

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 621 of 2001

Jabalpur, this the 19<sup>th</sup> day of November, 2003

Hon'ble Shri G. Shanthappa, Judicial Member

Smt. Kamla Bai, Widow of  
late Munnalal, aged about 46  
years, R/o. House No. 154, Madar  
Tekari, P.O. Motinala, Jabalpur.

... 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. The Secretary,  
Deptt. of Pension & Pensioners'  
Welfare Department, 3rd Floor,  
Lok Nayak Bhawan, New Delhi.
3. The Director General/Chairman,  
Ordnance Factory Board, 10,  
A Shahid Khudi Ram Bose Marg,  
Kolkata.
4. The General Manager,  
Ordnance Factory, Khamaria,  
Jabalpur.

... Respondents

(By Advocate - Shri S.A. Dharmadhikari)

O R D E R

The said Original is filed seeking the relief to set-aside the order dated 19.04.2000 (Annexure A-3) and direct the respondents to provide family pension and retiral benefits due to the applicant from the date of the death of the applicant's husband with all consequential benefits and arrears. The further relief is that to direct the respondents to pay the interest on the delayed payment as per the judgment of the Hon'ble Supreme Court reported in 1994 (Vol.II) SCC Page 240 (G).

2. The case of the applicant is that the husband of the applicant was appointed on 04.04.1983 as Labour in the

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Ordnance Factory, Khamaria, Jabalpur. The applicant's husband died on 15.06.1992. The applicant had submitted a representation for grant of family pension due to the death of her husband (Annexure A-2). The respondents have rejected the application/representation of the applicant on the ground that the husband of the applicant did not serve for ten years. Hence the applicant is not qualified for pension and family pension.

3. Subsequently the applicant had submitted representation to the respondent No. 2 requesting for grant of family pension on the ground that she is entitled for family pension under Rule 2 of CCS (Pension) Rules, 1972, which is enclosed along with the representation. The respondents have boarded out the husband of the applicant under medical decategorisation vide order issued on 26.06.1992. The advocate for the applicant had submitted that the husband of the applicant served for 9 years one month and twenty two days. Though the said service is less than 10 years the applicant is eligible for grant of family pension since the husband of the applicant served for more than one year, under the rules existing as on 01.01.1964. The said rules are applicable to the case of the applicant.

The advocate for the applicant has relied on the judgment of the Tribunal reported in 1990 (14) ATC 250 Kalinath Sarma Vs. Union of India and others, (1994) 26 ATC 612 Govind Prasad Vs. R.G. Prasad and others and (1996) 10 SCC 172 S.R. Bhanrale Vs. Union of India and others.

4. Per contra the respondents have filed reply stating that the husband of the applicant was appointed on 04.04.1983 and he was medically boarded out on 25.05.1992, after obtaining opinion from the medical board, the proposal was issued on 31.03.1992. The respondents have intimated that the services

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of the husband of the applicant would be terminated on the ground of being found unfit for further services/duties and also requested to make appeal if any within a period of one month as per the Government instructions. The husband of the applicant was medically boarded out with effect from 25.5.92 by an order published vide Factory order Part-III No. 2633, dated 26.06.1992. The respondents have relied on the Rule 49 of the CCS (Pension) Rules, 1972 contending that the Government servant retiring before completing the qualifying service of 10 years, the amount of service gratuity shall be calculated at the rate of half months emoluments for every completed six monthly period of qualifying services whereas in the instant case the employee was declared permanently incapacitated for further services and also rendered only less than 10 years of service.

5. The applicant approached for grant of family pension and gratuity. The respondents have admitted that the husband of the applicant rendered in service 9 years, one month and twenty two days. The applicant is not entitle for family pension or gratuity or any other kind of reliefs as claimed in the application, since her husband rendered less than 10 years of service. The applicant is not entitled for pension/family pension as per the family pension rules of Rule 49.

6. Subsequently the applicant has filed the rejoinder to the reply by submitting the clarifications to the reply. According to para 4 of the rejoinder the specific case of the applicant is that there is no provision in the CCS (Pension) Rules, 1972, that no family pension or benefit will be granted to the employee who has rendered less than 10 years of service. On the contrary the said rules makes it obligatory for the

employer to give pension to the family of the deceased employee irrespective of number of years/days of service. However, dependent/family of the deceased permanent Government servant is entitled to get the family pension on his demise irrespective of days/years of service put in by him. The authority who has passed the impugned order has no authority to reject the claim of the applicant for grant of pension/family pension. The respondents have not applied the proper rules while rejecting the claim of the applicant. Hence there shall be a direction to consider the case of the applicant for grant of pension/family pension.

7. After hearing the advocate for the applicant and the advocate for the respondents, after perusal of the pleadings and the documents, rules submitted by either sides I have decided the case on merits. The very short question is whether the applicant is entitled for pension/family pension and other retiral benefits ?

8. The admitted facts are that the husband of the applicant has put in 9 years, one month and twenty two days on permanent basis. Rule 54(2) (a) of CCS (Pension) Rules, 1972 provides that the applicant is entitled for family pension since the applicant has put in more than one year of service. The applicant has rightly requested for grant of the interest on the delayed payment as per the judgment of the Hon'ble Supreme Court reported in (1996) 10 SCC 172 S.R. Bhanrale Vs. Union of India and others.

9. The submission made by the respondents <sup>is that</sup> relying on the Rule 49 of CCS (Pension) Rules <sup>er</sup> contended that the husband

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of the applicant did not put in 10 years of service, the applicant is not entitled for family pension and the respondents have rightly rejected the claim of the applicant. This Tribunal should not interfere in granting the reliefs as prayed in the Original Application.

10. After perusal of the records and applying the rules of CCS (Pension) Rules, 1972 the applicant is entitled for family pension and also the interest on the delayed payment of family pension, in view of the law laid down referred to in para 3 of/ this order.

11. Accordingly, the Original Application is allowed and the impugned order Annexure A-3 is quashed and direction is issued to the respondents to consider the case of the applicant for grant of family pension under CCS (Pension) Rules, 1972 and also grant interest at the rate of 8% per annum on the delayed payment. The respondents hereby directed to calculate the family pension and also the interest at the rate of 8% per annum from the date of the application till the date of taking decision. The respondents are further directed to comply the said direction within a period of three months from the date of receipt of a copy of this order. No order as to costs.

*G. Shanthappa*  
(G. Shanthappa)  
Judicial Member

पृष्ठांकन सं ओ/व्या.....जयलपुर, दि.....  
परिचालित सं/दि.....

- (1) सचिव, जयलपुर, जयलपुर, जयलपुर
- (2) अध्यक्ष, जयलपुर, जयलपुर, जयलपुर
- (3) प्रत्यक्षी, जयलपुर, जयलपुर, जयलपुर
- (4) सहायक, जयलपुर, जयलपुर, जयलपुर

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*S. Paul*  
उप-जज  
21.11.03

*Issued  
21-11-03*