

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 813 of 2005

Jabalpur, this the 9th day of January, 2006

Hon'ble Shri M.K. Gupta, Judicial Member

Smt. Shahnaj Sher Jabier, W/o. late Sheikh
Jabier, aged about 50 years, R/o. Near Old
Temple, Sharafabad Pasiyana Shastri Ward,
Jabalpur, M.P.

.... Applicant

(By Advocate – Shri G.K. Kekre)

V e r s u s

1. Union of India, through the Secretary,
Ministry of Defence, New Delhi.
2. Additional Director Ordnance Factory,
Appellate Authority Govt. of India,
Ministry of Defence, Ordnance Factory
Board, 10-A, Sheed K.B. Road,
Kolkata – 700001.
3. The General Manager, Ordnance Factory,
Khamariya, Jabalpur. Respondents

(By Advocate – Shri Shahidulla Baig on behalf of Shri S.A.
Dharmadhikari)


O R D E R (Oral)

The issue which falls for consideration in the present Original Application is in very narrow compass namely whether the applicant, being a widow of Shri Sheikh Jabier is entitled to arrears of family pension with effect from 16th May, 1990 till July, 2003, as prayed for in the present Original Application.

2. I have heard both the sides at length and perused the pleadings carefully.

2.1 In order to understand the background under which the respondents denied the said arrears, certain facts are required to be noticed namely that a penalty of removal was imposed upon the said Shri Sheikh Jabier vide order dated 15th May, 1990, consequent upon the major penalty proceedings initiated against him for committing the offences of (i) missing/unauthorized absence from place of duty, (ii) coming to duty under intoxication of alcohol, (iii) physically assaulting co-employee while coming to duty, (iv) causing hindrance/obstruction to a co-worker to attend his legitimate official duties, (v) causing damage to personal property of a co-worker, who was on his way to his duty, (vi) habitual offender of breach of peace and discipline in the OFK Estate/factory, (vii) suppression of facts of arrest by the police and (viii) conduct unbecoming of a Government servant. The said penalty was maintained by the appellate authority by rejecting the appeal of the deceased, vide order dated 16.10.1990. The review was also filed, which did not bring any fruitful result and was rejected on 2nd September, 1998. Being aggrieved with the aforesaid orders, the deceased preferred OA No. 390/1999 which came to be dismissed, vide order dated 11th April, 2001. The said order have been taken before the Hon'ble High Court vide Writ Petition No. 3322 of 2001 and vide order dated 26th August, 2002 the aforesaid matter was remanded to this Tribunal with direction for taking a decision with regard quantum of punishment imposed upon him keeping in view the finding of the enquiry officer and such other documents.

2.2 The said OA was again heard on merits and dismissed vide order dated 14th November, 2002. The order dated 14th November, 2002 dismissing the aforesaid OA once again became the subject matter in Writ



Petition No. 585/2003. During the pendency of the said petition, the petitioner died on 4th July, 2003 and in these circumstances his legal representative, the applicant being the widow, was brought on record. When such were the facts, in March 2004, the applicant filed an application before the Hon'ble High Court for taking subsequent events on record. In paragraph 3 of the said application she voluntarily submitted that : "she would not claim any arrears of salary from 15/5/90 when order of removal has been passed against my husband. She further submits that she would not claim any amount due to my husband or any appointment on compassionate ground." (emphasis supplied).

3. Vide order dated 2nd April, 2004, the aforesaid Writ Petition was disposed of though the matter was listed for hearing only on the IA No. 1208-w/04, for taking subsequent events on record but as the learned counsel for the parties were prepared and willing to proceed on merit, the aforesaid order had been passed with the direction to respondents to : "reconsider the matter with a view to convert the punishment of removal to that of compulsory retirement, so that the petitioner's family members many not be deprived of the family pension and other benefits."

4. Pursuant to the aforesaid order, the Additional DGOF/Member Appellate Authority passed order dated 17th March, 2004 and in deference to the direction of the Hon'ble High Court dated 8-1-04 modified the said penalty to that of compulsory retirement. Subsequently, another order dated 27th July, 2004 was passed, whereby it was observed that : "In compliance with the directions given by the Hon'ble High Court of M.P. Jabalpur vide its order dated 2-4-04 it has further been ordered that the legal heir of the deceased employee is entitled full compensation pension and retirement gratuity admissible on the date of compulsory retirement i.e. 15.5.90. She is however not entitled to payment of any arrears except

family pension which would be admissible from the date of death of Shri Sheikh Jiboyer." (emphasis supplied).

4.1 It is pointed out that immediately prior to the aforesaid order dated 27th July, 2004, the appellate authority had issued another order dated 15.7.2004, wherein the appellate authority had observed that the applicant would not be entitled to any arrears except family pension. It is these orders namely 15th July, 2004 and 27th July, 2004, which have been impugned in the present case.

4.2 Shri G.K. Kekre, learned counsel appearing for the applicant has vehemently contended that the applicant is an illiterate lady and no estoppel is attracted in the facts and circumstances of the present case. Once the penalty of removal is modified to that of compulsory retirement, in deference to the directions issued by the Hon'ble High Court, as noticed & mentioned herein above, the applicant would be entitled to all benefits flowing there from including arrears of family pension etc. and no restricted or microscopic view could be taken by the respondents merely because she happened to have mentioned a fact in an Misc. Application before the Hon'ble High Court that she will not claim any arrears of salary from May, 1990. It is further sought to be illustrated that what claim she had given up was the salary from May, 1990 onwards and not the family pension etc. which could have accrued to her because of conversion of penalty from removal to that of compulsory retirement. Basically the idea behind the conversion of penalty had been that the family be allowed certain monetary benefits and not otherwise. Once the applicant is deprived the arrears of family pension, no fruitful purpose would be served, contended learned counsel for the applicant. It is further contended that even the Hon'ble High court had not made any observation

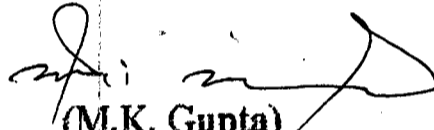
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on the aforesaid aspect, indicating as if the applicant would or would not be entitled to any arrears on such account.

5. Shri Shahidulla Baig, learned counsel appearing on behalf of Shri S.A. Dharmadhikari, for the respondents, vehemently contended that all aspects had been considered by the respondents prior to passing the orders dated 15th July, 2004 and 27th July, 2004. It is in deference to the statement made by the applicant, before the Hon'ble High Court, which led to passing the order dated 2nd April, 2004, the respondents were justified to deny her arrears of family pension. The sole object and intention of the respondents in converting the penalty of removal to that of compulsory retirement was to enable her the grant of family pension and other benefits. It is further stated that the applicant had been paid terminal benefits in the form of CGIS Rs. 1,185/-, GPF Rs. 20,112/-, Leave encashment Rs. 2,415/- and Family pension Rs. 1,275/- p.m. So far as the gratuity amount is concerned, it is stated in an affidavit dated 9/1/2006, filed in the Court today, that the payment of amount of such account is under consideration by the PCDA(P) Allahabad, to the applicant.

6. Upon perusing the material on records and after hearing the learned counsel for the parties, I am of the considered view that the applicant herself voluntarily and intentionally gave up the claim regarding arrears of "any amount due" to the applicant's husband as noticed hereinabove ~~vide~~ ^{vide} her application filed before the Hon'ble High Court of Madhya Pradesh at Jabalpur. As such it would be to much to stretch on that aspect and contend that the applicant would be entitled to arrears of family pension. It is not the case of the applicant that the said statement was obtained from her under coercion/threat. In my considered view the principle of estoppel would be applicable in the facts and circumstances of the present case. Since the applicant had already been paid various amounts as reflected

hereinabove, except the leave encashment and gratuity for which the bill is pending for payment, I deem it appropriate to direct the respondents to release the amount due namely : leave encashment and gratuity within a period of 45 days from the date of receipt of a copy of this order. Order accordingly. I make it clear that I do not find any infirmity, illegality, arbitrariness and justifiability in interfering with the orders passed by the respondents namely 15th July, 2004 and 27th July, 2004. Accordingly, the Original Application is disposed of. No order as to costs.


(M.K. Gupta)
Judicial Member

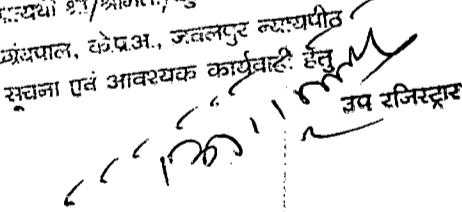
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पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....

चलितदिधि अद्यो दिनात:-

- (1) सचिव, उच्च न्यायालय वॉर एसोसिएशन जबलपुर
(2) आर्बेडक श्री/श्रीमती/कु.....के काउंसल
(3) पार्षथी श्री/श्रीमती/कु.....के काउंसल
(4) ग्रामपाल, कोप्र.अ., जबलपुर न्यायपीठ
सूचना एवं आवश्यक कार्यवाही हेतु

E.K. Kekore Adv. JBS
S.A. Dharmadhi Kesri
Adv. JBS


उप रजिस्ट्रार

Fajjad
13.1.06