

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 548 of 2003

Jabalpur, this the 6th day of January, 2004

Hon'ble Shri G. Shanthappa, Judicial Member

Lila Bai Kori, W/o Shankarlal,
Near Railway Station Pipariya,
P.O. Pipariya, Distt : Hoshangabad,
M.P.

... Applicant

(By Advocate - Shri M.R. Chandra)

V e r s u s

1. Union of India, through
Director, Central Govt. Water
Board, NH-IV Faridabad, Hariyana
State.
2. Pay & Accounts Officer,
Ministry of Water Resources,
NH-IV, Faridabad, Hariyana State.
3. Regional Director, Central Ground
Water Board, North Central Region,
Block Ist, 4th Floor, Paryawas
Bhawan, 38, Arera Hill, Jail Road,
Bhopal, 462011.

... Respondents

(By Advocate - None)

O R D E R

None appeared for the respondents even
on second call. Heard the learned counsel for
the applicant. The OA is disposed of in terms
of Rule 16 of the Central Administrative Tribunal
(Procedure) Rules, 1987.

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g.s.

2. The above Original Application is filed seeking the following reliefs:

- "(i) To direct the respondent to grant family pension to the Applicant Widow for the livelihood of the family after adjustment of amount already paid as Ex-Gratia payment. To quash the portion of the order which denies the legitimate family pension to the applicant widow.
- (ii) To direct Respondent No.2 i.e. Regional Director, Bhopal to grant appointment in any Group 'D' or 'C' post in the fact and circumstances of the case within a reasonably specified period to overcome the indigent condition of the family.
- (iii) To grant any other suitable relief or reliefs in the facts and circumstances of the case as deem fit and proper.
- (iv) And to grant compensatory cost to the Scheduled Caste Indigent widow for compelling her to come before this Hon'ble Tribunal for lodging this avoidable litigation."

3. The brief facts of the case are that the applicant is the widow of Late Shri Shankarlal Kori, who was working under the respondents as Work Charged Helper since 22.10.1969 vide appointment letter dated 12.8.1969. He was appointed *g* on a pay of Rs.70/- P.M. in the scale of Rs.70-1-80-EB-1-85 and other allowances. The husband of the applicant was died while he was in service on 30.7.1978. On the date of death his services were not regularised. As the applicant is facing the financial difficulties, she has requested the respondents for grant of family pension as well as the appointment on compassionate grounds to her daughter. The deceased Government servant has served only nine years on Work Charged basis in the Central Ground Water Board, Betwa Project, Bhopal. The respondents have sanctioned an amount of Rs.118/- and arrears of T.A. in the year 1979. The applicant has also been ~~paid~~ granted Ex-gratia payment of Rs.150/- per month from 1.1.1986

vide order dated 13.3.1992. Now, the daughter of the deceased is aged about 22 years, and she has passed 10th Madhyamik Shiksha. ~~Rxxx~~ Hence, the applicant is entitled for family pension as well as the appointment on compassionate ground to her daughter. The respondents have issued the impugned order dated 7.1.2003 wherein it has been stated that the applicant is not entitled for family pension and as regards the appointment of daughter of the applicant on compassionate grounds, the applicant ^{is} requested to take up the matter with the ^{Regional} Director, North Central Region, Bhopal for further ~~xxxxxx~~ necessary action. The Regional Director, CGWB, ^{g.} through his communication dated 23.1.2003, has stated that further action is being taken in the matter of compassionate appointment to the daughter of the applicant.

4. The learned counsel for the applicant has relied on Rule 54(2)(a) for CCS (Pension) Rules, 1972 and also relied on the Judgement of the Hon'ble Supreme Court in Prabhavatidevi v. Union of India and Others, 1996 SCC (L&S) 369 in support of grant of family pension. The applicant's counsel also relied on the Judgement of the Hon'ble High Court of Allahabad in Uma Shanker Rai v. Union of India & Others, 2003 LAB. I.C. 1499 in support of his contention that the application is not barred by limitation. In view of the above rules and rulings referred above, ^{g.} the applicant is entitled for family pension, according to the applicant's counsel. Hence, the present OA.

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5. Per contra, the respondents have filed their reply, wherein they have denied the averments made by the applicant in the OA. They have taken a specific plea of limitation and stated that as the employee, i.e., husband of the applicant, died on 30.7.1978 and the OA is filed in the year 2003. Hence, there is a delay in filing the OA, the same is liable to be dismissed on the ground of limitation.

6. The respondents have also stated in their reply that the husband of the applicant was working as Helper in CGWB, Betwa Project, Bhopal on Work Charged basis and was covered under the C.P.F, as such the provisions of CCS (Pension) Rules, 1972 are not applicable to the applicant. It is also stated that as per the OM issued by the Ministry of Finance dated 13.6.1988 and 27.9.1988, which pertains to grant of ^{Ex-}Ex-gratia to the widow and dependent children of the deceased CPF beneficiary who died while in service prior to 1.1.1986, the applicant has been granted Ex-gratia payment of Rs.150/- per month plus dearness ^{gr.}relief from the appropriate date which has been revised to Rs.605/- plus dearness allowance w.e.f. 1.11.1997 as per the OMs dated 16.12.1997 and 3.4.1998. Since the applicant's husband was not a regular employee and his services were not regularised and he died as Work Charged Helper only, the relief claimed by the applicant for grant of family pension is not sustainable in the eyes of law.

7. As far as the request for grant of compassionate appointment to the daughter of the applicant is concerned, the respondents have stated in their reply that though they have taken

a decision in the matter but it has not yet been communicated to the applicant and the same will be issued to the applicant at the earliest possible.

8. In view of the above reasons, the respondents ^{have} / stated that the applicant is not entitled for ^{ep} family pension, hence, the OA is liable to be dismissed.

9. I have heard the Advocate for the applicant and perused the pleadings on record.

10. I find that the applicant has prayed multiple reliefs of grant of family pension and grant of compassionate appointment, which is against the Rule ^{ep} 10 of the Central Administrative Tribunal (Procedure) Rules, 1987. Hence, this application is restricted to only one relief, i.e., grant of family pension. Regarding compassionate appointment, the applicant has to file a fresh application as per rules.

11. The admitted facts of the case are that the ^{husband of} / the applicant has been appointed as Helper on Work ^{ep} Charged basis and his services were not regularised prior to date of his death. It is also an admitted fact that Rule 54(2)(a) of CCS (Pension) Rules, 1972 is not applicable to the persons working on Work Charged basis.

12. As far as the preliminary objection of the respondents that the application is barred by limitation is concerned, as per M.R. Gupta v. Union of India, AIR 1996 SC 669, wherein the Hon'ble Supreme Court has held that where the claim is of pension, the limitation would not apply in that case. Hence, the objection of the respondents regarding limitation is not sustainable in the eyes of law.

Accordingly, the same is rejected and I proceeded to dispose of the OA, pertaining to family pension, on merits.

13. Rule 54(2)^{supra} speaks as under:

"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, 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below;" Not printed. See GID(20) below this rule."

14. It is well settled law that to get the pension/family pension, the department in which the person is working must be a pensionable organisation, at the appropriate time. It is an admitted fact that the applicant had been granted Ex-gratia amount of Rs.150/- w.e.f. 1.1.1986 and also revised the same to Rs.605/- by the respondents as the husband of the applicant was working as Helper on work charged staff, who covered under the Contributory Provident Fund Scheme.

15. The Judgement relied upon by the applicant in Prabhavatidevi's case (supra) has been referred in a subsequent Judgement of the Hon'ble Supreme Court in Union of India and Others v. Rabia Bikaner and others, 1997 SCC (L&S) 1524 wherein it has been held
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as under:

"5. The learned counsel strongly relied upon the judgment in Prabhavati Devi v. Union of India. Therein, the facts were that from the year 1981 to 27-4-1993, the husband of the appellant had worked as ~~casual~~ casual worker and obtained the status of substitutes who were working, as defined under Rule 2315 of the Railway Establishment Manual, in a regular establishment on a regular scale of pay and allowances applicable to those posts in which they were employed. Since he died while working in the regular post, his widow became eligible to claim the benefits of the pension scheme. Thus, in that case, the appellant's husband was a substitute working in a regular scale of pay in the Railway Establishment. Obviously, he was screened and was also appointed to the temporary status but instead of being given appointment to a temporary post, he was treated as substitute and appointed to the vacancy when the regular candidates went on leave. Under these circumstances, this Court had held that the widow of such employee is entitled to the benefit of the family pension. The above ratio is inapplicable to the cases referred to hereinbefore. The question also was considered in a recent judgment of this Court in Union of India v. Sukanti wherein relying on the ratio in Ram Kumar case this Court held that no retiral benefit was available to the widow of the casual labourer who had not been regularised till his death. Thus, we hold that the view taken by the Tribunal in granting the pensionary benefits to the respondents is clearly illegal.

6. The appeals are accordingly allowed and the OAs stand dismissed, but in the circumstances, without costs. However, if any amounts have already been paid pursuant to the orders of the Tribunal, the same may not be recovered from them."

16. If one has regard to the above referred ruling, the present OA is liable to be dismissed.

17. In the result, for the foregoing reasons, as the applicant has not made out his case for grant of family pension and as the applicant has not brought any relevant rule(s) or case law before me, the OA is accordingly dismissed. No costs.


(G. SHANTHAPPA)
Judicial Member

पूरांकन सं. के द्वारा....., दि.....
प्रतिनिधि के द्वारा.....

(1) सचिव, न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा

(2) सचिव, न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा


(3) सचिव, न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा

(4) सचिव, न्यायिक सेवा, न्यायिक सेवा, न्यायिक सेवा

सूचना एवं आवश्यकता के अनुसार

MR Chandra, Ach.

SP Singh, Ach.


7/11/04

Filed
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