant is treated as 'family'.

14. The O.M.No.14014/6186-Estt(D) dated 30.6.1987(Appendix 2 to CCS(Pension) Rules) issued by the Govt.of India, Dept.of Personnel and Training shows that compassionate appointment may be made of a son or daughter or near relative of a Govt.servant who dies in harness leaving his family in immediate need of assistance, when there is no other earning member in the family.

15. The above noted provisions under the rules show that the benefits of family pension payable and the compassionate appointment given to a widow of a Govt. servant flow from the service of the deceased Govt. servant and its benefit is inhered by his widow or other dependent family members. During the life time of the Govt. servant there could not arise any ~~fight~~ right to the same in favour of his family members. These are not earned by virtue of any independent right created by law. These therefore have to be correlated with the 'Pension' to which the Govt.servant became entitled. These cannot be availed de-hors the pension. The object behind providing for family pension and compassionate appointment is the same namely, to relieve the family of a deceased Govt.servant from the great distress suffered by it as the sole bread earner has died and there is no source of income for livelihood immediately available. These are welfare measures introduced by the State.

8. The question that arises for consideration is as follows:-
Whether a widow of a Govt. employee who died in harness is entitled to continue to get dearness relief on the amount of family pension after her compassionate appointment in Govt. Service?
9. The applicant draws support to her contention that she is entitled to get the dearness relief on the family pension notwithstanding her compassionate appointment from the decision of the Ernakulam Bench of Central Administrative Tribunal in Smt. E. Manickam Vs. The postmaster, Tirur & Ors. reported in 1992(1) SLJ (CAT 589 (Annexure 5) and followed by Hyderabad Bench in O.A. No. 1116/93 decided on 13.9.93 (Smt. Neena Asthana) (Annexure 6).
10. The learned standing counsels for the respondents however submitted that the law laid down by the Ernakulam Bench in Smt. E. Manickam is no longer good law in view of the decision of the Hon'ble Supreme Court in Union of India & Ors. Vs. G. Vasudevan Pillai and ors. 1995 SCC (L&S) P.396, which according to them provides answer to the question under consideration and consequently the O.A. is liable to be dismissed.
11. Before turning to the above submission I would indicate my own view on the point. In my opinion the answer to the question involved would require the following aspects to be examined, namely.
- i) Whether family pension paid to the widow on the death of her husband forms part of the pension of the deceased or whether it is received by way of an independent right conferred under the Rules and has to be so treated,
 - ii) whether dearness relief on family pension is integral part of the family pension or is different,
 - iii) whether compassionate appoint of the widow was to be correlated to the service of the deceased Govt. Servant, and
 - iv) whether the expression re-employed pensioner can apply to a person in receipt of family pension so as to attract clause (ii) of Rule 55A of the CCS (pension) Rules, 1972 (as amended)?

18. Rule 5 of Pension Rules regulates claims to pension and family pension in accordance with provisions of the said rules. Rule 7(2) lays down that a Govt. servant who having retired on superannuation or retiring pension shall not be entitled to a separate pension or gratuity for the period of his re-employment. Rule 55A(ii) so far material is in following terms:

"(ii) If a pensioner is re-employed under the Central Govt. he shall not be eligible to draw dearness relief on pension/family pension during the period of such employment."

This provision was inserted on 9.2.91 was already noted and it is pertinent to note that simultaneously Rule 3(f) was substituted to exclude dearness relief from definition of family pension. When it is realised that dearness relief was provided with a view to off set price rise consistently with the object of providing family pension to a widow (family) in distress and that is otherwise taken care of by providing her a regular source of livelihood by giving her employment together with dearness relief on pay the limitation placed by Rule 55A(ii) appears logical and reasonable. The challenge to its validity therefore cannot succeed. It is not possible to see how discriminatory treatment can arise or violation of Article 14 can be spelt out. A re-employed Govt. servant would stand on par with other Govt. servants and no question of differential treatment can arise. Similarly, a person appointed in service would no longer be similar to an unre-employed pensioner. It is argued on behalf of the applicants by the learned counsels that family pension is not granted to the family of the deceased Govt. servant solely as a welfare measure but also in consideration of service rendered by the Govt. servant during the period which he was in service and relief on pension being an adjunct of pension, rule 55A(ii) ought to be construed as unreasonable and violative of Article 14. This argument ignores difference between un-reasonableness of a provision and where a provision results in discrimination. Both these grounds however do not arise as discussed above.

19. What however is argued by the learned counsels and which has great substance is that Rule 55A (ii) speaks only of a pensioner who himself is re-employed and a widow not being the same person who is re-employed the provision does not apply

In the instant case (and in similar situations) the applicant widow has been paid family pension as also she has been given an employment on compassionate ground. Obviously that was to provide her immediate means for livelihood. To that extent even the respondents have not deprived her of the family pension after compassionate employment was given.

16. The position as regards dearness relief has to be understood in the context of the above considerations. The entitlement to receive dearness relief is not to be equated with the right to receive the pension family pension. The definition of family pension under rule 3(1) (f) therefore does not include dearness relief as part of family pension. It was on the recommendation of the IVth Central Pay Commission that by O.M dt.6.4.1974 the relief had been made available to Class II, III & IV employees. The recommendation was aimed at protecting the pension from erosion on account of possible increases in the cost of living in future. For that purpose All India Working Class Consumer Price Index is followed. That is also reflected from Rule 55A which refers to it as relief against price rise.

17. When with the self same object of removing immediate distress of the family, compassionate appointment is given to the widow the element of corrosion in the value of the rupee and the price rise are taken care of by payment of dearness relief paid on the pay. That is further supplemented by the amount of family pension which the widow continues to receive. The two benefits are not to be taken as additional sources of income by way of bounties conferred unrelated to the object for which these are given. With the appointment in service the element of distress stands removed and with the payment of dearness relief on pay the corrosion in value of money and price rise are taken care of. The claim of the widows like applicant as sought would imply that her pay on her appointment on a regular pay scale should be read as basic pay plus amount of family pension and on this total amount dearness relief should be given. That clearly would not be supportable if one has regard to the basic object for which these welfare measures have been introduced. The appointment on compassionate ground itself is by way of a concession as it is made available out of turn under special rules and not under the regular recruitment rules and in given cases after giving relaxation to widows in educational qualification (See para 4(d) of G.O. dated 30.6.87).

21. In Meena Subramanian (Mrs.) & Ors. Vs. Union of India and ors. of the Madras Bench of CAT.(1992) 20 ATC 584, similar view as taken by the Ernakulam Bench has been taken. It is held that dearness relief cannot be treated as different from pension. It has also been held that there is inconsistency between clauses (i) and (ii) of Rule 55A and in view of the purpose of the relief i.e. of off-setting the eroding value of rupee and preventing fall in real value of pension and to restore pension to its original value clause(ii) of Rule 55A introduces unconstitutional discrimination and therefore is invalid. To my mind the position of an employed widow and a widow who is not employed makes all the difference and whereas in the latter instance deprivation of dearness relief would be bad had unconstitutional but in the former instance it may not necessarily be so. The decision further says thus:

If the Government does not want to extend two benefits to widows of Govt. servant, it is open to them either not to give compassionate employment to the spouses getting a family pension or to provide that family pension will be suspended during the period of compassionate employment. But once pension is allowed to be drawn, dearness relief should be paid alongwith it, otherwise there will be only a part payment of pension in real terms".

22. With respect, family pension and dearness relief being two separate segments -- one being property available as a right and the other being a benefit conferred in addition to that right and when that benefit is transformed in the relief granted on the pay received on employment there is room to take the view that dearness relief may be validly suspended. Once again the position would differ where the widow is employed and where she is not. The first category may be possible to be treated differently. Moreover when the observations imply that it is open to the Govt. either to deny compassionate appointment or to suspend the family pension itself during the period of employment it is not easy to understand as to why the Government could not suspend only the dearness relief leaving in tact the family pension even after providing employment and dearness relief on the pay. It would not therefore appear that Rule 55A(ii) is unreasonable for unconstitutional.

to the widow and therefore there is no bar arising under the Rules against payment of dearness relief on family pension which she is otherwise entitled to receive under the relevant provisions in the rules and therefore the respondents are not right in applying the said rule to the applicant widows. At the first blush the argument appears attractive but it cannot be sustained on deeper scrutiny.

It is true that the Pension Rules do not define 'Pension' as inclusive of 'family pension'. Likewise Rule 55A(ii) speaks only of a 'pensioner' who is re-employed and does not contain the words 'a pensioner' or 'a family pensioner' so as to include family pensioner under the limitation contained therein. That is why the concepts of family pension and compassionate appointment have to be understood in the context of the object in providing them and upon an analysis of the same it must follow that in as much as these benefits/concessions are integral part of service rendered by the pensioner namely the deceased Govt. servant and would not arise independently thereof the expression 'Pensioner' occurring in the rule must be given an expanded meaning so as to include within its ambit a 'family pensioner'. With this position the limitation contained in Rule 55A(ii) would be attracted and the conclusion is inevitable that the applicant/s has/have no right to claim dearness relief on family pension during the period of her/their re-employment.

20. In the decision in Smt. E. Manickam (supra) of the Ernakulam Bench of CAT. It has been held that family pension cannot be considered as an ex-gratia payment or a bounty and it is a property earned by the recipient and its deprivation either in part or in whole without observing the due process of law has to be struck down as unreasonable and unjust. This view implies that dearness relief on pension has to be treated as part of family pension which in turn is property and therefore Rule 55A(ii) is unreasonable and unenforceable. I have indicated my own view upon the scheme envisaged by the rules which is not in conformity with this view nor I can ignore the difference between deprivation of a right and mere suspension of the right (assuming it is a right) on reasonable grounds for a certain duration namely employment (which in the context amounts to re-employment of the pensioner).

alongwith the question:

Whether the decision of the Union of India not to allow Dearness Relief (DR) on pension to the ex-servicemen on their re-employment in a civil post is in accordance with the law or not?

Their Lordships have held that the denial of DR on pension/family pension in cases of those ex-servicemen who got re-employment or whose dependants got employment is legal and just. The learned counsels for the applicants submitted that the decision having been rendered in respect of ex-servicemen it may not be applied to civilians as are concerned in the present cases.

27. It is not possible to agree. Discussion in paras 2, 3 and 4 of the judgment is of general application and takes in its sweep civilians and indeed the position of ex-servicemen is discussed in subsequent paras de-hors clause (ii) of Rule 55A. However no opinion has been expressed on the point whether DR is or is not a part of pension and whether pension being a right available to a retired employee and DR being a part of pension, right to receive the same could not have been infringed merely because the incumbent sought re-employment to take care of the hardship which he might have otherwise faced after retirement. Even so it has been observed as follows:

"Even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed pensioners it would be permissible in law to deny DR on pension in as much as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of DR, as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed." (para.8).

23. Similar view as taken in the above decisions has been taken in Mrs. Usha Sharma Vs. Union of India by the Jaipur Bench of CAT. 1994(2) CAT.P.101. It has been held that there is no provision for withdrawing the relief which has already been granted under the rules and it will be a case not of dearness relief but of withdrawal of a relief already granted from the future date i.e., from the date of employment of the wife and that is not permissible under the rules.

Following the decisions of Madras and Ernakulam Benches, ~~xx~~ this Bench (Hyderabad Bench) have earlier allowed some O.A.s including O.A.No. 1116/93 (Smt. Neena Asthana) which was decided on 13.9.92 (supra).

24. The learned counsels for the applicants heavily rely on the above noted decisions. All these decisions are rendered by larger benches (division benches) and have taken a consistent view. Hence judicial propriety demands that I should follow them particularly the previous decisions of this Bench which with respect are binding upon me. However, even so I am unable to grant relief to the applicants in these O.As having regard to the decision of the Hon'ble Supreme Court in G.Vasudevan Pillai's case (supra) as that is binding upon me notwithstanding the earlier decisions of the Tribunal.

25. The learned Standing Counsels drew my attention to the decision of the Bombay Bench of the Tribunal in Smt. Sunnabi Vs. Union of India & Anr. 1995(3) CAT.p.519 wherein after noticing the cases rendered by different benches of the Tribunal including those referred to herein above it was held that the O.A. was liable to be dismissed following the decision of the Supreme Court in G.Vasudevan Pillai's case. It has also been noted that although the Supreme Court has not in terms overruled the decision in Meena Subramanian's case it impliedly stands overruled. I am inclined to adopt the same course in the instant applications.

26. In G.Vasudevan Pillai's case (1995 SCC (L&S) 396) the Hon'ble Supreme Court was dealing with the question:

whether denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen is justified or not?

30. The learned counsels next submitted that the vires of the provisions contained in Rule 55A(ii) were not subject matter of decision in G.Vasudevan Pillai's case and as in the instant application (O.A.No.306/94) these are challenged it is open to the Tribunal to strike down the said provisions as being discriminatory, unreasonable and violative of Article 14 of the Constitution. I do not agree. The observations in the judgment (of the Supreme Court) as already noted support the validity of the provisions and therefore it is not open to take a different view.

31. Thus as the matters stand at this stage I hold that having regard to the decision of the Hon'ble Supreme Court in G.Vasudevan Pillai's case the O.As are liable to be dismissed. That is more so because the decisions of this Bench in O.A.No.1116/93 Annexure 6) (referred earlier also) and O.A. 1117/93 have been stayed by the Hon'ble Supreme Court in S.L.P.(Civil) Nos. 8455-56 of 1994 by order dated 11.7.1994. Similarly Supreme Court has been pleased to grant stay in SLP (Civil) No.10927/94 preferred against the decision of this Bench dt.21.2.1994 in OA No.177/94 and to issue notice by order dt.19-4-96 in following terms:

Issue notice for final disposal on the SLP requiring the respondent to show cause why the matter be not decided in accordance with the decision of this court in Union of India Vs.G.Vasudevan Pillai."

SLPs are also pending against some more decisions of this Bench as well as other Benches. That shows that the question is treated as concluded by the decision in Union of India Vs.G.Vasudevan Pillai.

32. While dismissing the applications it may not be overlooked that some points argued by the learned counsel for the respective applicants may be open to be canvassed in the pending Special Leave Petitions in the Supreme Court. Hence in the event of the Hon'ble Supreme Court being pleased to take a view which may leave it open to grant relief as prayed by the applicants and the applicants may not be put to disadvantage by dismissal of the O.As, I propose to give them liberty to seek review of this order. No useful purpose however will be served by merely keeping these O.As pending.

33. Hence following order is passed:

Para 10 of the judgment deals with denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen. In that connection it is held as follows:

"This decision has to be sustained in view of what has been stated above regarding denial of DR on pension on re-employment in as much as the official documents referred on that point also mention about denial of DR on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependants on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done."

28. It is pertinent to note that in the context of DR on family pension their Lordships have used the expression 'employment' and not 're-employment'. There is therefore no room left to take the view that since compassionate considerations merely precede the employment of a dependant but once appointment is made it stands on same ~~xxx~~ footing as of regular appointment and may not be correlated with the pension of the deceased in the hands of the widow in the shape of family pension or that in that sense she is not 're-employed' pensioner and therefore DR on family pension cannot be suspended on employment being given to the dependant or during its currency.

29. The learned counsels for the applicants submitted that still discrimination arises by application of clause (ii) of Rule 55A. They argue that where a dependant other than widow such as son/daughter of the deceased Govt. servant is appointed on compassionate ground while he gets Dearness Allowance on his pay yet the widow continues to get Dearness Relief on family pension and thus a widow who is employed on compassionate ground is treated unreasonably when the Dearness Relief is suspended during her employment and that amounts to discrimination and therefore clause (ii) of Rule 55A cannot be applied to such widows violating Article 14 of the Constitution. There appears great force in this argument. The anomaly would appear to result in discrimination. However, with respect, it is not open to me to act on this premise having regard to what has been held by the Supreme Court (in G. Vasudevan Pillai's case).



S C H E D U L E

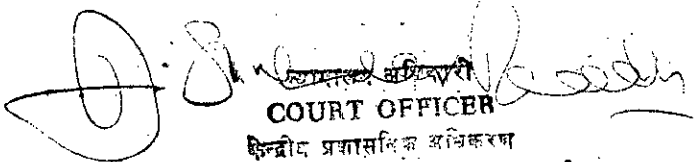
(To be treated as part of Order to the Common Judgment and order passed by Hon'ble Mr. Justice M.G. Chaudhari, Vice-Chairman in O.A. 306/94 dt. 110-2-1997 disposing of the following cases as batch matters.)

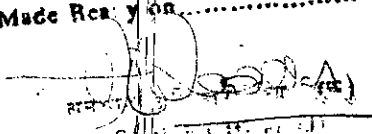
<u>Sl.No.</u>	<u>O.A.No.</u>	<u>Cause Title.</u>	<u>Name of the counsels</u>
1.	1610/93	A. Moonakshi G.M.S.C. Rlys. Calcutta & 4 ors.	Mr. Y. Subrahmanyam. Mr. C.V. Malla Reddy.
2.	833/94	J. Rathna Kumari and 60 others. G.M. SC Rlys. Sec'bad & anr.	Mr. V. Rama Rao Mr. K. Siva Reddy.
3.	928/94	Smt. A. Gokulu Secretary Rly. Board, New Delhi and 2 ors.	Mr. S. Ramakrishna Rao Mr. K. Ramulu
4.	941/94	Smt. A.V. Subhadra Director, IICT Tarnaka & 2 ors.	Mr. Krishna Mohan Rao Mr. C.B. Desai.
5.	1288/94	Smt. S. Saradha Devi Fin. & Chief Accounts Officer. SC Rlys, Sec'bad and 2 ors.	Mr. G.V. Subba Rao Mr. N.V. Ramana
6.	1515/94	Smt. K. Sarojini. Sr. Supdt. of Post Offices, Vizag & anr.	Mr. M.P. Chandramouli Mr. N.R. Devraj.
7.	307/95	Smt. A. Radhamma G.M. SC Rly. Secunderabad & 3 ors.	Mr. N. Raman Mr. C.V. Malla Reddy.
8.	402/94	Smt. P. Padmini. & 15 ors. Secy. Telecom. N. Delhi & 5 ors.	Mr. T.V.V.S. Murthy. Mr. N.R. Devraj
9.	520/94	Naseem Banu & 4 ors. Secretary, Posts, New Delhi & 5 ors.	-do- Mr. K. Bhaskar Rao.
10.	607/94	N. Anasuya & 3 ors. Secretary, Posts, New Delhi & 3 ors.	Mr. T.V.S. Murthy. -do-

- i) O.A.No.306/94 and all the OAs listed in the Schedule hereto are dismissed with no order as to costs subject to following clauses:
- ii) In the event of a decision being rendered by the Hon'ble Supreme Court in the SLPs presently pending against decisions of this Tribunal on the point involved herein upholding the restoration of Dearness Relief on family pension to widows employed on compassionate grounds the applicants in this batch of cases will be at liberty to seek individually review of this order if so advised provided it is promptly filed. The applicants will also be at liberty to seek condonation of delay in filing the review petition. This direction however shall be subject to such orders as the Supreme Court may be pleased to pass.
- iii) This operative order shall govern O.A.No. 306/94 and also shall be recorded on each O.A. in the list in the Schedule and each O.A. shall be treated as separately disposed of for all purposes.
- iv) A copy of this order shall be placed separately on record of each OA in the list in the schedule annexed to this order.

34. O.A.No. 306/94 is disposed of together with OAs listed in schedule annexed hereto which also stand disposed of in terms of this order.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY
Sd/-HMGCU
VC


COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद बेंच
HYDERABAD BENCH

केस नं. O.A.No.306/94 and 81
CASE NUMBER Batch
निर्णय का तारीख 10-2-1996
Date of Judgement
प्रति तय्यार किया गया दिन 13-1-1997
Copy Made Ready on

Sd/-HMGCU

21. C.A.496 /94

Smt. Shantabai
and 3 others
UDF Secretary Dept.
of posts, & 40 ors.

Mr. P.V.V.S. Murthy.

Mr. N.R. Devaraj.

22. 191/95

B. Sarvasama & 6 Ors. Mr. P.B. Vijaya Kumar.
Chief PMG, A.P.
Hyderabad & 4 Ors. Mr. N.R. Devaraj.

23. 1511/95

K. Tarakshwari. Mr. P.B. Vijaya Kumar.
Defence Secretary, Mr. V. Dhimanna.
New Delhi & 5 Ors.

24. 696/94

K. Sakki Bai. Mr. Krishna Davan.
Accounts Officer
Postal, A.P. Circle, Mr. N.R. Devaraj.
Hyd. & ors.

25. 698/94

P. Karakalaxmi.
Director of Accts.,
Postal, Hyd. & 2 Ors.

-do-

-do-

26. 822/94

M. Suddar. A.
Accounts Officer,
Postal, A.P. Circle
Hyd. & 2 Ors.

-do-

-do-

27. 829/94

K.P. Periyamma.
Director of Accounts,
Postal, A.P. Circle.
Hyd. & 2 Ors.

-do-

-do-

28. 893/94

P. Veerayamma, & 5 Ors.
Director of Accts.,
Postal, Hyderabad & 3 Ors.

-do-

-do-

29. 880/94

Y. Svarnalatha.
Chief Accounts Officer,
Telcom, A.P. Hyderabad.
& 2 others.

-do-

-do-

30. 1018/94

Rahani Khaleel.
Sr. Div. Acc. Officer, Mr. G.S. Sanghi.
Secd. & another.

-do-

31. 1131/94

N. Padmanathi.
Chief Acc. Officer,
Telcom, Hampally,
Hyderabad & 2 Ors.

-do-

Mr. N.R. Devaraj.

11. 307/94 S. Grasamma. Mr. KSR. Anjaneyulu.
Supdt. of Post Mr. N.R. Devaraj.
offices, Kurnool
& 2 ors.
12. 308/94 S. Mallika Begum. Mr. KSR. Anjaneyulu.
Telecom, Dist. Mr. N.R. Devaraj.
Manager, Kurnool & 2 ors.
13. 309/94 C. Meera Bai. -do-
Supdt. of Post -do-
offices, Kurnool
& 2 ors.
14. 310/94 Manorama. -do-
-do- -do-
15. 394/94 R. Pushavani. Mr. P.B. Vijaya Kumar.
& 48 ors.
Secretary, Rly. Board, New Delhi
& 4 ors. Mr. V. Bhimanna,
16. 510/94 K. Sakunthala & 11 ors. Mr. P.B. Vijaya Kumar.
Director of Accts.,
AP. Circle, Hyd. & 2 ors. Mr. N.R. Devaraj.
17. 604/94 Uma Rani & 8 ors. Mr. P.B. Vijaya Kumar.
Director, Naval
Science & Technical Mr. N.R. Devaraj.
Lab, Viz. & 2 ors. Mr. IVRK. Murthy.
18. 613/94 G.V. Lakshmi. Mr. P.B. Vijaya Kumar.
Area Accounts Mr. N.R. Devaraj.
Officer, NDA, Vizag.
19. 681/94 M. Amitha. Mr. P.B. Vijaya Kumar.
Chief PMG, Mr. N.R. Devaraj.
AP. Circle, Hyd.
& And.
20. 708/94 P. Phanumathi & 25 ors. Mr. P.B. Vijaya Kumar.
Secretary, Rly. Board, Mr. N.R. Devaraj.
New Delhi & 13 ors. Mr. IVRK. Murthy.

32.	1167/94	Deljoot Kaur. Acc. Officer, Hyd. Tele com. & Anr.	Mr. Krishna Devan. Mr. N.R. Devaraj.
33.	1202/94	Jayamma & 6 Ors. Sr. Divl. Accts. Officer S.C. Riy. Sec'bad. & anr.	-do- V. Rajeshwara Rao
34.	715/95	D. Surekha. Dir. of Acc. Postal. AP. Circle. Hyd. & Anr.	-do- Mr. N.V. Ramana.
35.	769/95	R. Rajulamma. Acc. Officer, Tele com, Hyd. & 2 Ors.	-do- Mr. V. Bhimanna.
36.	339/94	A.N. Manimma. Dy. Dir. General, Postal, New Delhi. & 2 Ors.	Mr. P. Jaya Rao. Mr. N.R. Devaraj.
37.	340/94	P. Chandrakantha George. Chairman, Central Board of Direct Taxes, New Delhi & 2 Ors.	-do- -do-
38.	341/94	U. Prema Rani. Controllor of Accts. Science & Technology. New Delhi.	-do- -do-
39.	342/94	K. bhanumathi. -do-	-do- -do-
40.	343/94	S. Khasim Bibi Controllor of Auditor of India, N. Delhi.	-do- Mr. G. Paramashwara Rao.
41.	344/94	J.V. Jasantha. -do-	-do- -do-
42.	345/94	N. Vimala. -do-	-do- -do-
43.	346/94	P. Jayashree -do-	-do- -do-
44.	347/94	D. Krishna Veni -do-	-do- -do-
45.	348/94	Syed Rubeena Ayesha -do-	-do- -do-
46.	349/94	D. Mirmala Rajkumari -do-	-do- -do-
47.	430/94	A. Rakha Subhalaxmi -do-	-do- -do-
48.	429/94	D. Adhi Laxmi -do-	-do-
49.	431/94	L. Lakshmi Kumari -do-	-do- -do-

50.	432/94	K. Sushila vs. -do-	-do-
51.	433/94	T. Rajya Lakshmi vs. -do-	-do-
52.	434/94	S. Chinamma vs. -do-	-do-
53.	435/94	D. Pushpakala vs. -do-	-do-
54.	615/94	B. Hymavathi vs. & 3ors -do-	-do-
55.	731/94	A. Surya Kumari vs. -do-	-do-
56.	730/94	P. Vijaya Lakshmi vs. Director & ICAR & ors. Mr. N. R. Devraj	-do-
57.	312/94	G. Saraswathi & 16ors vs. GM, Telecom District, Vijayawada	Mr. K. Venkateswara Rao Mr. N. R. Devraj
58.	314/94	S. Vijaya Lakshmi & 12 ors. vs. Telecom Dist. Engg, Warangal District	-do- -do-
59.	315/94	V. Nagalaxmi & ors vs. AG Hyd. & 2 ors	-do- Mr. N. R. Devraj Mr. G. Parameswara Rao
60.	399/94	A. Satya Lathi & 15 ors vs. GM, Telecom Dist, WJZ.	-do- Mr. K. Shaskara Rao
61.	401/94	V. Barojani & 24 ors vs. -do-	-do- -do-
62.	498/94	Lakshminarasamma vs. -do-	-do- -do-
63.	529/94	D. Shamala & 2 ors vs. Telecom Dist. Engg, NZB	-do- Mr. V. Shimanna
64.	551/94	V. Rukminamma & 3ors. vs. Telecom Dist. Manager Kurnool & 3 others	-do- Mr. N. R. Devraj
65.	579/94	G. V. Varalakshmi vs. Supdt. Teltraffic, Nellore	-do- -do-

66.	635/94	M.Sita & Others Vs. Secy.Fin, N.Delhi	-do- -do-
67.	653/94	G.Saralamma Vs. -do-	-do- -do-
68.	661/94	C.Kameshwari Devi Vs. AG.AP Hyd & 2 Ors.	-do- Mr.G.Parameshwar Rao -do-
69.	751/94	K.Naga Maleshwar & 25 Vs. GM Telecom, Gundur	Mr. -do- Mr.K.Bhaskara Rao
70.	801/94	E.Vijaya Laxmi Vs. Telecom Dist.Ongole & 2	-do- Mr.N.R.Devaraj
71.	803/94	M.S.Laxmi & 10 Ors Vs- Telecom Dist. Man.Viz.	-do- Mr.N.V.R.Reddy.
72.	806/94	S.Sushila Vs. Telecom Dist. Engg. Karimnagar	-do- -do- Mr.K.Bhaskara Rao
73.	813/94	P.K.Dhrgamba & 9 Ors Vs. Secy. Fin, N.Delhi	-do- Mr.N.R.Devaraj
74.	815/94	D.Shamala Devi & Ors. Vs. Secy. Fin, N.D & 4 Ors	-do- Mr.N.V.Raghava Reddy
75.	999/94	N.Khanthamma Vs. Telecom, Karimnagar	-do- Mr.N.R.Devaraj
76.	1005/94	Y.Annasuyya & 15 Ors. Vs. Secy. Fin, N. Delhi	-do- -do-
77.	1146/94	P.V.Bhagyalaxmi Vs. GM Telecom, Rly.	Mr. -do- Mr.N.R.Devaraj.
78.	1148/94	K.Jayasree & 10 Ors. Vs. Telecom, Ananthapur	-do- -do-
79.	65/96	D.Venkat Laxmi Vs. Telecom, Karimnagar	-do- -do-
80.	84/96	K.Suvarna & Ors. Vs. Rlys, N. Delhi.	-do- Mr.V.Rajeshwar Rao
81.	85/96	K.Rajashwari & 4 Ors. Vs. -do-	-do- -do-

3. The respective applicants are widows of Govt. employees working under the respective respondents and who died in harness. These widows are receiving family pension. Most of them however have been appointed in Govt. employment in varying posts on compassionate grounds and are working on regular pay scales and some were already in service. They are receiving dearness relief on their pay. Prior to their compassionate appointment they were being paid dearness relief on the family pension. On their being appointed to the Govt. Service (on compassionate ground) the respondents however stopped payment of dearness relief on the family pension applying Rule 55A(ii) of the CCS(Pension) Rules treating them as re-employed pensioners. This action is subject matter of challenge in these applications.

4. Individual facts in the instant O.A. (i.e. 306/94) may be illustratively noted in order to understand the precise nature of the grievance of the applicants.

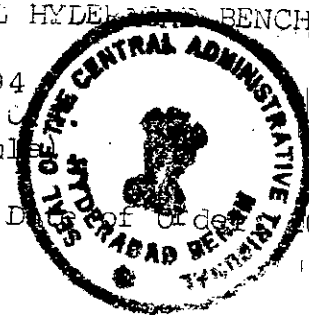
5. Smt. B. Ankamma (Applicant) is the widow of late B. Ranganna who was working as telephone Operator and died in harness on 31-10-91. Smt. B. Ankamma drew family pension at Rs. 575/- p.m. w.e.f. 1.11.91 and would have drawn the same @ Rs. 375/- from 1.11.98 vide the pension order dt. 20.7.92 and authorisation order dt. August, 1992 (annexures 2 and 3). She was being paid dearness relief at the prescribed rate on the pension of Rs. 575/- until 28.11.92. She was appointed to Group 'D' w.e.f. 28.4.92 on compassionate ground. Thereupon vide PPO No. TDM/KNL/23 issued by the 3rd respondent payment of dearness relief on the pension was stopped from 28.11.92. She submitted a representation on 9.2.94 but the same was rejected. Hence the applicant has filed the instant O.A. on 11.3.94. She seeks a direction to the respondents to restore the dearness relief on the family pension from 28.11.92 and pay the arrears. The principal contention is that Rule 55A(ii) is discriminatory and violative of Article 14 of the Constitution of India.

6. The respondents have not filed counter. Hence the facts may be taken as undisputed.

7. Facts in other OAs are similar.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 306/94
(with batch of 81 cases
listed in Schedule)



Date of Order: 10-2-97..

Between:

Smt. B. Ankamma.

and

Applicant.

1. Union of India, rep. by
Telecom. District Manager,
Kurnool, Kurnool Dist.
2. Director of Accounts (postal),
A.P. Circle, Hyderabad.
3. Postmaster, Kurnool HFO, Kurnool.

Respondents.

Counsel for the Applicant: Sri K.S.R. Anjaneyulu.

Counsel for the Respondents: Sri N.R. Devraj, Sr. CGSC.
Sri G. Parameswara Rao, SC for IA & AD

CORAM:

HON'BLE SRI JUSTICE M.G. CHAUDHARI : VICE-CHAIRMAN

J U D G M E N T

(Per Hon'ble Sri Justice M.G. Chaudhari : Vice-Chairman.

....

This O.A. and other cases in the batch involve a ~~same~~ common question of law for determination. Hence submissions of the learned counsel representing respective applicants and the respective respondents in the batch have been heard together. The following counsels argued on behalf of the applicants:

Messrs. K.S.R. Anjaneyulu, K. Venkateswar Rao,
T.V.V.S. Murthy, P.B. Vijayakumar, Krishna Devan,
S. Ramakrishna Rao, G.V. Subba Rao, M.P. Chandramouli,
Krishna Mohan Rao, N. Raman, P. Jaya Rao,
V. Rama Rao and V. Purga Rao.

On behalf of the respondents Sri N.R. Devraj, Sr. CGSC. and Sri G. Parameswara Rao, SC for IA & AD addressed the arguments.

2. The list of cases in the batch is set out in the Schedule appended to this judgment.

12. The provisions under the rules material for present purpose may now be noted. Pension is a retirement benefit. Rule 5 of the CCS(Pension) Rules (hereinafter referred as Rules) provides that a claim to pension or family pension shall be regulated by the provisions of the said rules where a Govt.servant retires(etc.) or dies-from the date of currence of the event, Rule 3(1) (o) as amended on 9.2.91 provides that pension includes gratuity but does not include dearness relief. Dearness relief is defined in Rule 3(1) (cc) to mean relief as defined in Rule 55A. The said Rule 55A was inserted on 9.2.91 and defines dearness relief as relief against price rise as may be granted to the pensioners and family pensioners in the form of dearness relief at the rates and subject to conditions as may be specified by the Central Government from time to time.

13. 'Family pension' is defined in Rule 3(1)(f) to mean Family Pension, 1964 admissible under Rule 54 but does not include Dearness relief. Rule 54 provides for Family Pension, 1964. Sub Rule 2 provides for payment of family pension to the family of the deceased Govt.servant at the prescribed rates. Under Rule 54(14) wife in the case of a male Govt.servant is treated as 'family'.

14. The O.M.No.14014/6186-Estt(D) dated 30.6.1987(Appendix 2 to CCS(Pension) Rules) issued by the Govt.of India, Dept.of Personnel and Training shows that compassionate appointment may be made of a son or daughter or near relative of a Govt.servant who dies in harness leaving his family in immediate need of assistance, when there is no other earning member in the family.

15. The above noted provisions under the rules show that the benefits of family pension payable and the compassionate appointment given to a widow of a Govt. servant flow from the service of the deceased Govt. servant and its benefit is inherited by his widow or other dependent family members. During the life time of the Govt. servant there could not arise any ~~fight~~ right to the same in favour of his family members. These are not earned by virtue of any independent right created by law. These therefore have to be correlated with the 'Pension' to which the Govt.servant became entitled. These cannot be availed de-hors the pension. The object behind providing for family pension and compassionate appointment is the same namely, to relieve the family of a deceased Govt.servant from the great distress suffered by it as the sole bread earner has died and there is no source of income for livelihood immediately available. These are welfare measures introduced by the State.

8

The question that arises for consideration is as follows:-
Whether a widow of a Govt. employee who died in harness is entitled to continue to get dearness relief on the amount of family pension after her compassionate appointment in Govt. Service ?

9. The applicant draws support to her contention that she is entitled to get the dearness relief on the family pension notwithstanding her compassionate appointment from the decision of the Ernakulam Bench of Central Administrative Tribunal in Smt. E. Manickam Vs. The postmaster, Tirur & Ors. reported in 1992(1) SLJ (CAT) 589 (Annexure 5) and followed by Hyderabad Bench in O.A. No. 1116/93 decided on 13.9.93 (Smt. Neena Asthana) (Annexure 6).
10. The learned standing counsels for the respondents however submitted that the law laid down by the Ernakulam Bench in Smt. E. Manickam is no longer good law in view of the decision of the Hon'ble Supreme Court in Union of India & Ors. Vs. G. Vasudevan Pillai and Ors. 1995 SCC (L&S) P.396, which according to them provides answer to the question under consideration and consequently the O.A. is liable to be dismissed.
11. Before turning to the above submission I would indicate my own view on the point. In my opinion the answer to the question involved would require the following aspects to be examined, namely.
- i) Whether family pension paid to the widow on the death of her husband forms part of the pension of the deceased or whether it is received by way of an independent right conferred under the Rules and has to be so treated.
 - ii) whether dearness relief on family pension is integral part of the family pension or is different,
 - iii) whether compassionate appointment of the widow has to be correlated to the service of the deceased Govt. Servant, and
 - iv) whether the expression re-employed pensioner can apply to a person in receipt of family pension so as to attract clause (ii) of Rule 55A of the CCS (pension) Rules, 1972 (as amended)?

18. Rule 5 of Pension Rules regulates claims to pension and family pension in accordance with provisions of the said rules. Rule 7(2) lays down that a Govt. servant who having retired on superannuation or retiring pension shall not be entitled to a separate pension or gratuity for the period of his re-employment. Rule 55A(ii) so far material is in following terms:

"(ii) If a pensioner is re-employed under the Central Govt. he shall not be eligible to draw dearness relief on pension/family pension during the period of such employment."

This provision was inserted on 9.2.91 was already noted and it is pertinent to note that simultaneously Rule 3(f) was substituted to exclude dearness relief from definition of family pension. When it is realised that dearness relief was provided with a view to off set price rise consistently with the object of providing family pension to a widow (family) in distress and that is otherwise taken care of by providing her a regular source of livelihood by giving her employment together with dearness relief on pay the limitation placed by Rule 55A(ii) appears logical and reasonable. The challenge to its validity therefore cannot succeed. It is not possible to see how discriminatory treatment can arise or violation of Article 14 can be spelt out. A re-employed Govt. servant would stand on par with other Govt. servants and no question of differential treatment can arise. Similarly, a person appointed in service would no longer be similar to an unre-employed pensioner. It is argued on behalf of the applicants by the learned counsels that family pension is not granted to the family of the deceased Govt. servant solely as a welfare measure but also in consideration of service rendered by the Govt. servant during the period which he was in service and relief on pension being an adjunct of pension, rule 55A(ii) ought to be construed as unreasonable and violative of Article 14. This argument ignores difference between un-reasonableness of a provision and where a provision results in discrimination. Both these grounds however do not arise as discussed above.

19. What however is argued by the learned counsels and which has great substance is that Rule 55A (ii) speaks only of a pensioner who himself is re-employed and a widow not being the same person who is re-employed the provision does not apply

In the instant case (and in similar situations) the applicant widow has been paid family pension as also she has been given an employment on compassionate ground. Obviously that was to provide her immediate means for livelihood. To that extent even the respondents have not deprived her of the family pension after compassionate employment was given.

16. The position as regards dearness relief has to be understood in the context of the above considerations. The entitlement to receive dearness relief is not to be equated with the right to receive the pension family pension. The definition of family pension under rule 3(1) (f) therefore does not include dearness relief as part of family pension. It was on the recommendation of the IVth Central Pay Commission that by O.M dt.6.4.1974 the relief had been made available to Class II, III & IV employees. The recommendation was aimed at protecting the pension from erosion on account of possible increases in the cost of living in future. For that purpose All India Working Class Consumer Price Index is followed. That is also reflected from Rule 55A which refers to it as relief against price rise.

17. When with the self same object of removing immediate distress of the family, compassionate appointment is given to the widow the element of corrosion in the value of the rupee and the price rise are taken care of by payment of dearness relief paid on the pay. That is further supplemented by the amount of family pension which the widow continues to receive. The two benefits are not to be taken as additional sources of income by way of bounties conferred unrelated to the object for which these are given. With the appointment in service the element of distress stands removed and with the payment of dearness relief on pay the corrosion in value of money and price rise are taken care of. The claim of the widows like applicant as sought would imply that her pay on her appointment on a regular pay scale should be read as basic pay plus amount of family pension and on this total amount dearness relief should be given. That clearly would not be supportable if one has regard to the basic object for which these welfare measures have been introduced. The appointment on compassionate ground itself is by way of a concession as it is made available out of turn under special rules and not under the regular recruitment rules and in given cases after giving relaxation to widows in educational qualification (See para 4(d) of C.I. dated 30.6.87).

21. In Meena Subramanian (Mrs.) & Ors. Vs. Union of India and ors. of the Madras Bench of CAT. (1992) 20 ATC 584, similar view as taken by the Ernakulam Bench has been taken. It is held that dearness relief cannot be treated as different from pension. It has also been held that there is inconsistency between clauses (i) and (ii) of Rule 55A and in view of the purpose of the relief i.e. of off-setting the eroding value of rupee and preventing fall in real value of pension and to restore pension to its original value clause (ii) of Rule 55A introduces unconstitutional discrimination and therefore is invalid. To my mind the position of an employed widow and a widow who is not employed makes all the difference and whereas in the latter instance deprivation of dearness relief would be bad had unconstitutional but in the former instance it may not necessarily be so. The decision further says thus:

If the Government does not want to extend two benefits to widows of Govt. servant, it is open to them either not to give compassionate employment to the spouses getting a family pension or to provide that family pension will be suspended during the period of compassionate employment. But once pension is allowed to be drawn, dearness relief should be paid along with it, otherwise there will be only a part payment of pension in real terms".

22. With respect, family pension and dearness relief being two separate segments - one being property available as a right and the other being a benefit conferred in addition to that right and when that benefit is transformed in the relief granted on the pay received on employment there is room to take the view that dearness relief may be validly suspended. Once again the position would differ where the widow is employed and where she is not. The first category may be possible to be treated differently. Moreover when the observations imply that it is open to the Govt. either to deny compassionate appointment or to suspend the family pension itself during the period of employment it is not easy to understand as to why the Government could not suspend only the dearness relief leaving intact the family pension even after providing employment and dearness relief on the pay. It would not therefore appear that Rule 55A(ii) is unreasonable for unconstitutional.

to the widow and therefore there is no bar arising under the Rules against payment of dearness relief on family pension which she is otherwise entitled to receive under the relevant provisions in the rules and therefore the respondents are not right in applying the said rule to the applicant widows. At the first blush the argument appears attractive but it cannot be sustained on deeper scrutiny.

It is true that the Pension Rules do not define 'Pension' as inclusive of 'family pension'. Likewise Rule 55A(ii) speaks only of a 'pensioner' who is re-employed and does not contain the words 'a pensioner' or 'a family pensioner' so as to include family pensioner under the limitation contained therein. That is why the concepts of family pension and compassionate appointment have to be understood in the context of the object in providing them and upon an analysis of the same it must follow that in as much as these benefits/concessions are integral part of service rendered by the pensioner namely the deceased Govt. servant and would not arise independently thereof the expression 'Pensioner' occurring in the rule must be given an expanded meaning so as to include within its ambit a 'family pensioner'. With this position the limitation contained in Rule 55A(ii) would be attracted and the conclusion is inevitable that the applicant/s has/have no right to claim dearness relief on family pension during the period of her/their re-employment.

20. In the decision in *Smt. E. Manickam (supra)* of the Ernakulam Bench of CAT. It has been held that family pension cannot be considered as an ex-gratia payment or a bounty and it is a property earned by the recipient and its deprivation either in part or in whole without observing the due process of law has to be struck down as unreasonable and unjust. This view implies that dearness relief on pension has to be treated as part of family pension which in turn is property and therefore Rule 55A(ii) is unreasonable and unenforceable. I have indicated my own view upon the scheme envisaged by the rules which is not in conformity with this view nor I can ignore the difference between deprivation of a right and mere suspension of the right (assuming it is a right) on reasonable grounds for a certain duration namely employment (which in the context amounts to re-employment of the pensioner).

alongwith the question:

Whether the decision of the Union of India not to allow Dearness Relief (DR) on pension to the ex-servicemen on their re-employment in a civil post is in accordance with the law or not?

Their Lordships have held that the denial of DR on pension/family pension in cases of those ex-servicemen who got re-employment or whose dependants got employment is legal and just. The learned counsels for the applicants submitted that the decision having been rendered in respect of ex-servicemen it may not be applied to civilians as are concerned in the present cases.

27. It is not possible to agree. Discussion in paras 2, 3 and 4 of the judgment is of general application and takes in its sweep civilians and indeed the position of ex-servicemen is discussed in subsequent paras de-hors clause (ii) of Rule 55A. However no opinion has been expressed on the point whether DR is or is not a part of pension and whether pension being a right available to a retired employee and DR being a part of pension, right to receive the same could not have been infringed merely because the incumbent sought re-employment to take care of the hardship which he might have otherwise faced after retirement. Even so it has been observed as follows:

"Even if Dearness Relief be an integral part of pension, we do not find any legal inhibition in disallowing the same in cases of those pensioners who get themselves re-employed after retirement. In our view this category of pensioners can rightfully be treated differently from those who do not get re-employed; and in the case of the re-employed pensioners it would be permissible in law to deny DR on pension in as much as the salary to be paid to them on re-employment takes care of erosion in the value of the money because of rise in prices, which lay at the back of grant of DR, as they get Dearness Allowance on their pay which allowance is not available to those who do not get re-employed." (para.8).

23. Similar view as taken in the above decisions has been taken in Mrs. Usha Sharma Vs. Union of India by the Jaipur Bench of CAT. 1994(2) CAT.P.101. It has been held that there is no provision for withdrawing the relief which has already been granted under the rules and it will be a case not of dearness relief but of withdrawal of a relief already granted from the future date i.e., from the date of employment of the wife and that is not permissible under the rules.

Following the decisions of Madras and Ernakulam Benches, ~~the~~ this Bench (Hyderabad Bench) have earlier allowed some O.As including O.A.No. 1116/93 (Smt. Neena Asthana) which was decided on 13.9.92 (supra).

24. The learned counsels for the applicants heavily rely on the above noted decisions. All these decisions are rendered by larger benches (division benches) and have taken a consistent view. Hence judicial propriety demands that I should follow them particularly the previous decisions of this Bench which with respect are binding upon me. However, even so I am unable to grant relief to the applicants in these O.As having regard to the decision of the Hon'ble Supreme Court in G.Vasudevan Pillai's case (supra) as that is binding upon me notwithstanding the earlier decisions of the Tribunal.

25. The learned Standing Counsels drew my attention to the decision of the Bombay Bench of the Tribunal in Smt. Sunnabi Vs. Union of India & Anr. 1995(30) CAT.p.519 wherein after noticing the cases rendered by different benches of the Tribunal including those referred to herein above it was held that the O.A. was liable to be dismissed following the decision of the Supreme Court in G.Vasudevan Pillai's case. It has also been noted that although the Supreme Court has not in terms overruled the decision in Meena Subramanian's case it impliedly stands overruled. I am inclined to adopt the same course in the instant applications.

26. In G.Vasudevan Pillai's case (1995 SCC (L&S) 396) the Hon'ble Supreme Court was dealing with the question:

whether denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen is justified or not?

30. The learned counsels next submitted that the vires of the provisions contained in Rule 55A(ii) were not subject matter of decision in G.Vasudevan Pillai's case and as in the instant application (O.A.No.306/94) these are challenged it is open to the Tribunal to strike down the said provisions as being discriminatory, unreasonable and violative of Article 14 of the Constitution. I do not agree. The observations in the judgment (of the Supreme Court) as already noted support the validity of the provisions and therefore it is not open to take a different view.

31. Thus as the matters stand at this stage I hold that having regard to the decision of the Hon'ble Supreme Court in G.Vasudevan Pillai's case the O.As are liable to be dismissed. That is more so because the decisions of this Bench in O.A.No.1116/93 Annexure 6) (referred earlier also) and O.A. 1117/93 have been stayed by the Hon'ble Supreme Court in S.L.P.(Civil) Nos. 8455-56 of 1994 by order dated 11.7.1994. Similarly Supreme Court has been pleased to grant stay in SLP (Civil) No.10927/94 preferred against the decision of this Bench dt.21.2.1994 in O.A.No.177/94 and to issue notice by order dt.19-4-96 in following terms:

Issue notice for final disposal on the SLP requiring the respondent to show cause why the matter be not decided in accordance with the decision of this court in Union of India Vs.G.Vasudevan Pillai."

SLPs are also pending against some more decisions of this Bench as well as other Benches. That shows that the question is treated as concluded by the decision in Union of India Vs.G.Vasudevan Pillai.

32. While dismissing the applications it may not be overlooked that some points argued by the learned counsel for the respective applicants may be open to be canvassed in the pending Special Leave Petitions in the Supreme Court. Hence in the event of the Hon'ble Supreme Court being pleased to take a view which may leave it open to grant relief as prayed by the applicants and the applicants may not be put to disadvantage by dismissal of the O.As, I propose to give them liberty to seek review of this order. No useful purpose however will be served by merely keeping these O.As pending.

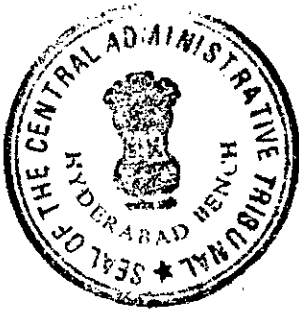
33. Hence following order is passed:

Para 10 of the judgment deals with denial of Dearness Relief on family pension on employment of dependants like widows of the ex-servicemen. In that connection it is held as follows:

"This decision has to be sustained in view of what has been stated above regarding denial of DR on pension on re-employment in as much as the official documents referred on that point also mention about denial of DR on family pension on employment. The rationale of this decision is getting of Dearness Allowance by the dependants on their pay, which is drawn following employment, because of which Dearness Relief on family pension can justly be denied, as has been done."

28. It is pertinent to note that in the context of DR on family pension their Lordships have used the expression 'employment' and not 're-employment'. There is therefore no room left to take the view that since compassionate considerations merely precede the employment of a dependant but once appointment is made it stands on same ~~xxx~~ footing as of regular appointment and may not be correlated with the pension of the deceased in the hands of the widow in the shape of family pension or that in that sense she is not 're-employed' pensioner and therefore DR on family pension cannot be suspended on employment being given to the dependant or during its currency.

29. The learned counsels for the applicants submitted that still discrimination arises by application of clause (ii) of Rule 55A. They argue that where a dependant other than widow such as son/daughter of the deceased Govt. servant is appointed on compassionate ground while he gets Dearness Allowance on his pay yet the widow continues to get Dearness Relief on family pension and thus a widow who is employed on compassionate ground is treated unreasonably when the Dearness Relief is suspended during her employment and that amounts to discrimination and therefore clause (ii) of Rule 55A cannot be applied to such widows violating Article 14 of the Constitution. There appears great force in this argument. The anomaly would appear to result in discrimination. However, with respect, it is not open to me to act on this premise having regard to what has been held by the Supreme Court (in G.Vasudevan Pillai's case).



S C H E D U L E

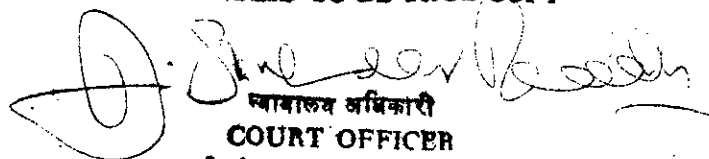
(To be treated as part of Order to the Common Judgment and order passed by Hon'ble Mr. Justice M.G. Chaudhari, Vice-Chairman in O.A. 306/94 dt. 10-2-1997 disposing of the following cases as batch matters.)

<u>Sl.No.</u>	<u>O.A.No.</u>	<u>Cause Title.</u>	<u>Name of the counsels</u>
1.	1610/93	A.Meenakshi G.M.S.C.Rlys. Calcutta & 4 ors.	Mr.Y.Subrahmanyam. Mr.C.V.Malla Reddy.
2.	833/94	J.Rathna Kumari and 60 others. G.M.SC Rlys. Sec'bad & anr.	Mr.V.Rama Rao Mr.K.Siva Reddy.
3.	928/94	Smt.A.Gokulu Secretary Rly. Board, New Delhi and 2 ors.	Mr.S.Ramakrishna Rao Mr.K.Ramulu
4.	941/94	Smt.A.V.Subhadra Director, IICT Tarnaka & 2ors.	Mr.Krishna Mohan Rao Mr.C.B.Desai.
5.	1288/94	Smt.S.Saradha Devi Fin.& Chief Accounts Officer. SC Rlys, Sec'bad and 2 ors.	Mr.G.V.Subba Rao Mr.N.V.Ramana
6.	1515/94	Smt.K.Sarojini. Sr.Suptd.of Post Offices, Vizag & anr.	Mr.M.P.Chandramouli Mr.N.R.Devraj.
7.	307/95	Smt.A.Radhamma G.M.SC Rly. Secunderabad & 3ors.	Mr.N.Raman Mr.C.V.Malla Reddy.
8.	402/94	Smt.P.Padmini. & 15 ors. Secy.Telecom. N.Delhi & 5ors.	Mr.T.V.V.S.Murthy. Mr.N.R.Devraj
9.	520/94	Naseem Banu & 4ors. Secretary, Posts, New Delhi & 5 ors.	-do- Mr.K.Bhaskar Rao.
10.	607/94	N.Anasuya & 3ors. Secretary, Posts, New Delhi & 3 ors.	Mr.T.V.S.Murthy. -do-

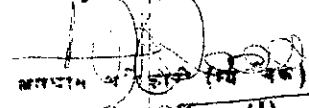
- i) O.A.No.306/94 and all the O.A.s listed in the Schedule hereto are dismissed with no order as to costs subject to following clauses:
- ii) In the event of a decision being rendered by the Hon'ble Supreme Court in the SLPs presently pending against decisions of this Tribunal on the point involved herein upholding the restoration of Dearness Relief on family pension to widows employed on compassionate grounds the applicants in this batch of cases will be at liberty to seek individually review of this order if so advised provided it is promptly filed. The applicants will also be at liberty to seek condonation of delay in filing the review petition. This Direction however shall be subject to such orders as the Supreme Court may be pleased to pass.
- iii) This operative order shall govern O.A.No. 306/94 and also shall be recorded on each O.A. in the list in the Schedule and each O.A. shall be treated as separately disposed of for all purposes.
- iv) A copy of this order shall be placed separately on record of each O.A. in the list in the schedule annexed to this order.
34. O.A.No. 306/94 is disposed of together with O.A.s listed in schedule annexed hereto which also stand disposed of in terms of this order.

SC/-HMGCIJ
VC

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY


न्यायालय अधिकारी
COURT OFFICER

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद -बिच- ६
HYDERABAD BENCH

किस नं. O.A.No.	306/94 and 81
CASE NUMBERS	batch
वर्णन का तिथि	10-2-1996
Date of Judgment	
व न त्था/ किवा नवा दिना	3-1997
Copy Made Ready on	
 Section Officer (D)	

21. C.A. 496 /94

Smt. Shantabai and 3 others
 UOI Secretary, Dept. of posts, & 40 ors.
 Mr. P.V.V.S. Murthy
 Mr. N.R. Devaraj.

22. 191/95

J. Sarvasama & 6 ors. Mr. P.B. Vijaya Kumar,
 Chio PMG, A.P.
 Hyderabad & 4 ors. Mr. N.R. Devaraj.

23. 1511/95

K. Tarakeshwari. Mr. P.B. Vijaya Kumar.
 Defence Secretary, Mr. V. Dhimanna.
 New Delhi & 5 ors.

24. 696/94

K. Sakki Bai. Mr. Krishna Dayan.
 Accounts Officer
 Postal, A.P. Circle, Mr. N.R. Devaraj.
 Hyd. & ors.

25. 698/94

R. Karakalaxmi.
 Director of Accts.
 Postal, Hyd. & 2 ors.

-do-

-do-

26. 822/94

M. Sundar n.
 Accounts Officer,
 Postal, A.P. Circle,
 Hyd. & 2 ors.

-do-

-do-

27. 829/94

K.P. Mariyamma.
 Director of Accounts,
 Postal, A.P. Circle,
 Hyd. & 2 ors.

-do-

-do-

28. 893/94

P. Veerayamma. & 5 ors. -do-
 Director of Accts., -do-
 Postal, Hyderabad. & 3 ors.

29. 880/94

Y. Svarnalatha. -do-
 Chief Accounts Officer,
 Telecom, A.P. Hyderabad. -do-
 & 2 others.

30. 1018/94

Rohani Khaleel. -do-
 Sr. Div. Acc. Officer, Mr. G.S. Sanghi.
 Sec&bat & another.

31. 1131/94

N. Padmaathi. -do-
 Chief Acc. Officer, Mr. N.R. Devaraj.
 Telecom, Ampally,
 Hyderabad & 2 ors.

- | | | | |
|-----|--------|--|--|
| 11. | 307/94 | S. Grasamma.
Supdt. of Post
offices, Kurnool
& 2 ors. | Mr. KSR. Anjaneyulu.
Mr. N.R. Devaraj. |
| 12. | 308/94 | S. Mallika Begum.
Telecom, Dist.
Manager, Kurnool & 2 ors. | Mr. KSR. Anjaneyulu.
Mr. N.R. Devaraj. |
| 13. | 309/94 | C. Meera Bai.
Supdt. of Post
offices, Kurnool
& 2 ors. | -do-
-do- |
| 14. | 310/94 | Manorama.
-do- | -do-
-do- |
| 15. | 394/94 | R. Pushavani.
& 48 ors.
Secretary, Rly.
Board, New Delhi
& 4 ors. | Mr. P.B. Vijaya Kumar.
Mr. V. Thimanna, |
| 16. | 510/94 | K. Sakunthala & 11 ors.
Director of Accts.,
AP. Circle, Hyd. & 2 ors. | Mr. P.B. Vijaya Kumar.
Mr. N.R. Devaraj. |
| 17. | 604/94 | Uma Rani & 8 ors.
Director, Naval
Science & Technical
Lab, Viz & 2 ors. | Mr. P.B. Vijaya Kumar.
Mr. N.R. Devaraj.
Mr. IVRK. Murthy. |
| 18. | 613/94 | G.V. Lakshmi.
Area Accounts
Officer, NDA, Vizag. | Mr. P.B. Vijaya Kumar.
Mr. N.R. Devaraj. |
| 19. | 681/94 | M. Amitha.
Chief PMG,
AP. Circle, Hyd.
& Anr. | Mr. P.B. Vijaya Kumar.
Mr. N.R. Devaraj. |
| 20. | 788/94 | P. Phanumathi & 25 ors.
Secretary, Rly. Board,
New Delhi & 13 ors. | Mr. P.B. Vijaya Kumar.
Mr. N.R. Devaraj.
Mr. IVRK. Murthy. |

32.	1107/94	Saljoot Kaur. Acc. Officer, Hyd. Tele com. & Anr.	Mr. Krishna Devan. Mr. N.R. Devaraj.
33.	1202/94	Jayamma & 60rs. Sr. Divl. Accts. Officer SC. Riy. Sec'bad. & anr.	-do- V. Rajeshwara Rao
34.	715/95	D. Surakha. Dir. of Acc. Postal. AP. Circle. Hyd. & Anr.	-do- Mr. N.V. Ramana.
35.	769/95	R. Rajulamma. Acc. Officer, Tele com, Hyd. & 2ors.	-do- Mr. V. Dhimanna.
36.	339/94	A.N. Manimma. Dy. Dir. General, Postal, New Delhi. & 2 ors.	Mr. P. Jaya Rao. Mr. N.R. Devaraj.
37.	340/94	P. Chandrakantha George. Chairman, Central Board of Direct Taxe, New Delhi & 2 ors.	-do- -do-
38.	341/94	U. Prema Rani. Contrellir of Accts. Science & Technology. New Delhi.	-do- -do-
39.	342/94	K. bhannumathi. -do-	-do- -do-
40.	343/94	S. Khasim Bibi Contrellor of Auditor of India, N. Delhi.	-do- Mr. G. Paramashwara Rao.
41.	344/94	J.V. Jasantha. -do-	-do- -do-
42.	345/94	N. Vimala. -do-	-do- -do-
43.	346/94	P. Jayashree -do-	-do- -do-
44.	347/94	D. Krishna Veni -do-	-do- -do-
45.	348/94	Syed Rubeena Ayesha -do-	-do- -do-
46.	349/94	J. Mirmala Rajkumari -do-	-do- -do-
47.	430/94	A. Rakha Subhalaxmi -do-	-do- -do-
48.	429/94	D. Adhi Laxmi -do-	-do-
49.	431/94	L. Laxmi Kumari -do-	-do- -do-

50.	432/94	K. Sushila vs. -do-	-do- -do-
51.	433/94	T. Rajya Lakshmi vs. -do	-do-
52.	434/94	S. Chinamma vs. -do-	-do-
53.	435/94	G. Pushpakala vs. -do-	-do-
54.	515/94	B. Hymavathi vs. & 3ors -do	-do-
55.	731/94	A. Surya Kumari vs. -do-	-do-
56.	730/94	P. Vijaya Lakshmi vs. Director & ICAR & ors. Mr. N.R. Devaraj	-do-
57.	312/94	G. Saraswathi & 16ors vs. GM, Telecom District, Vijayawada	Mr. N.R. Devaraj
58.	314/94	S. Vijaya Laxmi & 12 ors. vs. Telecom Dist. Engg, Warangal District	-do- -do-
59.	315/94	V. Nagalaashmi & ors vs. AG Hyd. & 2 ors	-do- Mr. N.R. Devaraj Mr. G. Parameswara Rao
60.	399/94	A. Satyaathi & 15 ors vs. GM, Telecom Dist, WJZ.	-do- Mr. K. Bhaskara Rao
61.	401/94	V. Sarojini & 24 ors vs. -do-	-do- -do-
62.	498/94	Lakshminarasamma vs. -do-	-do- -do-
63.	529/94	D. Shamala & 2 ors vs. Telecom Dist. Engg, NZB	-do- Mr. V. Bhimanna
64.	551/94	V. Rukminamma & 3ors. vs. Telecom Dist. Manager Kurnool & 3 others	-do- Mr. N.R. Devaraj
65.	579/94	G.V. Maralakshmi vs. Supdt. Teltraffic, Nellore	-do- -do-

66.	635/94	M.Sita & Others Vs. Secy.Fin, N.Delhi	-do- -do-
67.	653/94	G.Saralamma Vs. -do-	-do- -do-
68.	661/94	C.Kameshwari Devi Vs. AG.AP Hyd & 2 Ors.	-do- Mr.G.Parameshwar Rao -do-
69.	751/94	K.Naga Maleshwar & 25 Vs. GM Telecom, Gunder	Mr. -do- Mr.K.Bhaskara Rao
70.	801/94	E.Vijaya Laxmi Vs. Telecom Dist.Ongole & 2	-do- Mr.N.R.Devaraj
71.	803/94	M.S.Laxmi & 10 Ors Vs- Telecom Dist. Man.Viz.	-do- Mr.N.V.R.Reddy.
72.	806/94	S.Sushila Vs. Telecom Dist. Engg. Karimnagar	-do- -do- Mr.K.Bhaskara Rao
73.	813/94	P.K.Dhrgamba & 9 Ors Vs. Secy. Fin, N.Delhi	-do- Mr.N.R.Devaraj
74.	815/94	D.Shamala Devi & Ors. Vs. Secy. Fin, N.D & 4 Ors	-do- Mr.N.V.Raghava Reddy
75.	999/94	N.Khanthamma Vs. Telecom, Karimnagar	-do- Mr.N.R.Devaraj
76.	1005/94	Y.Annasuyya & 15 Ors. Vs. Secy. Fin, N. Delhi	-do- -do-
77.	1146/94	P.V.Bhagyalaxmi Vs. GM Telecom, Rjy.	Mr. -do- Mr.N.R.Devaraj.
78.	1148/94	K.Jayasree & 10 Ors. Vs. Telecom, Ananthapur	-do- -do-
79.	65/96	D.Venkat Laxmi Vs. Telecom, Karimnagar	-do- -do-
80.	84/96	K.Suvarna & Ors. Vs. Rjys, N. Delhi.	-do- Mr.V.Rajeshwar Rao
81.	85/96	K.Rajashwari & 4 Ors. Vs. -do-	-do- -do-