

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 416 of 2005

Received, this the 22nd day of November, 2005

Hon'ble Shri Madan Mohan, Judicial Member

Durgabai, aged about 86 years,
W/o. late Vishwanath RAI, Ex.
Leading Hand, COD, Jabalpur, C/o.
Govind Rao, 285, Manjupath,
Dixitpura, Jabalpur. ... Applicant

(By Advocate - Shri Rajneesh Gupta)

V e r s u s

1. Union of India, through Secretary,
Ministry of Defence, New Delhi.
2. Commandant, COD, Jabalpur.
3. CCDA, (Pension), Allahabad (UP).
4. Accounts Officer (Pension),
COD, Jabalpur.
5. CDA (Pension), Allahabad (UP). ... Respondents

(By Advocate - Shri Akhil Prakash Khare)

ORDER

By filing this Original Application the applicant has claimed the following main reliefs :

"(i) to quash the order dated 4.4.2005 (Annexure A-1) in the interest of justice and be further pleased to direct the respondents to make payment towards Family Pension to the applicant without loss of time,

(ii) to direct the respondents to pay the arrears of amount towards family pension right from the date the similarly situated persons have been taking the benefit of family pension with interest @ 18% in the interest of justice w.e.f. the year 1977 when the similarly situated persons were started paying the family pension,

(iii) to impose heavy cost on the respondents in harassing an old aged lady in getting the pension after retirement/death of her husband."

2. The brief facts of the case are that the husband of the applicant retired as Leading Hand NIE on 28.2.1951 and thereafter died on 10.4.1993. The post of Leading Hand is a non-industrial establishment post and is a pensionable post. At the time of retirement of the deceased employee there was



no provision for grant of family pension but subsequently in the year 1964 scheme was floated by the Central Government for grant of family pension. When the applicant was neither paid the family pension nor any other amount, she approached the Tribunal for grant of family pension. On 6th August, 1999 the Tribunal directed the respondents to decide the representation of the applicant. The respondents to show compliance of the order passed by the Tribunal have started only paying ex gratia pension w.e.f. 29.3.2000. The applicant submits that the ex gratia payment paid by the respondent comes out to Rs. 605/- plus DA per month, whereas the applicant is entitled for family pension at the rate of Rs. 1275/- plus DA per month. When the respondents did not start paying the family pension to the applicant she preferred several representations to the respondents. The respondents have granted benefit of family pension to the similarly situated persons i.e. Diwakar Rao Jadhav, who also retired in the year 1954 i.e. prior to 1964 and his family is getting the family pension w.e.f. 22.2.1977. The family of another person Shri Yadav Rao who retired in the year 1951 is also getting family pension. The applicant is a old lady. She was not aware of the judgment of the Hon'ble Supreme Court and hence she could not approach the authorities. After knowledge she immediately filed the OA No. 218/1999. She has also filed the copy of the OM dated 10.2.1995 which supports her claim. By order dated 4th April, 2005 the applicant has been informed that she is not entitled for family pension as an ex gratia pension payment has already been granted to her by order dated 29th March, 2000. This order is apparently illegal, improper and unjustified. Hence this Original Application is filed by her.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.



4. It is argued on behalf of the applicant that her husband retired on 28.2.1951 and he died on 10.4.1993. At the time of retirement of the deceased employee there was no provision for grant of family pension but subsequently in the year 1964 a scheme was floated by the Central Government for grant of family pension. My attention is drawn towards Annexure A-7 regarding grant of family pension to the families of Govt. servants who retired or died before 1.1.64 or otherwise not covered by the family pension scheme of 1964. He has also drawn my attention towards the judgment of the Hon'ble Supreme Court in the case of Poonamlal and Ors. Vs. Union of India & Ors., (1985) 3 SCC 345 and also towards Rule 54 of CCS (Pension) Rules. He further argued that from 1.1.1964 the benefit of family pension was also granted to the employees who retired before 1.1.1964. The husband of the applicant retired 28.2.1951 i.e. before 1.1.1964. He also argued that the respondents have given the benefit of family pension to the similarly situated person i.e. the family of Diwakar Rao Jadhav who retired in the year 1954 and his family is getting the pension with effect from 22.2.1977. My attention is also drawn towards Annexure A-5 by which Smt. Shantibai Jadhav is getting the family pension. This letter is issued from the office of the DCDA, Allahabad. Hence, the applicant is legally entitled for the reliefs claimed by her.

5. In reply the learned counsel for the respondents argued that the husband of the applicant who was appointed in COD, Jabalpur with effect from 30th March, 1941 as Labourer was discharged from service with effect from 28th February, 1951. Hence, on this ground also the applicant is not entitled for the benefit of family pension. He further argued that the applicant has also applied for grant of ex gratia family pension. She was asked to submit documentary evidence of her



late husband vide letter dated 3.5.1994 and which she had submitted on 11th September, 1995 alongwith an affidavit in which she had stated that her late husband was governed by IOFW Provident Fund which later on was known as Contributory Provident Fund. In this affidavit the applicant has also mentioned that after retirement the husband of the applicant was not getting any pension. He further argued that the families of the Central Government employees who were governed by Contributory Provident Fund Scheme and who retired prior to 1st January, 1986 were granted ex-gratia payment of family pension vide Govt. of India order dated 13th June, 1988. Effective date of this order was 1.1.1986 or from the date following the date of death of deceased employee, whichever is later. According to this provision her case was taken up with audit authorities on 4th October, 1995 which has been returned by audit authority on 4th January, 1996 with some observations. The applicant was asked to submit the necessary documents but inspite of repeated reminders she did not submit any documentary evidence as demanded by audit. The applicant filed an OA No. 218/1999 for grant of family pension. The Tribunal disposed of the OA holding that the Government has granted ex-gratia pension to the widows of deceased Govt. employees who retired prior to 1.1.1986 and directed that the applicant may file a fresh representation in this regard to the respondents. The applicant represented her case for grant of family pension in terms of Govt. of India's OM dated 10.2.1995. This order was made applicable to such families of deceased Govt. servant who were borne on pensionable establishment and not originally covered by family pension scheme of 1964 or families of those Govt. servants who retired/died before 31.12.1963 or who opted out of 1964 scheme. Since, all these three conditions were not being fulfilled by the applicant, she was issued letter dated 4th April, 2005 which is under challenge in the present OA.



The action of the respondents is perfectly legal and justified. Hence, this Original Application deserves to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the pleadings and records, I find that the applicant has mentioned in the OA at paragraphs 4.9 and 4.10 that the respondents have granted the benefit of family pension to the similarly situated persons i.e. Diwakar Rao Jadhav who retired in the year 1954 prior to 1964 and his family is getting the family pension w.e.f. 22.2.1977 and the family of Shri Yadav Rao who retired in the year 1951. The reply of the respondents in this regard seems to be not proper. They have mentioned that the name of the persons quoted by the applicant do not belong to Army Ordnance Corps, therefore, in the absence of their service particulars/terms, no comments are offered. I have perused Annexure R-5 which is ^{Page} PPO in respect of the applicant towards payment of Ex-gratia payment of family pension issued from the office of the CCDA (Pension) Allahabad and also Annexure A-5 which is in respect of payment of family pension to Smt. Shanti Bai Jadhav, W/o. late Dewakar Rao Jadhav, issued from the same office the DCDA (Pension), Allahabad. Thus it cannot be said that the respondents have no knowledge about the names of the persons mentioned by the applicant in her OA at paragraphs 4.9 and 4.10. The applicant is a old lady aged about 86 years. I ^{and further} find that similar issue has already been considered by the Hon'ble Supreme Court in the case of Poonamlal (supra). The Hon'ble Supreme Court has observed in the said case that "(W)hen a Government servant die in harness or soon after retirement, in the traditional Indian family on the death of the only earning member, the widow or the minor children were not only rendered orphans but faced more often destitution and starvation. Traditionally speaking the widow was hardly in a position to obtain gainful employment. She suffered the most

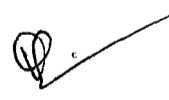


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inasmuch as she was deprived of the companionship of the husband and also became economically orphaned. As a measure of socio-economic justice family pension scheme was devised to help the widows tie over the crisis and till the minor children attain majority to extend them some succour." The argument advanced on behalf of the respondents that the husband of the applicant was either discharged or dismissed from the service is not supported by any documentary proof. Hence, it cannot be accepted. If this argument is accepted then the respondents should not have granted the benefit of ex-gratia pension to the applicant with effect from 29.3.2000.

7. Considering all the facts and circumstances of the case in view of the view that ends of justice would be met if I direct the applicant to submit a fresh representation mentioning all the facts, within a period of one month from the date of receipt of a copy of this order. I order accordingly. If the applicant complies with the aforesaid, then the respondents are directed to re-consider the case of the applicant in view of the observations made above and decide the fresh representation of the applicant within a period of three months from the date the representation is received from the applicant.

8. In view of the above, the Original Application stands disposed of. No costs.



(Madan Mohan)
Judicial Member

पृष्ठांकन सं ओ/ज्या.....जबलपुर, दि.....

पंक्तिदिशि जय्ये निम्न:-

"SA"

- (1) सचिव, राज्य सरकार का पंक्तिदिशि, जबलपुर
- (2) आदेशक, जय्ये निम्न/पु.....के काउंसल
- (3) प्रचारक, जय्ये निम्न/पु.....के काउंसल
- (4) कंसपाल, कोष, जबलपुर महापौर सूचना एवं आदेशक कार्यवाही हेतु

Handwritten signatures and initials:
Rajendra Kumar
D.P. Khare

Handwritten signature and date:
25/11/05
उप रजिस्ट्रार

Handwritten notes:
25-11-05