

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1490/2015

Reserved on:18.08.2017
Pronounced on: 08.09.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

Smt. Asha Devi, Age 55 years,
W/o late Sh. Chandi Prasad Bamrara,
R/o Flat No.669, 1st Floor, DDA Flat,
Pocket-C, Loknayak Puram,
Bakkarwala, New Delhi-110041. ...Applicant

(By Advocate: Sh. U.C. Mathpal)

Versus

1. Union of India through
Secretary, M/o Communications,
Sanchar Bhawan,
New Delhi – 110 002.
2. The Chairman & Managing Director,
Mahanagar Telephone Nitam Limited,
Khurshid Lal Bhawan,
New Delhi – 110 002. ...Respondents

(By Advocate: Mr. S.N. Verma for R-1
Ms. Neha Bhatnagar for R-2)

ORDER

The applicant has filed this Original Application under
Section 19 of the Administrative Tribunals Act, 1985
seeking the following reliefs:-

“a) To set aside the order dated 08.10.2013 of the respondents and direct the respondents to decide the pending appeal of the applicant dated 29.11.2013 and reminders thereafter till date and other representations and last representation dated 18.01.2015 with legal notice dated 15.03.2015 of

which no reply has been given by the respondents till date.

b) To allow the Original Application of the Applicant and the pensionary benefits to the applicant w.e.f. 14.08.2012 in the interest of justice and;

c) To direct the respondents to recruit the son of the applicant in their services as per rules and

d) To pass any other further order/direction as deemed fit and proper in the facts and circumstances of the case;

e) besides costs of this application may be passed in favour of the applicant and against the respondents by this Hon'ble Tribunal in the interest of justice."

2. The facts of the case, as brought out by the applicant, are that the applicant's husband joined the Department of Telecommunication (DoT) on regular basis on 01.01.1992 and after having rendered 7 years of service in DoT was deemed to have retired on 31.10.1998 to bring him on the rolls of MTNL on 01.11.1998. It is not in dispute that the applicant's husband died on 05.07.2012 in harness while serving with MTNL leaving behind him six family members including the applicant, who all are unemployed and the family has no regular source of income except working as labour.

3. It is the contention of the applicant that on having rendered more than 20 years of regular service by the deceased employee, the applicant is entitled for the family

pension in accordance with CCS (Pension) Rules, 1972, besides providing compassionate appointment to her son. In this regard, the applicant made a representation dated 21.05.2013 followed by reminder dated 29.08.2013, which were rejected by the respondents vide order dated 08.10.2013, impugned in this OA, which reads as under:-

“With reference to your application received in this office on 04.10.13, it is intimated that as per CCS Pension Rules, an employee is not entitled for pro-rata pension if rendered the Government service is less than 10 years upto 31.10.98.

As per your application, your husband has rendered the service of 7 years and pro-rata pension is not admissible as per CCS Pension Rules. Such type of cases were earlier sent to CAO(Pen) o/o CCA, DOT, Prasad Nagar but the o/o CCA returned the cases with the remarks that such cases should not be sent to CCA.

In case more information is required the same may be obtained from CAO(Pension) o/o CCA, DTO Bldg., Prssad Nagar, ND.”

4. Being aggrieved by the aforesaid order of the respondents, the applicant filed an appeal dated 23.11.2013 before the appellate authority and sent several reminders to the respondents, which all are waiting response of the respondents. However, the respondents vide letter dated 13.08.2014 (Annexure A-4) it is made clear that out of 38 such type of cases, 30 cases have been accepted and the pensionary benefits released to the family members of the concerned deceased employee. It is further submitted that on account of prolonged delay in

sanctioning the pensionary benefits, the applicant, before approaching this Tribunal, the applicant had also sent a Legal Notice dated 15.03.2015 but the respondents did not even bother to respond to the said legal notice. It is submitted by the applicant that despite having rendered more than 20 years of service by his deceased husband, the action of the respondents in not sanctioning/releasing the pensionary benefits to her is illegal, arbitrary, discriminatory, against the Pension Rules and violative of principles of natural justice. Moreover, as the applicant and her family members have been facing financial hardship on account of death of the employee, the respondents have not provided compassionate appointment to her son, which is also against the compassionate appointment scheme and principles of natural justice.

5. The applicant has placed reliance of the decision of Co-ordinate Bench of this Tribunal at Guwahati in the case of ***Prativa Dedas vs. Union of India & Ors.*** [OA No.202/00534/2014 decided on 19.08.2015] wherein the relief was granted to the applicant by granting family pension even though she was getting the benefit under Employees' Pension Scheme, 1995. Obviously, the facts of this case are quite different. Learned counsel for the applicant also placed before me Gazette Notification dated

25.10.2007 which, in substance, dealt with the issue of pensionary benefits on the basis of combined service rendered by an employee in the Government and in Public Sector Undertakings. The relevant portion i.e. 2(8) is reproduced below:-

“2. In the Central Civil Services (Pension) Rules, 1972, in rule 37A, for sub-rule (8), the following sub-rule shall be substituted, namely :-

(8) A permanent Government servant who has been absorbed as an employee of a public sector undertaking or autonomous body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Government and in the public sector undertaking or autonomous body in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from public sector undertaking or autonomous body, as the case may be or at his option, to received pro-rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION – The amount of pension/family pension of the absorbed employee on superannuation from Public Sector Undertaking/Autonomous Body shall be calculated in the same way as would be the case with a Central Government servant, retiring on superannuation, on the same day.”

However, again it is seen that this issue is not in dispute as far as this OA is concerned.

6. The respondent no.2 in its reply has taken a preliminary objection stating that the OA is barred by limitation and no application for condonation of delay has been filed by the applicant. On merits, the respondent has stated that the applicant was appointed on 01.01.1992 as

Work Assistant/Regular Mazdoor in DoT and worked upto 31.10.1998, hence, the total length of service rendered by the applicant with only 6 years 10 months i.e. less than 10 years. It is further submitted that since the deceased employee has not completed 10 years of service with DoT, the applicant as per Rule 37(A) of the CCS (Pension) Rules, 1972 is not entitled for pensionary benefits, a fact which has admittedly been intimated to her vide order dated 08.10.2013. It is also submitted that the request of six similarly situated employees whose family had asked for pro-rata pension and the respective deceased employee had rendered less than 10 years of service, has been declined. Insofar as grant of compassionate appointment is concerned, the respondent has stated that this issue is no longer res integra as the same has been dealt with by this Tribunal in the case of **Dinesh vs. MTNL** [OA No.3805/2013 decided on 13.01.2015] and held that as there is complete ban on appointment on compassionate grounds in view of the decision taken by the respondent letter dated 18.03.2014, the compassionate appointment can only be granted after the said ban is lifted.

7. The respondent no.2 has placed before me the decision of the Hon'ble Supreme Court in case of **Ghanshyam Dass Relhan vs. State of Haryana & Ors.**

[MANU/SC/1218/2009] wherein the issue of pro-rata pension of an employee, who has not attained the age of superannuation, has been dealt with. In this case before the Supreme Court, the facts are very different. Here was a case where the petitioner was seeking pensionary benefits even before superannuation from government service and sought pension after rendering 18 years 2 months and 3 days of service between 07.11.1958 and 10.01.1977. The Apex Court very rightly held that he was not entitled for any pension as he has not completed the qualifying service of not less than 30 years which, in special cases, could be reduced to 25 years. Clearly, this ruling has no bearing as far as the case at hand is concerned.

8. The respondent no.1 in its reply has taken more or less the same grounds as has been taken by the respondent no.2. However, it is contended that the absorbed employee of MTNL were given the following options for pensionary benefits:-

- “(i) *Pro rata pensionary benefits;*
- (ii) *Pensionary benefits as per Govt. rules on the basis of combined service rendered in Govt. and MTNL.”*

It is submitted that the deceased husband of the applicant, who had opted for pro rata pension and rendered less than 10 years of service, was not eligible for pensionary benefits

and, therefore, the request of the applicant for grant of pensionary benefits has been rightly declined.

9. I have given thoughtful consideration to this whole matter, carefully perused the pleadings and heard the arguments so advanced by the learned counsel for the parties.

10. Insofar as the issue of grant of compassionate appointment is concerned, the same would be taken care of by the respondents themselves as and when the ban imposed is lifted by the Government as has been held by this Tribunal in ***Dinesh vs. MTNL*** (supra).

11. The sole issue that remains to be adjudicated here is that as to whether the applicant is entitled for the pensionary benefits irrespective of the fact that the deceased employee had opted for pro rata pensionary benefits and had not rendered the required length of service of 10 years?

12. I have perused the Option Form. While offering option of pro-rata pension, the Option Form does not anywhere mention that if one exercises the option of pro-rata pension, he must have put in at least 10 years of service in the Department of Telecommunication to become entitled for availing the facility of pro-rata pension. In my view,

making such information available was not only desirable but also essential in view of the fact that many of the employees belonging to lower categories are not likely to be aware of the rule position in this regard and consequently may exercise the option out of ignorance as seems to be the case in the present OA. It may be noted that the deceased husband was a Mazdoor when he joined MTNL. From this perspective also, it seems iniquitous to me to deprive the deceased employee's wife, the applicant herein, from an entitlement which could have gone to her but for the ignorant act of her husband. Tested on the touchstone of equity, fair play and justice, I have no hesitation in coming to the conclusion that the applicant deserves a positive consideration on her prayer for relief.

13. It is obvious from the records that at the time of exercising option of pro-rata pension, the applicant's deceased husband was unaware of the fact that the entitlement of pro-rata pension required at least 10 years of service. He had at the point of exercising this option had put in a little less than 7 years of service in the Department of Telecommunication. Any reasonable person, whether literate or illiterate, is very unlikely to exercise an option of pro-rata pension after putting in only 7 years of service when the rules provide that he must put in at least 10

years of service to become entitled for this facility. As a matter of fact, exercising such an option becomes utterly meaningless and infructuous, and, in my view, amounts to no option in the eyes of law. In legal terms, it may, as well be called '*non-est*'. In other words, by exercising this option, he is making sure that he is not entitled to pro-rata pension which cannot be the intention behind exercising this option in this matter.

14. In view of this, I have no hesitation in declaring that the option exercised by the deceased husband of the applicant for pro-rata pension may be treated as no option. As a consequence, it will be appropriate that the applicant, who is the surviving wife of the deceased employee, gets an opportunity to exercise the option afresh as if the same were exercised by her late husband and the Department be directed to consider the same. As and when the option is given afresh, then based on the fresh option, the respondents will take action accordingly in order to provide the retirement benefits to the applicant.

15. The OA accordingly stands disposed of. The applicant shall be at liberty to exercise fresh option on behalf of her deceased husband and the respondents are directed to accept that option and take action on that option as per rules and grant her all the consequential benefits including

retirement dues to the applicant. The applicant may give fresh option within a month from the date of getting a certified copy of this order and the respondents shall carry out the exercise of accepting that option, processing her case and make actual payment to the applicant within a period of four months thereafter. No costs.

(UDAY KUMAR VARMA)
Member (A)

/Ahuja/