

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.1358/95

Date : 9.10.96

BETWEEN :

Smt.M.Sesha Kumari ..Applicant

AND

1. Union of India, Rep. by
Secretary, Ministry of Defence,
New Delhi.

2. Controller-General of Defence,
Accounts, Government of India,
West Block-5, Ramakrishnapuram,
New Delhi - 110 040.

3. Controller of Defence Accounts,
Government of India, Agram Post,
Bangalore - 560 007.
Karnataka State.

4. Deputy Controller of Defence,
Accounts, Government of India,
South Trimulgherry,
Secunderabad. ..Respondents.

Counsel for the Applicant ..Mr.G.RamachandraRao

Counsel for the Respondents ..Mr.V.Bhimanna

CORAM:

HON'BLE SHRI R.RANGARAJAN : MEMBER (ADMN.)

ORDER

Oral order as per Hon'ble shri R.Rangarajan :
Member(Admn.)

Heard Mr.G.Ramachandra Rao, learned counsel for the applicant and Mr.V.Bhimanna, learned standing counsel for the respondents.

2. The applicant in this OA is the wife of late Sri M.V.Gopala Krishna Murthy who was appointed on 4.1.71 as Upper Division Clerk under R-4. The deceased employee was later promoted to next higher grade post and finally as Auditor. He was retired compulsorily while working as Auditor in the office of the Controller of Defence at Bangalore by an order dated 28.2.85. Subsequently he died on 30.3.90. It is stated that the deceased employee after his retirement before his death made several representations to the respondents herein for payment of pensionary benefits but the same was not given. The applicant herein also represented for payment of family pension^{to her} by her letter dated 11.7.95. This was replied by the impugned proceedings No.AN/III/2188/8308151/MVGKFP, dated 24.7.95 (A-11) regretting her claim for family pension on the ground that she is not entitled for family pension as her late husband neither died in service nor died after retirement with pension.

3. Aggrieved by the above, she has filed this OA for setting aside the impugned proceedings in No: AN/III/2188/8308151/MVGKFP, dated 24.7.95 (A-11) and for a consequential benefit for payment of pensionary benefits to her late husband Sri M.V.Gopala Krishna Murthy from 28.2.85, ~~and~~ and family pension to her



(applicant herein) from 31.3.90 including arrears by treating the period of break in service of her late husband from 3.10.74 to 10.10.74 as qualifying service for all purposes.

4. Reply has been filed in this OA. The main contention of the respondents in not granting her pensionary benefit is due to the fact that the ex-employee (husband of the applicant herein) was a militant agitator in illegal strike from 3.10.74 to 10.10.74 and hence the break in service was imposed for those who had participated in the illegal strike as per provisions of FR 17-A. Though the break in service was condoned in case of some other employees who also took part in the illegal strike, the case of the applicant herein is not similar to those for whom the break in service was condoned. In the case of those employees, representations expressing regrets for participation in illegal strike and request for condonation of break in service were received and those cases were considered by the competent authority who condoned the break in service treating the unauthorised absence during the strike period as dies non. The applicant's husband neither expressed regrets nor made representation for condonation of break in service. Due to the break in service, his qualifying service for payment of pension and other pensionary benefits was less than 10 years at the time of his compulsory retirement and therefore the pension was not payable. It is also stated that the representation from the applicant herein for family pension was submitted 5 years after the death of her husband and after 10 years after her husband was compulsorily retired. Considering the indigent circumstances expressed by the applicant in a



representation dated 21.1.95 the matter for grant of family pension was taken up with CCDA (Pensions) Allahabad and also the competent authority for condonation of break in service. Her request for condonation of break in service of her husband has been rejected by the competent authority as more than 20 years had elapsed since the award of break in service and it was too late to condone the same and to treat the period of absence as dies non. As the condonation of break in service was not acceded to, the qualifying service of the deceased government employee fell short of the required 10 years qualifying service for granting pension. Even the claim for compassionate allowance under Rule 41 of CCS (Pension) Rules 1972 was rejected. The applicant was informed of the same by letter dated 24.7.95 (the impugned proceedings in this OA).

5. From the above, two important contentions of the respondents for rejecting the claim of the applicant for payment of family pension are discernable. They are (1) the break in service was imposed as per FR 17-A and the condonation of break in service cannot be given to the applicant's husband as he was a militant agitator and he had not submitted any regrets for having joined the agitation. (2) the representation of the applicant herein was submitted belatedly 20 years after the award of break in service and 5 years after the death of the ex-employee.

6. Provisions of FR 17-A states that "unauthorised absence shall be deemed to cause an interruption or break



in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanancy and eligibility for appearing in departmental examiantions, for which a minimum period of continuous service required."

7. From the above provisions it can be said that provision of FR 17-A does not expressly provide for break in service for purpose of payment of pension and other pensionary benefits. The rule as it stands is for the purpose of leave travel concession, quasi permanancy and eligibility for appearing in departmental examinations. When the respondents have taken recourse to order break in service under the provision of FR 17-A they should have considered whether this provision is a proper one in this case or not. In any case the break in service has been ordered under the said provision.

8. Rule 27 of CCS (Pension) Rules gives the circumstances under which a government servant entails for forfeiture of his past service. Rule 28 of CCS (Pension) Rules is very relevant which is reproduced below for purpose of clarification:

(a) In the absence of specific indication to the contrary in the service book, an interruption between two spells of civil service rendered by a Government servant under Government including civil service rendered and paid out of Defence Services



Estimates or Railway Estimates shall be treated as automatically condoned and the pre-interruption service treated as qualifying service.

(b) Nothing in clause (a) shall apply to interruption caused by resignation, dismissal or removal from service or for service or for participation in a strike.

(c) The period of interruption referred to in clause (a) shall not count as qualifying service."

The Government of India's instructions (1) under this Rule conveyed under letter No.14/12/82-Vig.III, dated 23.09.82 further clarifies the position in regard to break in service for the purpose of counting qualifying service.

9. The important portion in this letter is that "it is not the intention of the Government to deny pensionary benefits to the employees in all cases of break in service. If necessary the appointing authority may in its discretion not condoning the break in service on account of unauthorised absence for purpose of pension only in exceptional-and-grave-circumstances-and-not-as-a-matter-of course. (Emphasis added)." It also states that "the question of condonation of break in service for purpose of pension rules may be considered suo moto without waiting for a representation from the affected officials and orders issued so that the retired employees are not put to



financial hardship".

10. From the above it is clear that even if the deceased employee had not submitted any representation, the respondents are yet to consider the case for condoning the break in service suo moto. Though the respondents submit that the applicant had not submitted any representation for condoning the break in service for the period from 3.10.74 to 10.10.74, the respondents considering the case of a retired employee who is not very highly paid could have considered his case for condonation of delay without waiting for representation in case it is a deserving one. But that was not done. Be that as it may, the representation of the applicant herein for family pension atleast could have been considered in the light of the decision of the Government of India conveyed by order dated 23.9.82 extracted as above. But the respondents for reasons best known to them rejected the representation of the applicant herein for family pension on the ground that the representation is a belated one. Even compassionate allowance under Rule 41 of CCS (Pension) Rules 1972 was rejected presumably on account of delay in submitting the representations.

11. Goverment employees have to depend on the pension only after the retirement. Especially in the case of a widow, she cannot hope to get any employment at that old age. Hence if she submit a representation for family pension, it has to be considered in accordance with the



rules instead of rejecting the same on mere technicalities. The decision of the Govt. of India conveyed by the letter dated 23.9.82 gives ample scope for the respondents to consider the case of the applicant herein for family pension without any serious implications. But as stated earlier, the case was rejected only on the ground that the representation is belated one. Hence I am of the opinion that the case needs reconsideration in the light of provisions of FR 17-A and Rule 27 of CCS (Pension) Rules and Government of India's instructions under Rule 28 of CCS (Pension) Rules. If an objective view is taken in this connection probably the applicant herein may hope to get some favourable decision from the respondents. However no positive direction can be given at this juncture by this Tribunal in regard to the prayer of the applicant in this OA as the respondents have not looked into this case objectively on the basis of various rules/instructions as quoted above. The only direction that can be given to R-2 is to reconsider the issue *denovo* on the basis of her representation and also taking into account the observations made as above in this judgement.

12. It is no doubt that the applicant had submitted a representation very belatedly. In view of her late submission of representation she cannot get full relief as prayed for in this OA even if R-2 decides her case in her favour. Under the circumstances the payment of family pension being a continuing one, she is entitled for the same only from 3.11.94, i.e., one year prior to filing of



this OA (this OA was filed on 3.11.95). She will not be entitled for any arrears other than the family pension from 3.11.94 if her case is decided in her favour by R-2.

13. In the result, the following direction is given:-

R-2 should reconsider the case of the deceased employee for condonation of break in service for the period from 3.10.74 to 10.10.74, in the light of the various rules/instructions of Govt. of India keeping in mind the observations made in the judgement as above. If R-2 decides the issue for condoning the break in service of the husband of the applicant favourably, then the applicant is entitled for payment of family pension from 3.11.94 i.e., one year prior to filing of this OA (This OA was filed on 3.11.95). The applicant is not entitled for any other relief other than what is directed as above.

14. Time for compliance is four months from the date of receipt of a copy of this order.

15. The OA is ordered accordingly. No costs.


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED: 9th October, 1996
(Dictated in open court)


Dr. Reg. T. N. Raj (P.S.)

sd/vsn

Copy to:-

1. The Secretary, Ministry of Defence, Union of India, New Delhi.
2. Controller General of Defence, Accounts, Govt. of India, West Block-5, Ramakrishnapuram, New Delhi.
3. Controller of Defence Accounts, Govt. of India, Agaram Post, Banbalore, Karnataka state.
4. Deputy Controller of Defence Accounts, Govt. of India, South Trimulgherry, Secunderabad.
5. One copy to Sri. G.Ramachandra Rao, advocate, CAT, Hyd.
6. One copy to Sri. V.Bhimanna, Addl. CGSC, CAT, Hyd.
7. One copy to Library, CAT, Hyd.
8. One copy to spare.

Rsm/-

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DA-1358/95

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THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

DATED:

9/10/96

ORDER/JUDGEMENT
R.A.C.P./M.A.NO.

O.A.NO.

1358/95

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED
DISPOSED OF WITH DIRECTIONS
DISMISSED
DISMISSED AS WITHDRAWN
ORDERED/REJECTED
NO ORDER AS TO COSTS.

YLKR

II COURT

