

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

R.A.No. 23/95

Dt. of order: 19-5-95.

Union of India & Ors.

: Applicants

Vs.

Smt. Gyana Devi

: Respondents

Mr. U.D. Sharma

: Counsel for applicants

CORAM:

Hon'ble Mr. Gopal Krishna, Vice Chairman

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

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

In this review application filed by the Union of India, the Director General of ESIC, New Delhi and the Regional Director, ESIC, Jaipur, ^{they} have prayed that the order passed by this Bench of the Tribunal in O.A.No. 221/94 on 13.2.95 may be reviewed and recalled and that the said O.A. should be dismissed.


2. In O.A.No. 221/94 the applicant had claimed that the respondents should be directed to pay Dearness Allowance (actually Dearness Relief) on Family Pension being paid to the applicant, alongwith arrears. The applicant, widow of an employee of ESIC was getting Family Pension and she was herself employed as an L.D.C. in ESIC on compassionate ground on account of the death of her husband. As an employee of ESIC, she was getting pay and Dearness Allowance as admissible thereon but on Family Pension she was not granted any Dearness Relief, in view of certain instructions issued by the Government. The Tribunal after examining the scheme of Family Pension, had come to the conclusion that the applicant was entitled to Dearness Relief also on Family Pension, besides her entitlement of pay and Dearness Allowance as an employee of ESIC. The applicants in the present review application were the respondents in the O.A.No. 221/94.

3. In the review application, the applicants, Union of India & Ors, have stated that the Hon'ble Supreme Court delivered a judgment on 8.12.'94 in the case of Union of India & Ors. Vs. B. Vasudevan Pillai & Ors. etc., etc., in which it has held that in identical circumstances that Dearness Relief would not be admissible on Family Pension to those who are themselves employed

and are in receipt of pay and Dearness Allowance thereon. Although this judgment was delivered on 8.12.94, its copy was not available to the applicants at the time of the hearings of the said O.A and a copy in fact became available to them only after the Tribunal had passed order in the said O.A. on 13.2.95 and accordingly the said decision of the Hon'ble Supreme Court could not be brought to the notice of the Tribunal at the time of hearing. It has been prayed that since the aforesaid decision of the Hon'ble Supreme Court squarely covers the controversy involved in the O.A, it is a fit case in which the Tribunal should review its order dated 13.2.94, recall the same and dismiss the O.A.

4. None is present on behalf of Smt. Gyana Devi, ~~xxxx~~ the applicant in O.A.No. 221/94 who is the respondent in the present review application. We have heard the learned counsel for the applicants, Union of India & Ors. and have gone through the records and the judgment of the Hon'ble Supreme Court cited before us. The said judgment of the Hon'ble Supreme Court was delivered on 8.12.94 and it has since also been reported at (1995) 29 ATC 180. A perusal of the judgment of the Hon'ble Supreme Court shows that they have held that Dearness Relief would not be admissible on Family Pension to those employees who are getting pay and Dearness Allowance. There are no circumstances to justify any distinction between the facts of the present case and those on the basis on which the judgment by the Hon'ble Supreme Court was delivered. Since the Hon'ble Supreme Court had already delivered the said judgment when the Tribunal passed its order on 13.2.95, the Tribunal's order is erroneous in law in as much as the said judgment of the Hon'ble Supreme Court lays down the law on the subject and had a copy of the said judgment been available at the time of passing of the order of the Tribunal on 13.2.95, it would have certainly been followed by the Tribunal. We, therefore, exercising our powers of Review under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987, ~~we~~ accept the review application and recall our order dated 13.2.1995.

5. In view of the judgment of the Hon'ble Supreme Court referred to above, copy of which has also been annexed to the review application as Annx.RA/2, we hold that the applicant is not entitled to Dearness Relief on Family Pension. The O.A. stands dismissed with no order as to costs.


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


(Gopal Krishna)
Vice Chairman.