

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 217/93

Date of decision: 11/2/94

MPS. UMA SHARMA

: Applicant.

VERSUS

UNION OF INDIA & OPS

: Respondents.

Mr. Surendra Singh

: Counsel for the applicant.

Mr. U.D. Sharma

: Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice D.L. Mehta, Vice-Chairman

Hon'ble Mr. P.P. Shrivastava, Administrative Member

HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

The applicant submitted the O.A. and prayed that respondents be directed to grant her Dearness Relief with family pension w.e.f. 6.12.1983. She also prayed that she should be paid interest on account of non-payment of the Dearness Relief on the said amount at the rate of 12% per annum.

2. The applicant submitted that her husband, Shri Babu Lal Sharma, was serving as LDC in the office of the Deputy Director General, Geological Survey of India, Western Region, Jaipur. Shri Babu Lal Sharma expired on 5.12.83. She is getting family pension only but she has not got the dearness relief after her appointment on adhoc basis on 15.6.84. The applicant is in service. She was drawing the family pension to the tune of Rs. 187/- per month upto 5.12.90, and, thereafter, she was getting Rs. 100/- per month.

3. The applicant's contention is that dearness relief being a part of the pension should be paid even after employment on compassionate grounds and the respondents cannot withhold the payment of the dearness relief on the ground that the applicant is in employment and she is only entitled for the basic pension and no dearness allowances.

4. In the case of Maena Subramanian & Ors Vs. Union of India & Ors decided on 13.1.1992 by the Madras Bench of the Tribunal and held that Dearness Relief is not separable from pension. Even after employment of the applicant, according to the Madras Bench, the dearness relief should be paid along-with the pension. The Madras Bench has also considered the Rule 55-A, which was inserted vide amendment in the year 1991. Giving an appointment or employment and giving the pension are two different things. It was held that once the pension is allowed to be drawn, dearness relief should be paid along-with it, otherwise there will be only a part payment of pension in real terms.

5. Rule 54(2)(a), (aa) and (b) read as under:-  
out

'With/without prejudice to the provisions contained in sub-rule (3), where a Government servant dies -

(a) after completion of one year of continuous service; or

(aa) before completion of one year of continuous service provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service; or

(b) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in Chapter V, other than the pension referred to in Rule 37,

the family of the deceased shall be entitled to Family Pension.// Even under Rule 54(11), two family

pensions can be given to the person entitled for the same.

Sub-rule 11-C(a) provides that if a person, who in the event of death of a Government servant while in service, is eligible to receive family pension under this rule, is charged with the offence, referred to in Sub-rule 11-C, then the family pension is suspended till the conclusion of the criminal proceedings. If <sup>she</sup> he is convicted, no family pension should be made and <sup>she</sup> he will be debarred. If acquitted, family pension becomes payable to such person from the date of the death of the Government servant. Sub-rule 13 further provides that the

adhoc increase in pension, sanctioned in the Ministry of Finance, O.M. No. 15(13-E.V-(A)/63 dated 16.10.1963, as amended from time to time, shall not be payable to the family, under the circumstances mentioned therein. However, the words "adhoc increase in pension" have not been defined any-where. Sub-rule 14(c)(ii) deals with average emoluments as referred to in Rule 34. Under Rule 19, pay has been defined and pay means the amount drawn monthly by a Govt. servant as the pay other than the special pay. It further provides that any other emoluments which may be specially classed as pay by the President. Thus, there is a difference between pay and allowances and allowances may            if it is notified, become the pay.

6. Mr. Sharma submitted that the applicant is not entitled to the dearness relief on family pension as she is in employment and is getting the dearness allowances on her salary which she is getting on account of her employment. The amount drawn by her on her own salary is higher. Thus, the payment of dearness relief does not arise. Mr. Sharma relied upon the case of Mahesh Chandra Ghosh & Ors Vs. Union of India & Ors, decided by the Calcutta Bench of the Central Administrative Tribunal, reported in 1992(7) SLR 421. Calcutta Bench held that            the Central or the State Government employees including teachers working as Extra Departmental Agents are not entitled for getting the dearness relief. This Judgement is not in any way relevant as it is not a case in which the question of family pension and dearness relief was considered. It is a case in which the regular employee is performing the duties of the Extra Department Agent in addition to his own duties. As such, the Calcutta Bench held that the question of payment of dearness relief on the amount drawn by the E.D. Agent does not arise.

7. To give a compassionate employment is not in any way connected with the grant of family pension. The fact that the compassionate appointment is given, may be the additional relief and the Government can withdraw this relief if it so chooses. There is no direction under Articles 14, 15 and 16 to give such appointment or reservation like the persons of the Scheduled Casts and Scheduled Tribe or Backward Class. We have not considered even this aspect whether to give appointment on compassionate grounds may or may not be violative of Articles 14, 15 and 16. The grant of dearness relief cannot be limited only with the question of appointment. A widow can get appointment on merits. In that case, she will have the right under the rules to get the dearness relief and the submissions that the appointment was given on compassionate grounds will not be available.

8. We will have to take into consideration the social system prevailing in society. There can be more than one widow and all the widows are entitled to get the benefit of family pension. One of the widows may be in employment and other may not be in employment. In such circumstances, the question of non-payment of the dearness relief to the widow will become penal in character and will deprive her of valuable right of getting the dearness relief only on the ground that the other widow is in employment. A query was made by the court to Mr. Sharma, the counsel appearing before us, why the other widow should be penalised. Mr. Sharma submitted that in that case there will be a pro-rata reduction in the dearness relief and the other widow will get the dearness relief but the widow who is in employment loses her part. If this argument of Mr. Sharma is accepted then the position will be that dearness relief is a part of family pension and it is to be distributed amongst the dependents or the persons entitled on a pro-rata basis. Thus, the argument advanced by Mr. Sharma does

not\*help the Government.

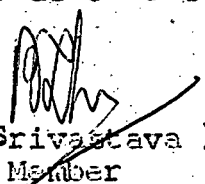
9. In the year 1991, Rule 55-A has been inserted. It provides that if a pensioner is re-employed under the Central or State Government or a Corporation/Company/Body/Bank under them, he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment. It will not be out of place to mention that under Rule 3(cc) 'dearness relief' means relief as defined in Rule 55-A. Family pension is determined under Rule-54 but it does not include dearness relief. As Rule 55-A is concerned, it only applies in the case of re-employment. It does not apply in the case of fresh employment. The word "employed" can be interpreted in a wider sense and it may include the case of re-employment also but the word "re-employed" cannot be interpreted to include the case of employment. ~~So the Rule 55-A only puts a bar in the case of re-employment.~~ So the Rule 55-A only puts a bar in the case of re-employment and not in case of employment. The word "family pension" as used in Rule 55-A is only relevant in case of re-employment of person who is getting family pension. For illustration, if husband and wife, both were in employment, husband dies, wife continues in employment, and she gets the family pension. Thereafter, wife after attaining the age of superannuation, retires and if she is re-employed, in such circumstances, the Rule 55-A may come into play but not in the case of the employment of wife who is getting the family pension. Family pension and dearness relief once granted cannot be withdrawn on account of the employment of the person who has been granted employment, may be on compassionate grounds or on merits.

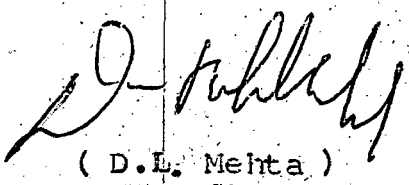
10. There is no provision for withdrawing the relief which has already been granted under the rules. The payment of the relief started in the instant case just after the death of the deceased and the wife was employed after a year or so. So it will not be a case of denial of dearness relief but it will be a case of withdrawal of a relief already granted from the future date, i.e. from the date of the employment of the wife, which is not permissible under the rules.

10. Before parting with the judgment, we will like to observe that the Govt. should consider the various provisions of Family Pension including rule 55-A. It is advisable that in clause (ii) of rule 55-A, the word "employed" is used in place of the word "reemployed" to make it more reasonable, equitable and just. We have to interpret the rule as it is and for this reasons, we are granting the relief to the petitioner.

11. For the reasons mentioned above, we are of the view that the applicant is entitled for dearness relief. In the result, we accept the petition; direct the respondents to grant dearness relief to the applicant from the date it was withdrawn on account of her employment within a period of three months from the date of receipt of this order.

12. The O.A. stands disposed of accordingly, with no order as to costs.

  
( P.P. Srivastava )  
Adm. Member

  
( D.L. Mehta )  
Vice Chairman