

O.A.No. 430/94 Dt. 2-9-97

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. C.A. to be treated as
seperately decided.

M.G.Chaudhary

HMGC(J)
VC

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

D.A. No./T.A. No..... 24.30 1994.

Smt. P. R. S. Lakshmi Applicant(s)

VERSUS

The Comptroller and Respondent(s)

A. T. of Transfer, N. D. EAT order

Date	Office Note	Orders
<u>12.5.94</u>	<u>Notice issued to Res. Comptroller. 1 to 3.</u> R. 1. Served on 26.4.94 R. 2. - R. 3. NSAR. T 20/5	Mr. P. Jayarao, for the applicant and Kisan Shakti, for the respondent are present. 1. respondent and list the OA for orders on 23.5.94
<u>6-6-94</u>		T - C. 2 H.C.S.R 2 (J) Admit. List - pt for orders on 29.8.94.
<u>7-11-94</u>		T - C. 2 H.C.S.R 2 (J) <i>J</i> None for the applic. This case may be listed to final hearing after the disposal of the SLP in a similar matter by the Supreme Court

12/2/94 P.T.A. 7/6

J
H.A.B.G.
2 (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD.

ORIGINAL APPLICATION NO. 430 of 1994.

Shri Sir P. R. S. Lansdowne Applicant (s)

VERSUS

Controller & Ag. of India, re Delhi

C 26

Respondent (s)

This Application has been submitted to the Tribunal
by Mr P. Jayabalan Advocate under section 19 of
the Administrative Tribunal 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 Adminis-
trative Tribunal (Procedure) Rules, 1987.

The application is in order and may be listed for
admission on - 4/94

Secretary Officer

J
Deputy Registrar (Judl)

11. Have legible copies of the annexures duly attested been filed? 4
12. Has the Index of documents been filed and pagination done properly? 5
13. Has the applicant exhausted all available remedies? 5
14. Has the declaration as required by item 7 of Form I been made? 5
15. Have required number of envelopes (file size) bearing full address of the respondents been filed? 4
16. (a) Whether the reliefs sought for, arise out of single cause of action? 5
17. (b) Whether any interim relief is prayed for? 5
17. In case an M.A. for condonation of delay is filed, is it supported by an affidavit of the applicant? 5
18. Whether this case can be heard by single Bench? 4
19. Any other point? 5
20. Result of the Scrutiny with initial of the scrutiny Clerk. *say in 25*

Section Officer

Deputy Registrar *say in 25*

Registrar

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH.

Diary No.

Report in the scrutiny of Application.

Presented by... *S. Jayabose*..... Date of Presentation....

Applicant(s)... *Mr. & Mrs. S. Jayabose*...

Respondent(s)... *2 & A. A. A. & others, Nellore & 26a*.

Nature of grievance *Dis. of J. J. P. B. & others*

No. of applicants..... 1 No. of respondents..... 3

CLASSIFICATION

Subject..... (no) Department..... (No.....)

1. Is the application in the proper form,
(Three complete sets in paper books form
in two compilations) *Y*
2. Whether name, description and address of all
the parties been furnished in the cause title, *C*
3. (a) Has the application been duly signed
and verified, *C*
(b) Have the copies been duly signed, *S*
(c) Have sufficient number of copies of
the application been filed, *Y*
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) *Y*
7. Has the Vakalatnama/Memo of appearance/
authorisation been filed, *Y*
8. Is the application maintainable,
(U/s 2, 14, 18 or U.R. 8 etc.) *—*
9. Is the application accompanied by IPO/DD
for Rs.50/- *—*
10. Has the impugned orders original/duly attested
legible copy been filed, *—*

Contd.

CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

INDEX SHEET

O.A. NO.

430

•f 1994.

CAUSE TITLE

cont. P. R. S. Lakshmi

VERSUS

the controller and A.G. of
India, a. o. D.A.T. and/or

Sl. No.	Description of documents.	Page No.
1.	Original Application	168
2.	Material Papers	669
3.	Vakalat	1
4.	Objection sheet	1
5.	Spare Copies	3
6.	Covers	3

By to direct the Respondents to pay the Applicant Dearness Allowance on monthly pension

Sight and one copy
SINGLE MEMBER CASE

GENERAL Dearness Allowance on monthly pension
Grant

APPLICATION FILED UNDER SECTION 19 OF THE ADMINISTRATIVE TRIBUNAL

ACT. 1985.

O.A. No. 430 of 1994



INDEX TO ORIGINAL APPLICATION

Sl.No.	Description of the document	Page No.
1.	Xerox copy of Pension Payment Order	6
2.	Xerox copy of the appointment order.	7
3.	Copy of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad Order in O.A.No.1116/93 dtd.13-9-93.	8
4.	Copy of the Representation made to the Respondents, on 10-6-1993.	9

I certify that the above documents filed by me are "True copies" of the Originals.

SIGNATURE OF THE COUNSEL.

FOR USE IN THE TRIBUNAL OFFICE:

Date of filing or

Date of Receipt by post.

Registration No.

SIGNATURE OF REGISTRAR.

12 copy
- 28/3/94

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD.

O.A.No. 430 of 1994

Between:

Smt.P. Radha Subba Laxmi ... Applicant

and

1. The Comptroller & Auditor General of India, New Delhi.
2. The Principal Accountant General (Audit-I) Andhra Pradesh, Saifabad, Hyderabad.
3. The Union of India, retd. by its Secretary, Ministry of Finance New Delhi. ... Respondents

CHRONOLOGICAL EVENTS OF THE CASE

Sl.No.	Description	Date
1.	The Applicant's husband Sri P.M.G.Murali Krishna was working as Audit Officer in the office of Principal Accountant General (Audit-I), A.P., Hyderabad. The applicant's husband died on 10-3-1990 while in service.	10-3-90
2.	The Applicant is employed in the Office of Principal Accountant General (Audit-I) A.P., Hyderabad as Senior Auditor subsequent to the death of her husband. This employment was given to her on compassionate grounds from 27-6-1990.	27-6-90
3.	In view of the service rendered by her husband the applicant is drawing Pension/ Family pension vide PPO No.61808-90-00330 dtd. 5/90.	5/90 11-3-1990
4.	The applicant submits that since her employment i.e., 27-6-90 on compassionate grounds, she is not being given Dearness relief on her family pension.	27-6-90
5.	Dearness Relief on pension/family pension is not being paid in view of Sub-clause(ii) of the New Rule 55-A "Dearness Relief on Pension/Family pension" incorporated in the Central Civil Services (Pension) Rules, 1992.	CCS(P) Rs.1992

...2/-

6. The Central Administrative Tribunal Madras Bench vide its order dtd. 13-1-1992 in O.A. No.801 of 1991 have held that "Dearness Relief forms an integral part of the pension and cannot be dissociated therefrom. They have declared that the sub-clause(ii) of the New Rule 55-A, in the Central Civil Services (Pension) Rules 1992, which denies Dearness Relief on Pension to a category of Pensioners viz., the employed or re-employed as unreasonable and discriminatory as price rise is the same for all the pensioners, and violative of Art.14 of the constitution and hence not enforceable. 13-1-1992

7. The Central Administrative Tribunal. Hyd., vide its judgement dtd. 13-9-1993 in O.A.No.1166/93 have concurred with the above view of Madras Tribunal and has granted Dearness Relief to Applicants at the admission stage itself. 13-9-93

Hyderabad,

Date: 28-3-1994



COUNSEL FOR THE APPLICANT.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD.

Between:

Smt.P.Radhasubbalaxmi widow of late
Sri P.M.G.Murali Krishna, aged 44 yrs.
Occupation: Sr.Auditor, Accountant
General (Audit-I) Andhra Pradesh,Hyd.,
r/o H.No.12-2-826/B/33, Vivekananda
Colony, Mehadipatnam, Hyd., ... Applicant

and

1. The Comptroller & Auditor General
of India, New Delhi.
2. The Principal Accountant General
(Audit-I) A.P., Hyd.,
3. The Union of India, retd. by its
Secretary, Ministry of Finance,
New Delhi ... Respondents

1. PARTICULARS OF THE APPLICANT:

The description of the applicant is the same as mentioned in the cause title and the address of the applicant for the purpose of service of all notices is that of her Counsel Sri P.Jaya Rao, Advocate, having his office and residence at Plot No.5/A, (No.12-7-112/13/2/A) Sai Nivas, Keshavanagar colony, New Mettuguda, Secunderabad-17.

2. PARTICULARS OF THE RESPONDENT:

The description and address of the Respondents are the same as mentioned in the cause title for the purpose of service of all notices etc.,

3. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

Sub-clause(ii) of the New Rule 55-A "Dearness Relief on pension/family pension" incorporated in the Central Civil Services (Pension) Rules 1992 by way of Amendment to Rules, 1991 denies Dearness Relief on Pension to a category of pensioners viz., employed or re-employed.

The Central Administrative Tribunal, Madras Bench vide its order dtd. 13-1-1992 in O.A.No.801 of 1991, have declared the above Rule denying Dearness Relief to employed Pensioners as discriminatory and violative of Article 14 of the Constitution.

The Central Administrative Tribunal, Hyderabad Bench, Hyderabad, vide its orders in O.A.No.1116/93 dtd. 13-9-1993 have concurred with the view of the Madras Bench and giving relief to all applicants.

4. JURISDICTION:

The Applicant is in Central Government Service and her late husband was also employed in Central Government Service. The matter for which redressal is sought pertains to Central Service (Pension) Rules and therefore comes within the Jurisdiction, Power and Authority of this Tribunal as contemplated U/s 14 of the Administrative Tribunals Act.1985.

5. LIMITATION:

The application is within the period of limitation as contemplated in Section 21 of the Administrative Tribunals Act.1985.

6. FACTS OF THE CASE:

The Applicant submits that her late husband Sri P.M.G.Murali Krishna was working in the office of Accountant General(Audit-I) A.P., Hyderabad as Audit Officer, that her husband died on 10-3-1990.

In consideration of the service rendered by the husband the Government sanctioned family pension vide PPO No.61808-90-0033-0 (Appendix No. 81 at page No. 6) to the applicant from 11-3-1990.

The applicant was given employment on compassionate grounds in the Office of the Accountant General (Audit-I) as an Auditor since 27-6-1990 (Appointment order enclosed at Appendix No. 11 at Page No. 7).

The applicant submits that since the employment of the applicant on compassionate grounds the applicant has been denied Dearness Relief on her family pension on the ground that she cannot have the double benefit one by way of Dearness Allowance on her pay and another Dearness Relief on her pension.

The Central Administrative Tribunal, Madras Bench vide its order dated 13-1-1992 in O.A.No.801 of 1991 has clearly held that denial of Dearness Relief to employed family pensioners is unconstitutional and violative of Article 14 of the Indian Constitution. They have held that Dearness Relief is an integral part of Pension as much as Dearness Allowance is an integral part of pay, and that they cannot be separated from one another.

The Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad, vide its orders dtd. 13-9-1993 in O.A.No. 1116/93 while concurring with the above view of the Central Administrative Tribunal, Madras Bench, Madras, has ordered payment of Dearness Relief to employed pensioners and also given monetary benefit for one year, from the date of application (Appendix No. 11 at page No. 8).

The Respondents have not cared to reply nor consider the representation submitted by the applicant (Appendix No. 1v at page No. 9).

The applicant submits that the value of her family pension has completely eroded and she is suffering as she is not getting Dearness Relief, which is intended to supplement the eroding value of her pension.

7. RELIEF SOUGHT:

In view of the facts mentioned above the applicant prays the Hon'ble Tribunal to order the Respondents to pay the applicant Dearness Relief on Family Pension from the date of her employment i.e., 27-6-1990 on compassionate grounds.

8. INTERIM ORDER IF ANY PRAYED FOR:

The applicant is seeking ~~final order as the time of ad-~~ ^{early disposal in view} ~~mission itself as~~ the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, ~~order dated~~ order dated 13-9-1993, in O.A. No. 1116/93, ~~established a laudable precedent.~~

9. DETAILS OF REMEDIES EXHAUSTED:

The applicant submits that the Respondents have not bothered to reply to her representation. Govt. is giving relief only to those pensioners who are approaching the Central Administrative Tribunal and obtaining orders from it.

10. MATTER NOT PENDING WITH ANY OTHER COURT ETC.,

The applicant further declares that the matter regarding which this application has been made is not pending before any other court of law or any other authority or any other Bench of the Tribunal.

11. PARTICULARS OF THE BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE:

1. No. of the I.P.O. : No. 929548
2. Name of the Issuing P.O. : GPO, Hyd.,
3. Date of issue of P.O. : 7-3-1994
4. Post office at which : GPO, Hyd.
payable.

12. LIST OF ENCLOSURES:

L.P.O./B.G./D.D./Hemavati

As per the Index to O.A.

IN VERIFICATION:

I, Smt.P.Radha Subba Laxmi widow of P.M.G.Muralikrishna, aged 44 years, working as Sr.Auditor in the office of Principal Accountant General (Audit-I), A.P., Hyd., residing at House No.12-2-826/B/33, Vivekananda colony, Mehdipatnam, Hyd., do hereby verify that the contents of paras 1 to 12 are true to my personal knowledge, belief and information and that I have not suppressed any material facts.

Place: Hyderabad,

Date: 28-3-1994

P.Radha Subbalaxmi
SIGNATURE OF THE APPLICANT.


COUNSEL FOR THE APPLICANT.

To

The Registrar,
Central Administrative Tribunal
Hyderabad Bench at Hyderabad.

at Rs.100/- p.m. from 25-12-1981 to 31-12-1985. From 1-1-1986 the pension has been revised to Rs.375/- p.m. which is the minimum pension.

3. The applicant was given appointment as LDC in March, 1975 on compassionate grounds. The applicant submits that she was not paid DA on family pension from the time she was employed as LDC on compassionate grounds.

4. This OA has been filed for direction to pay the applicant DA from the date she was employed, based on the orders in OA.801/91 dt.31-1-1992 on the file of Madras Bench and in CA.1132, CA.1133/92 and CA.1134/92 dt. 25-1-1993 on the file of Enakkulam Bench.

5. We find no reasons to differ from the orders of the Madras and Enakkulam Bench, and we fully agree with the reasonings.

6. As per practice followed by this Bench, monetary relief in such cases will be limited to one year prior to the date of filing of the OA. As this OA was filed on 7-9-1993, we direct payment of DA on the family pension from 1-9-1992.

7. OA is ordered accordingly at admission stage.

No costs.

P. J. D.

(P.T. Thiruvengadam)
Member (Admn)

Neeladri Rao
(V. Neeladri Rao)
Vice Chairman

Dated: Sep 13, 93
dictated in the open court

sk

Sph 11 (8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL & HYDERABAD BENCH
AT HYDERABAD

OA.1116/93

date of decision : 13-9-1993

Between

Smt. Neena Asthana : Applicant

and

1. The Secretary
Ministry of Finance
Dept. of Revenue
Central Excise
New Delhi

2. The Collector of Central
Excise
Bashir Bagh
Hyderabad

: Respondents

Counsel for the applicant : K. S. R. Anjaneyulu

Counsel for the respondents : N. V. Ramana, Addl. SC for
Central Government

CCRAA

-S. MR. JUSTICE V. KEELADRI RAO, VICE CHAIRMAN

MR. MR. P.T. THIRUVENGADAM, MEMBER (ADMINISTRATION)

Judgement

(As per Hon. Mr. P.T. Thiruvengadam, Member (Admn.)

Heard Smt. K.S.R. Anjaneyulu, learned counsel for the applicant and Sri N.V. Ramana, learned counsel for the respondents.

2. The applicant submits that she is a widow of late Sri S.K. Asthana, who worked as Inspector in Central Excise Department and expired on 24-12-1974. After the death of her husband the applicant was sanctioned family pension of Rs.200/- p.m. from 25-12-1974 to 24-12-1981 and

At
P.T.R

App. 784

Extract of Judgement in O.A. 282/90 dated 25.11.91 of,
CAT Ernakulam Bench.

107

Relief on family pension cannot be suspended when recipient is employed

Held: Family pension would be payable to the family of a deceased Government servant as per provisions of Rule 54 of the Civil Services Pension Rules. As per the provisions of this Rule the quantum of family pension is dependent on the basic pay of the Government servant and the length of his service. It has

absolutely no relation to the number of dependent members in the family and the financial position of the family. The quantum of family pension would be the same if two Government servants with identical service conditions die and if in one case, the family is possessed of substantial properties yielding sufficient income for the luxurious living of the family and in the other the family has nothing to fall back upon apart from the family pension. Similarly, there is nothing in the CCS (Pension) Rules which would suggest that, if a recipient of family pension is employed, there should be a reduction in the pension or in the relief on pension. The family pension payable to the family of a deceased Government servant has absolutely no bearing on the question whether the recipient of the family pension is employed or unemployed. Family pension is granted to the family of the deceased Government servant not solely as a welfare measure but also in consideration of service rendered by the Government servant during the period he was in service. So the family pension also cannot be considered as an *ex gratia* payment or a bounty. Family pension, therefore, is a property earned by the recipient and deprival of such property either in part or in whole without observing the due process of law has to be struck down as unreasonable and unjust. It is well settled by now that relief on pension is an adjunct of pension. As the salary of the recipient of family pension is not fixed taking into account the family pension, the fact that the recipient of family pension is an employee under the Government receiving a regular salary cannot be considered as a ground to deprive him of a portion of the pension or pension relief.

In a case where one or more members of the family in receipt of family pension is, or are employed in private sector undertaking or in business and are earning substantial income the relief on pension is not suspended on account of they being so employed. But even if one member of the family who is the recipient of the family pension is employed either in the State Government or in Central Government or in any company or corporation owned by such Government, though in the lowest post, as per the instructions contained in the Government of India, O.M., dated 13-2-1976 and 6-4-1976 and also in terms of the clarification issued by the Ministry of Railways, dated 18-3-1977, the relief on pension is to be sus-

pended during the period when the recipient of the family pension is thus employed. This discrimination is highly arbitrary and unreasonable. Since the instructions contained in the OM referred to above and the clarification contained in the circular issued by the Railways are only in the nature of administrative instructions which have no statutory force and since they purport to abridge the statutory benefit conferred by Rule 54 of the Civil Services Pension Rules, these instructions are unsustainable.

In view of the above, the respondent is directed not to suspend the relief on family pension payable to the applicant and continue to pay the applicant the full family pension with the pension relief treating the OMs, dated 13-2-1976 and 6-4-1976 and the clarification of Ministry of Railways, dated 18-3-1977, as having no legal force.

[*Smt. E. Manickam v. The Postmaster, Tirur and others, 1992 (1) SLJ (CAT) 589 (Ernakulam)*. Date of judgment 25-11-1991.]

A. S. N. J.

Hyderabad,
Dated: 10-6-1993.

App. 1/9

From,

Smt. P. Radha Subbalaxmi,
Sr. Auditor, ~~XXX XXX XXX XXX XXX XXX~~, Pri. A.G (Audit I) A.P.Hyd.
R/o, 12-2-826/B/33,
Vivekananda Colony,
Mehandipatnam - Hyderabad.

To

The Comptroller & Auditor General Of India,
New Delhi. -110 002.

Respected Sir,

Sub: Payment of Dearness Relief to
employed pensioners - Regarding.

My late husband Sri. P. M. G. Murli Krishna was working as Audit Officer in the Office of Principal Accountant General (Audit I), A.P., Hyderabad. On 10-3-1990 he died while in service. In view of his service I was given Pension/Family pension vide P.P.O. No. 61808-90-00330 Dt. 5/90 from 11-3-1990.

I submit that I was provided employment on compassionate grounds in the office of my late husband, from 27-6-1990.

I submit that since my employment I am not being paid Dearness Relief on my Family Pension.

I submit that The Central Administrative Tribunal, Madras Bench, vide its order Dated 13-11-1992 in O.A. No. 801 of 1991 (copy enclosed) has declared that denying Dearness Relief to employed pensioners is discriminatory and violative of Article 14 of the Indian Constitution.

Under the circumstances, I request you to kindly arrange to pay me D.R. on my family pension from 27-6-1990, being the date of my employment.

Thanking you,

Enc: One

Copy to:

Principal Accountant General (Audit I),
Andhra Pradesh, Hyderabad.

Yours faithfully,

S.R.L.

(Smt. Radha Subba Laxmi)

Attn
P.T.R

IN THE CENTRAL ADMINISTRATIVE
TRIBUNAL, HYDERABAD BENCH AT
HYDERABAD.

O.A.No. of 1994

Between:

Smt.P.Radhasubbalaxmi .. Applicant

and

1. The Comtrpller and
Auditor General of
India, New Delhi
& two others ... Respondents

APPLICATION FILED U/S 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT.1985.

Filed on: 28-3-1994

Filed by:

PIJAYA RAO

B.A. LL.B.

ADVOCATE

H. No: 12-7-112/1982/A, Sainik

KESHAV NARAYAN COLONY

METTUGUDA, SECUNDERABAD-17

COUNSEL FOR THE APPLICANT.

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 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 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.

... Applicant.

and

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.CHAULHARI : VICE-CHAIRMAN

JUDGMENT

(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.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.

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 occurrence 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. I : O.M.No.14014/6186 4stt(B) dated 1.6.1987 (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 so uch. of income for live hood 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 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 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 un-re-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(c) of O.M. dated 30.6.87).

21. In Meena Subramenian (Mrs.) & Ors. Vs. Union of India and ors. of the Madras Bench of C.R.T. (1992) 20 A.F.C 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 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 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 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 deprival either in part or in whole without observing the due process if 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 dependents 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 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).

24. Similar view as taken in the above decisions has been taken in Mrs. Usha Sharma Vs. Union of India by the Jaipur Bench of C.A.T. 1994(2) C.A.P. 201. 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, ~~in~~ 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.A.s 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) C.R.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 dependents 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 SIP 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.s, I propose to give them liberty to seek review of this order. No useful purpose however will be served by merely keeping these O.s pending.

33. Hence following order is passed:

Para 10 of the judgment deals with denial of Dearness Relief on family pension on employment of dependents 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 dependents 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 defendant but once appointment is made it stands on same ~~fix~~ 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 defendant 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 defendant 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 matter.)

<u>Sl. No.</u>	<u>O.A. No.</u>	<u>Cause Title.</u>	<u>Name of the counsels</u>
1.	1610/93	A.Meenakshi C.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 & 30rs.	Mr.N.Raman Mr.C.V.Malla Reddy.
8.	402/94	Smt.P.Padmini. & 15 ors. Secy.Telcom. N.Delhi & 50rs.	Mr.T.V.V.S.Murthy. Mr.N.R.Devraj
9.	520/94	Naseem Banu & 40rs. Secretary, Posts, New Delhi & 5 ors.	-do- Mr.K.Bhaskar Rao.
10.	607/94	N.Anasuya & 30rs. 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 C.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.

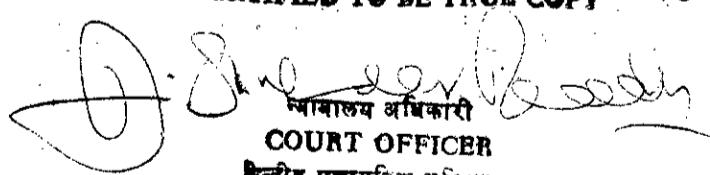
iv) A copy of this order shall be placed separately on record of each OA in the list in the schedule annexed to this order.

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

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

Sd/-HMG CJ

VC


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

केन्द्रीय O.A. No. 306/94 and 81
CASE NUMBER cases batch
मामूल का नाम
Dt. of Judgement 10-2-1996.....
प्राप्तवाया कर्या तया वित
Copy Made Ready on 3-1997.....

न्यायालय अधिकारी (को. दिक्षित)
Section Officer (1)

21. C.A.496/94 Smt. Chentabai & 3 others. Mr. V. V. S. Murthy & Mr. J. R. Devaraj. U.O.I. Secretary Deptt. of Posts, & 40 ors.

22. 191/95 B. Samayama & 6 others. Mr. P. B. Vijaya Kumar. Chie. P.M.G., A.P. Hyderabad & 4 Ors. Mr. N. R. Devaraj.

23. 1511/95 K. Tarakeshwari. Mr. P. B. Vijaya Kumar. Defense, Secretary, Mr. V. Shrimanna. New Delhi & 5 Ors.

24. 696/94 K. Sakki Bai. Mr. Krishna Devan. 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. Gurudaram. 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. Venkayamma. & 5 Ors. Director of Accts., Postal, Hyderabad. & 3 Ors. -do- -do-

880/94 Y. S. Varalatha. Chief Accounts Officer, Telecom, A.P. Hyderabad. & 2 others. -do- -do-

Rohana Khalid. -do- Sr. Div. Acc. Officer, Mr. G. S. Sanghi. Sec. & bad & another.

N. Padma Nathi. -do- Chief Acc. Officer, Telecom, Iampally, Hyderabad & 2 Ors. Mr. N. R. Devaraj.

10/10/94
12/12/94

11.	307/94	S.Grasamma. Supdt.of Post Offices,Kurnool & 2 ors.	Mr.KSR.Anjaneyulu. Mr.N.R.Davaraj.
12.	308/94	S.Mallika,Jogum. Telecom,Dist. Manager,Kurnool & 2 ors.	Mr.KSR.Anjaneyulu. Mr.N.R.Davaraj.
13.	309/94	C.Medra Jai. Supdt.of Post Offices,Kurnool & 2 ors.	-do- -do-
14.	310/94	Mandramma. -do-	-do- -do-
15.	394/94	R.Pushvayani. & 48 Ors. Secretary,Rly. Board,New Delhi & 4 ors.	Mr.P.B.Vijaya Kumar. Mr.V.Thimanna.
16.	510/94	K.Sakunthala & 11 Ors. Mr.P.B.Vijaya Kumar. Director of Accts., AP.Circle,Hyd. & 2 Ors. Mr.N.R.Davaraj.	
17.	604/94	Uma Rani & 3 Ors. Mr.P.B.Vijaya Kumar. Director,Naval Science & Technical Mr.N.R.Davaraj. Lab,Viz & 2 Ors. Mr.IVRK.Murthy.	
18.	613/94	G.V.Lakshmi. Area Accounts Officer,NDA,Vizag.	Mr.P.B.Vijaya Kumar. Mr.N.R.Davaraj.
19.	681/94	M.Amitha. Chief PMG, AP.Circle,Hyd. & Anr.	Mr.P.B.Vijaya Kumar. Mr.N.R.Davaraj.
20.	700/94	P.Dhanumathi & Secretary,Rly. Board,New Delhi & 13 Ors.	Mr.P.B.Vijaya Kumar. Mr.N.R.Davaraj. Mr.IVRK.Murthy.

25 Ors. ME.P.B.Vijaya Kumar
ME.N.R.Davaraj
ME.IVRK.Murthy

50.	432/94	K.Sushila	-do-
		"s.	
		-do-	-do-
51.	433/94	T.Rajya Lakshmi	-do-
		"s.	
		-do-	
52.	434/94	V.Chinaamma	-do-
		"s.	
		-do-	
53.	435/94	V.Pushpakulā	-do-
		"s.	
		-do-	
54.	515/94	B.Hymavethi	-do-
		"s. & 3ors.	
		-do-	
55.	731/94	A.Surya Kumari	-do-
		"s.	
		-do-	
56.	730/94	P.Vijaya Lakshmi	-do-
		"s.	
		Director & ICAR & ors. Mr.N.R.Devraj	
57.	312/94	G.Saraswathi & 16ors Mr.K Venkateswara Rao	
		"s.	
		GM, Telecom District, Vijayawada Mr.N.R.Devraj	
58.	314/94	S.Vijaya Laxmi & 12 ors. -do-	
		"s.	
		Telecom Dist. Engg, Warangal	
		District	-do-
59.	315/94	V.Magalashmi & ors	-do-
		"s.	
		AG Hyd. & 2 ors	Mr.N.R.Devraj
		"s.	Mr.G.Parameswara Rao
60.	399/94	A.Satyavathi & 15 ors	-do-
		"s.	
		GM, Telecom Dist, NZB	Mr.K.Chaskara Rao
61.	401/94	V.Sarojani & 24 ors	-do-
		"s.	
		-do-	
62.	498/94	Lakshminarasamma	-do-
		"s.	
		-do-	
63.	529/94	D.Sharmala & 2 ors	-do-
		"s.	
		Telecom Dist. Engg, NZB	Mr.V.Bhimenha
64.	551/94	V.Rukminamma & 8ors.	-do-
		"s.	
		Telecom Dist. Manager	
		Kurnool & 3 others	Mr.N.R.Devraj
65.	579/94	G.V.Varalakshmi	-do-
		"s.	
		Supdt. Teltraffic, Nellore	-do-

32.	1187/94	Baljeet Kaur. Mr. K. Venkateswaran Acc.Officer, Mr. N.R. Devaraj. Telecom. & Anr.
33.	1282/94	Jayamma & 6 Ors. -do- Sr. Divl. Accts. Officer, Mr. Rajeshwara Rao. SC. Rly. Secy. Bad. & anr.
34.	715/95	D. Surakha. -do- Dir. of Acc. Postal, -do- AP. Circle, Hyd. & anr. Mr. N.V. Ramana.
35.	769/95	R. Rajulamma. -do- Acc. Officer, Telecom, -do- Hyd. & 2 ors. Mr. V. Bhimanna.
36.	339/94	A. N. Manimma. Mr. P. Jayaram. Dy. Dir. General, -do- Postal, New Delhi Mr. N.R. Devaraj. & 2 ors.
37.	340/94	P. Chandrakantha George. -do- Chairman, Central Board -do- of Direct Taxes, New Delhi -do- & 2 ors.
38.	341/94	U. Prerna Rani. -do- Controller of Accts. -do- Science & Technology, -do- New Delhi.
39.	342/94	K. Bhanumathi. -do- -do-
40.	343/94	S. Khasim Bibi. -do- Controller of Auditor Mr. G. Paramashwara Rao. of India, N. Delhi & 2 Ors.
41.	344/94	J. V. Jasantha. -do- -do-
42.	345/94	N. Vimala. -do- -do-
43.	346/94	P. Jayashree. -do- -do-
44.	347/94	B. Krishna Veni. -do- -do-
45.	348/94	Syed Rubaena Ayosha. -do- -do-
46.	349/94	B. Nirmala Rajkumari. -do- -do-
47.	430/94	A. Radha Subhalaxmi. -do- -do-
48.	429/94	D. Adhi Laxmi. -do- -do-
49.	431/94	L. Laxmi Kumari. -do- -do-

- 6 -

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

Applicant.

and

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

JUDGMENT

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

....

This O.A. and other cases in the batch involve a ~~common~~ 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. Kama 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 occurrence of the event, Rule 3(1) (o) as amended on 9.2.91 provides that pension includes gratuity but does not include dearness relief. Dearnness 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. T o O.M.No.14014/6186 Istd(B) dated 3.6.1987 (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 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 so uch 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 appointment 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 un-re-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 O.M. dated 30.6.87).

21. In Meena Subramanian (Mrs.) & Ors. Vs. Union of India and ors. of the Madras Bench of C.A.T. (1992) 20 A.T.C 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 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 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 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 bare 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 deprival either in part or in whole without observing the due process if 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 dependents 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 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).

24. 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.601. 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 denies 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 Kerala benches, ~~the~~ this Bench (Hyderabad Bench) have earlier allowed some OAs including O.A. No. 1116/93 (Smt. Meena 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 dependents 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 dependents 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 dependents 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 ~~xxk~~ 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.Kadhamma G.M.SC Rly. Secunderabad&3ors.	Mr.N.Raman Mr.C.V.Malla Reddy,
8.	402/94	Smt.P.Padmini. & 15 ors. Secty.Telcom. 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:

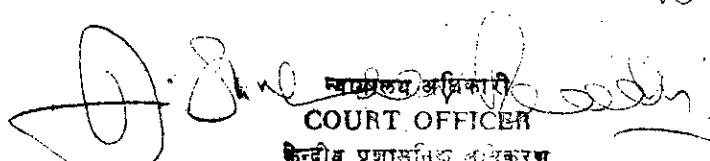
ii) In the event of a decision being rendered by the Hon'ble Supreme Court in the SLPs presently pending against decisions of this Tribunal on the point involved herein upholding the restoration of Dearness Relief on family pension to widows employed on compassionate grounds the applicants in this batch of cases will be at liberty to seek individually review of this order if so advised provided it is 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.

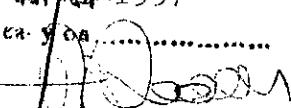
iii) This operative order shall govern O.A. No. 306/94 and also shall be recorded on each O.A. in the list in the Schedule and each O.A. shall be treated as separately disposed of for all purposes.

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 OAs listed in schedule annexed hereto which also stand disposed of in terms of this order.

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


न्यायालय अधिकारी
COURT OFFICER
फैन्डीव प्रशासनिक विभाग
Central Administrative Tribunal
हैदराबाद बैच
HYDERABAD BENCH

in O.A. No. 306/94 and 81
Case Number
तिथि of Judgement 10-2-1996
Dt. of Judgement
प्रति तिथि विधा दिन 1997
Copy Made Recd. by

वन्यालय अधिकारी (न्यायालय)
Section Officer (J)

21. O.A. 496/94 Smt. Shantabai and 3 others Mr. P. V. V. S. Murthy
UOI Secretary Dept. Mr. N. R. Devaraj.
of posts, & 40 ors.

22. 191/95 B. Sanyasama & 6 Ors. Mr. P. B. Vijaya Kumar.
Chief PMG, A.P.
Hyderabad & 4 Ors. Mr. N. R. Devaraj.

23. 1511/95 K. Tapakeshwari. Mr. P. B. Vijaya Kumar.
Defence, Secretary, Mr. V. Bhimanna.
New Dandi & 5 Ors.

24. 696/94 K. Sakki Bai. Mr. Krishna Devan.
Accounts Officer
Postal, A.P. Circle, Mr. N. R. Devaraj.
Hyd. & ors.

25. 698/94 S. Karakalaxmi. -do-
Director of Accts., -do-
Postal, Hyd. & 2 Ors. -do-

26. 822/94 M. Sundaram. -do-
Accounts Officer, -do-
Postal, A.P. Circle, -do-
Hyd. & 2 Ors.

27. 829/94 K. P. Mariyamma. -do-
Director of Accounts, -do-
Postal, A.P. Circle, -do-
Hyd. & 2 Ors.

28. 893/94 B. Veerayamma. & 5 Ors. -do-
Director of Accts., -do-
Postal, Hyderabad. & 3 Ors.

29. 880/94 Y. S. Varalatha. -do-
Chief Accounts Officer, -do-
Telecom, A.P. Hyderabad. -do-
& 2 others.

30. 1018/94 Rohana Khalid. -do-
Sr. Div. Acc. Officer, Mr. Eds. Sanghi.
Seabac & another.

31. 1131/94 N. Padmanathi. -do-
Chief Acc. Officer, Mr. N. R. Devaraj.
Telecom, Lampaally,
Hyderabad & 2 ors.

11.	307/94	S.Grasamma. Supdt.of Post offices,Kurnool & 2 ors.	Mr.KSR.Anjaneyulu. Mr.N.R.Devaraj.
12.	309/94	S.Mallika Dogum. Telecom,Dist. Manager,Kurnool & 2 ors.	Mr.KSR.Anjaneyulu. Mr.N.R.Devaraj.
13.	309/94	C.Moora Dai. Supdt.of Post offices,Kurnool & 2 ors.	-do- -do-
14.	310/94	Mangarama. -do-	-do- -do-
15.	394/94	R.Pushvayani. & 40 Ors. Secretary,Rly. Board,New Delhi & 4 ors.	Mr.P.B.Vijaya Kumar. 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 & 3 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. Arda Accounts Officer,NDA,Vizag.	Mr.P.B.Vijaya Kumar. Mr.N.R.Devaraj.
19.	601/94	M.Amita. Chief,PMG, AP.Circle,Hyd. & And.	Mr.P.B.Vijaya Kumar. Mr.N.R.Devaraj.
20.	700/94	P.Dhanumathi & 25 Ors. Mr.P.B.Vijaya Kumar. Secretary,Rly. Board, Mr.N.R.Devaraj. New Delhi & 13 Ors. Mr.IVRK.Murthy.	

50.	432/94	K. Sushila	-do-
		"s.	-do-
		-do-	-do-
51.	433/94	T. Rajya Lakshmi	-do-
		"s.	-do-
		-do-	-do-
52.	434/94	S. Chinamma	-do-
		"s.	-do-
		-do-	-do-
53.	435/94	D. Pushpaka la	-do-
		"s	-do-
		-do-	-do-
54.	615/94	B. Hymavathi	-do-
		"s. & 3 ors	-do-
		-do-	-do-
55.	731/94	A. Surya Kumari	-do-
		"s.	-do-
		-do-	-do-
56.	730/94	P. Vijaya Lakshmi	-do-
		"s.	-do-
		Director & ICAR & ors. Mr. N.R. Devraj	-do-
57.	312/94	G. Saraswathi & 16 ors Mr. K. Venkateswara Rao	-do-
		"s.	-do-
		GM, Telecom District, Vijayawada	Mr. N.R. Devraj
58.	314/94	S. Vijaya Lakshmi & 12 ors.	-do-
		"s.	-do-
		Telecom Dist. Engg, Warangal	-do-
		District	-do-
59.	315/94	V. Nagalashmi & ors	-do-
		"s.	-do-
		OrAG Hyd. & 2 ors	Mr. N.R. Devraj
		"s.	Mr. G. Parameswara Rao
60.	399/94	A. Satyavathi & 15 ors	-do-
		"s.	-do-
		GM, Telecom Dist, VIZ.	Mr. K. Chaskara Rao
61.	401/94	V. Sarojini & 24 ors	-do-
		"s.	-do-
		-do-	-do-
62.	498/94	Lakshminarasamma	-do-
		"s.	-do-
		-do-	-do-
63.	529/94	D. Shamala & 2 ors	-do-
		"s.	-do-
		Telecom Dist. Engg, NZB	Mr. V. Bhimanna
64.	551/94	V. Rukminamma & 8 ors.	-do-
		"s.	-do-
		Telecom Dist. Manager	Mr. N.R. Devraj
		Kurnool & 3 others	-do-
65.	579/94	G. V. Varalakshmi	-do-
		"s.	-do-
		Supdt. Teltraffic, Nellore	-do-

32.	1187/94	Baljoot Kaur. Mr.Krishna Devan. Aco.Officer,Hyd. Mr.N.R.Devaraj. Telecom.& Anr.
33.	1282/94	Jayamma & 6 Ors. -do- Sr.Divl.Accts.Officer Mr.M.Rajeshwara Rao SC.Rly. Soc'bad.& anr.
34.	715/95	D.Surakha. -do- Dir.of Acc.Postal, AP.Circle,Hyd.&anr. Mr.N.V.Ramana.
35.	769/95	R.Rajulamma. -do- Aco.Officer,Telecom, Hyd. & 2 ors. Mr.V.Bhimanna.
36.	339/94	A.N.Manimma. Mr.P.Jaya Rao. Dy.Dir.General, Mr.N.R.Devaraj. Postal,New.Delhi & 2 ors.
37.	340/94	P.Chandrakantha George. -do- Chairman,Central Board -do- of Direct Taxe,New Delhi & 2 ors.
38.	341/94	U.Prema Reni. -do- Controller of Accts. -do- Science & Technology, New Delhi.
39.	342/94	K.Bhanumathi. -do- -do-
40.	343/94	S.Khosim Bibi. -do- Controller of Auditor Mr.G.Paramashwara Rao. of India,N.Delhi & 2 Ors.
41.	344/94	J.V.Jasantha. -do- -do-
42.	345/94	N.Vimala. -do- -do-
43.	346/94	P.Jayashree. -do- -do-
44.	347/94	B.Krishna Veni. -do- -do-
45.	348/94	Syed Rubeen.Ayosha. -do- -do-
46.	349/94	B.Nirmala Rajkumari. -do- -do-
47.	430/94	A.Radhá Subhalaxmi. -do- -do-
48.	429/94	P.Adhi Laxmi. -do- -do-
49.	431/94	L.Laxmi Kumari. -do- -do-

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

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