IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

O.A.NO. 306/94
(with batch of 81 O.A.s
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 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.Durga 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.

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 authorisiation 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 OA. 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 discriminatroy 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 ohter OAs are similar.

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 inhered by his widow or other dependent family members. During the life time of the Govt. servant there could not arise any 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.Manicham 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 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 itnis 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 peirod 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 ClassII, 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 O.M. 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 Rules 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 valuse 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 deprival of dearness relief would be bad and 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 opento 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 pensioneven 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 ananalysis 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' occuring 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 receipient and its deprival either in part or in whole without observing the due process If law has to be struck down as unreasonable and unjest. 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 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 disallong the smae 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-employement 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, this Bench (Hyderabad Bench) have earlier allowed some OAs 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 courss 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 justfied 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 OAs, I propose to give them liberty to seek review of this order. No useful purpose however will be served by merely keeping these OAs 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 decisionis 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 ~~fkk~~ 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.)

Sl.No.	O.A.No.	Cause Title.	Name of the counsels
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.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&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 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 prompty 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.

Sd/-HMGCJ
VC

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

न्यायालय अधिकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ
HYDERABAD BENCH

केस नम्बर O.A.No. 306/94 and 81 Cases batch
CASE NUMBER
निर्णय का तारीख
Date of Judgement 10-2-1996
प्रति तय्यार किया गया दिन
Copy Made Ready on 3-1997

अनुभाग अधिकारी (न्या. विभाग)
Section Officer (J)