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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.221/94

Dt. of order: 13.2.1995

Smt.Gyana Devi Sharma

: Applicant

VS.

Union of India & Ors.

: Respondents

Mr.A.K.Bhargava

: Counsel for applicant

Mr.U.D.Sharma

: Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.O.P. Sharma, Member(Adm.).

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, applicant Smt.Gyana Devi Sharma has prayed that the respondents may be directed to pay Dearness Allowance (read Dearness Relief) with Family Pension and arrears of Dearness Relief from January 1986 till the date of actual payment.

2. The applicant, widow of late Shri Jagdish Chandra Sharma, employed in the Employees State Insurance Corporation, Jaipur, has been getting Family pension at Rs.532/- per month from Jan. 1986 to January 1990 (apparently this amount of Rs.532/- includes Dearness Relief). At present, however, she is getting Rs.375/- per month as pension without Dearness Relief. She was granted appointment as LDC on 3.2.1983 on compassionate ground on account of the death of her husband, who died on 11.12.'82. On stoppage of Dearness Relief attached to the Family Pension, she made a ^{dated} representation 5.2.'93 but the respondents rejected her request vide Annx.A1 dated 30.3.1993. She also served a legal notice on respondent Nos.2 & 3 on 6.01.94 but reply thereto is awaited. The Dearness Relief on Family Pension has been stopped on the ground of provisions in Rule 55-A (ii) of CCS(Pension) Rules. The applicant's case is that Rule 55-A is applicable to re-employed pensioners whereas she is not a re-employed pensioner, Therefore, she cannot be denied that relief.

3. The respondents in their reply have taken a preliminary objection as to limitation on the ground that whereas the

Dearness Relief payable on Family Pension had been stopped w.e.f. 28.1.1986, the applicant submitted her first representation against the aforesaid stoppage on 5.2.1993. Therefore, the rejection of the representation made by the applicant on 5.2.93 will not have the effect of reviving and extending the period of limitation. The applicant had earlier filed an O.A. No.152/94 which was withdrawn by her on 4.4.1994 with liberty to file a fresh application but that application was also barred by limitation and the Tribunal's order dated 4.4.94 would also ^{not} have the effect of reviving and extending the period of limitation which had already expired.

3. As regards the merits of the case, the respondents have stated that the payment of Dearness Relief on Family Pension has been suspended in accordance with the Govt. of India, Ministry of Finance's orders dated 13.2.76 and 6.4.'76 which have been reproduced from the Swamy's Compilation XI Edition of CCS (Pension) Rules, which have been annexed as Annx.R2. The respondents have stated that provisions of Rule 55-A are not applicable in the instant case. They have added that the Union of India has already filed a Special Leave Petition before the Hon'ble Supreme Court against the order passed by the Madras Bench of the Tribunal in the case of Smt.Meena Subramanian Vs. Union of India & Ors. and the said SLP had been admitted by the Hon'ble Supreme Court.(This order of the Tribunal has been relied upon by the applicant for claiming that provisions of Rule 55-A (ii) are violative of Article 14 of the Constitution). The respondents have further stated that Pension and Dearness Relief on pension are different and distinct benefits and Dearness Relief cannot be said to be an integral part of the pension as payment of Dearness Relief is linked with the cost of living index. Further according to them the applicant is getting her pay and allowances in the regular scale of the post which she is now holding and is also being paid Dearness Allowance in addition to her pay. If the Dearness Relief is also paid to her on the Family Pension, this would amount to grant of a double and unintended benefit.

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4. during the arguments, the learned counsel for the applicant relied upon the judgment of the Madras Bench of the Tribunal in Meena Subramanian & Ors. Vs. Union of India & Ors. reported at (1992) 2 ATC 584. The learned counsel for the respondents has reiterated the facts and arguments stated in the reply and relied upon a judgment of the Calcutta Bench of the Tribunal in Mahesh Chandra Ghosh & Ors. Vs. Union of India & Ors. reported at 1992(7) SLP 421. In this judgment the Tribunal had held that Dearness Allowance would ^{be} not/admissible to Central/State Govt. employees working as ^{Extra} Departmental Agents. The grant of Dearness Allowance on emoluments received as Extra Departmental Agent has been denied with a view of avoiding a double benefit being conferred on those employees, because they were already getting Dearness Allowance on the pay received by them as Central/State Government employees. He also drew our attention to definition of Dearness Relief contained in Rule 3(cc) of the CCS(Pension) Rules. According to this definition Dearness Relief means relief as defined in Rule 55-A. In Rule 55-A (i) it is stated that relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief at such rates and subject to such conditions as the Central Govt. may specify from time to time, If a pensioner is re-employed under the Central or State Govt, etc., he shall not be eligible to draw dearness relief on pension/family pension during the period of such re-employment.

5. We have heard the learned counsel for the parties and have gone through the record, judgments and rules cited before us. The respondents have themselves conceded that Rule 55-A has not been invoked by them for denying Dearness Relief on Family Pension to the applicant presumably because the applicant is not a re-employed pensioner. The ground for denying the Dearness Relief however is the provision in clause (i) of Rule 55-A which provides that dearness relief shall be admissible subject to such conditions as the Central Govt. may specify. The conditions governing the grant of Dearness Relief have been specified in the instructions dated 13.2.'76 and 6.4.'76, as reproduced in Annx.R2, which state that payment of dearness relief on Family Pension shall be suspended

When a person is employed in any of the organisations connected with ^{or with} the Central or State Govt.

6. There is no clear definition of Dearness Relief as such in Rule 55-A, although Rule 3(cc) states that Dearness Relief mean what has been defined in the said rule. The Dearness Relief has been stopped in terms of the instructions in Annx.R2 relied upon by the respondents which are reported to have been issued under clause (i) of Rule 55-A. Clause (i) states that relief against price rise may be granted to the pensioners and family pensioners in the form of dearness relief as such rate as may be prescribed on and/such conditions as may be prescribed. Obviously Dearness Relief is granted with a view to compensating the pensioners and the family pensioners for rise in prices which would otherwise erode the value of the pension received by them. Obviously, therefore, there is a contradiction between the provisions of clause (i) and the instructions issued by the government reproduced at Annx. R2. The ground advanced for denying Dearness Relief is that the applicant would otherwise be getting double, unintended benefit, in as much as she would be getting Dearness Allowance on her pay as a government servant and also Dearness Relief on her Family Pension. It is however significant to note that in spite of the fact that the applicant is a government servant and is drawing pay as well as Dearness Allowance in that capacity, the payment of Family pension to her has not been stopped, even though she was granted employment on compassionate grounds. It is obviously the government's intention that the applicant should get her pay as government servant with Dearness Allowance as also Family Pension. If she is entitled to Family Pension as well, she would as well be entitled to relief against price rise as provided in clause (i) of Rule 55-A. Since Rule 55-A has not been invoked by the respondents for denying Dearness Relief to the applicant, the judgment in Meen Subramanian's case may not have a direct applicability to the present case. However, in the said judgment after examining the provisions of the rules and the instructions issued by the government, the Tribunal came to the conclusion that Dearness

Relief is meant to compensate for the rise of cost of living. If the rise in the cost of living is not compensated while the pension would remain the same it would get reduced by the effect^{of fall} in the purchasing power of the rupee. The Tribunal held that pension and dearness relief cannot be treated as separate components and dearness relief forms part and parcel of the pension as it is intended to restore pension to its original value. These observations of the Tribunal are equally relevant in so far as the present case is concerned.

7. The judgment cited by the learned counsel for the respondents will have no applicability in the facts of the present case, in as much as the said judgment deals with grant of two Dearness Allowances to a serving State/Central government employee working in two different capacities. As already stated above the logic of grant of Family Pension to a person who is also a government servant is entirely different.

8. In the facts and circumstances of the present case, we hold that since the instructions Annx.R2, relied upon by the respondents contradict the provisions of clause (i) of Rule 55-A ^{stopping} these cannot be relied upon for Dearness Relief to the applicant. We also hold, as observed by the Madras Bench of the Tribunal in Meena Subramanian's case that Dearness Relief cannot be treated as something separate and distinct from pension. We accordingly set aside Annx.A1 dated 30.3.1993.


9. The respondents have taken a ground regarding limitation. This is not however a case in which the applicant has to establish her claim to Family Pension or that the claim as such has been disputed and is to be determined first, before Family Pension can be granted. This is on the other hand a case in which there is no dispute that the applicant is entitled to Family Pension. What the respondents have done is that they have stopped a part of the Family Pension of the applicant which is payable to her in the form of Dearness Relief. In such circumstances the cause of action available to the applicant would be a continuing cause and the question of limitation would not apply. We have already held above that Dearness Relief cannot be treated as something separate from Family

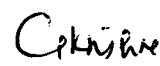
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Pension. Therefore, filing of the application in 1994 will not mean that the application is barred by limitation. However, in such circumstances, the relief to be granted to the applicant will be restricted to ~~for~~ a period of one year prior to the date of the filing of the application. Ofcourse from the date of the filing of the application onwards she would be entitled to Dearness Relief. The respondents are directed to make payment of the arrears of the Dearness Relief as mentioned above within a period of 4 months from the date of the receipt of a copy of this order and to pay her Dearness Relief on Family Pension from now onwards regularly.

10. The O.A. is allowed accordingly with no order as to costs.

11. The M.A. No.49/95 filed for seeking condonation of delay in filing the O.A. stands disposed of accordingly.


(O.P.Sharma)
Member(A).


(Gopal Krishna)
Member(J).