CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 307 of 2002

Jabalpur, this the 6th day of April, 2004

Hon'ble Shri M.P. Singh, Vice Chairman

Smt. Rohini Bai, W/o. late Suraj
Prasad, T.No. C.E./294/58011, R/o.
C/o. Shri Surjeet Yadav, 61/8,
Bhantalaiya, behind Hanumantal Police
Station, Jabalpur - 482 002.   ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1.   Union of India,
      through its Secretary,
      Ministry of Defence,
      New Delhi.

2.   Chairman/DGOF,
      Ordnance Factories Board, 10-A,
      Shahid S.K. Bose Marg,
      Kolkata (WB).

3.   General Manager,
      Ordnance Factory Khamaria,
      Jabalpur (MP).   ... Respondents

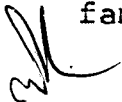(By Advocate - Shri S.A. Dharmadhikari)

O R D E R (oral)

By filing this Original Application the applicant

has sought the following main reliefs :

      "(II) set aside the impugned orders Annexure A-1 and
      Annexure A-2;

      (III) upon holding that applicant is entitled to
      get the family pension under CCS (Pension) Rules,
      1972, command the respondents to grant family
      pension and other retiral dues to the applicant from
      the date her husband expires, with all arrears and
      interest on delayed payment."

2.   The brief facts of the case are that the husband of

the applicant late Shri Suraj Prasad was appointed as

Labour in the Ordnance Factory, Khamaria on 27.2.1973.

He expired on 7th August, 1977. According to Rule 54 of

CCS (Pension) Rules, 1972,the applicant is entitled for

family pension as her husband had put in more than one

year of continuous service. Since the respondents have
not granted her family pension she has filed this OA
claiming the aforesaid reliefs.

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

4.   The learned counsel for the applicant has submitted
that the case of the applicant/is covered under rule
                   for family pension
54(2) of CCS (Pension) Rules, 1972, as the rules are
applicable to the civilian Government servants working
in defence services. Since the applicant's husband had
worked as civilian in defence services for a continuous
period of more than one year/the widow of the deceased
Government servant is entitled for family pension. He has
further submitted that although there is a delay in filing
this OA and he has also not filed a Misc. Application for
condonation of delay, as per the law laid down by the
Hon'ble Supreme Court regarding pension it is held that
pension is a continuous cause of action.

5.   On the other hand the learned counsel for the
respondents has stated that the applicant has been granted
ex-gratia pension under the Ex-Gratia Pension Scheme. Under
this scheme the widow of the deceased employee is entitled
for ex-gratia pension. The applicant has been granted ex-
gratia pension with effect from 1.1.1986 vide order dated
30th October, 2001 (Annexure R-3). He has also drawn our
                              (Annexure A-2)
attention to letter dated 26th March, 2001/issued by the
respondent No. 3. He has stated that the case of the
applicant has been rejected by the respondent No. 3 on the
ground that the applicant's husband was a Member of IOFWP/
CP Fund and after seeing the record it is found that the
husband of the applicant did not give any option for

switching over to the pension scheme as required under the OM dated 21st May, 1971. According to him, the time for giving the option was extended from time to time.

6. I have given careful consideration to the rival contentions made on behalf of the parties and I find that the applicant's husband was appointed as a labour in the Ordnance Factory, Khamaria in 1973. He has expired in the year 1977, and thus has put in more than one year continuous service. As per/CCS(Pension) Rules, the case

Rule 54 of

of the applicant is covered, as her husband was working as a Civilian Government servant in the defence services. Since the deceased employee has put in more than one year continuous service, his widow is entitled for family pension as provided under Rule 54(2) of the CCS(Pension) Rules, 1972. The relevant portion is extracted below :

> "54(2) 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 compass-ionate allowance, referred to in Chapter V, other than the pension referred to in Rule 37,
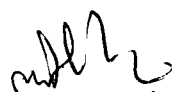>
> the family of the deceased shall be entitled to Family Pension, 1964 ...."

The contention of the respondents that the husband of the applicant was a member of IOFWP/CP Fund and was required to give his option to switch over the pension scheme under letter dated 21st May, 1971, is not applicable in the present case as the husband of the applicant had joined in the service only in the year 1973 and he is thus

automatically entitled for grant of family pension under the CCS(Pension) Rules, 1972. The option required to switch over to pension scheme vide order dated 21st May, 1971 was extended from time to time is not applicable in the present case of the applicant as the husband of the applicant was not in Government service on this date i.e. 21st May, 1971. Therefore the plea of the respondents to not grant family pension to the widow of the deceased Government service is not tenable and is accordingly rejected. Thus the respondents are directed to consider the case of the applicant for grant of family pension under CCS (Pension) Rules, 1972, within a period of six months from the date of receipt of copy of this order. However, the amount already granted to the applicant as Ex-gratia payment vide order dated 30th October, 2001 be adjusted against her entitlement of arrears of family pension to be granted.
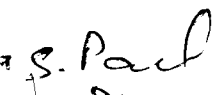
7. With the above observations the Original Application is disposed of. No costs.

(M.P. Singh)
Vice Chairman

"SA"