

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.2372/2015

Reserved on: 4.09.2017
Pronounced on: 8.09.2017

Hon'ble Ms. Praveen Mahajan, Member (A)

Chanda Devi age about 68 years
W/o Late Ram Sevak,
Ex-Office Supdt Grade-1
of Defence Estate Office,
Agra Cantt.
C/o H.No. 710/2A
Ram Jankipuram Colony,
Hansari, Jhansi (UP).

.. Applicant

(By Advocate Mr. Kuldeep Rai for Mr. Abdul Qadir)

Versus

1. Union of India
Through the Secretary
Ministry of Defence,
South Block, New Delhi.
2. Principal Controller of Defence Accounts
(Pension)
Draupdi Ghat, Robert Rd,
Ashok Nagar, Allahabad,
Uttar Pradesh.
3. The Defence Estate Officer
Agra Circle, Agra Cantt,
Uttar Pradesh.
4. Branch Manager
Punjab National Bank,
Fort Branch Jhansi,
District Jhansi, UP.

.. Respondents

(By Advocate Mr. R.K.Sharma)

ORDER

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- a) Direct the respondents to release the family pension in favour of the applicant w.e.f. 31.07.2006 with life time arrears and/ or;
- b) Arrears of the family pension interest @ 18% p.a. compounded yearly; and
- c) Pass any such further order or direction as may be deemed fit, proper and necessary in the interest of justice, with costs and expenses of present litigation to the extent of Rs.50,000/-"

2. Briefly stated, the facts of the case are that the applicant has not been paid family pension after death of her husband, who died on 30.07.2006. The husband of the applicant was appointed on 22.08.1966 and superannuated from service on 31.10.1996. After retirement, last Shri Ram Sewak was granted family pension with effect from 1.11.1996 and continued to draw the same till his death on 30.07.2006. It is stated that the applicant submitted various representations to the respondents but no action has been taken by them in releasing family pension in her favour. Hence, the current OA has been filed before this Tribunal.

3. In their counter, the respondents state that the applicant's husband was drawing service element pension instead of family pension. They submit that the government employee was an ex-serviceman and the case comes under the category of re-employment. They further contend that they were not aware

whether the applicant's husband was getting pension/ family pension from Army side. In case, the individual was not receiving any pension from the Army side, then the Head Office was required to forward the claim along with connected documents and certificates from the concerned record office to the effect that the individual was not receiving any pension from Army side. In view of this ambiguity, they state that the applicant is not entitled to any relief as prayed for by her and the OA deserves to be dismissed being devoid of merit.

4. I have heard both the learned counsels and perused the record.

5. During the course of hearing, learned counsel for the applicant stated that from the correspondence on record, it is clear that the applicant is not in receipt of family pension from the Army. Drawing attention to Annexure A-6 letter dated 08.03.2011 enclosed with the OA, he drew attention to the correspondence made between Respondent No.3, i.e., Defence Estates Officer, Agra Circle, Agra Cantt. and Respondent No.2, i.e., P.C.D.A. (Pension), Allahabad, U.P. He clarified that the Defence Estates Officer of Agra Circle, Agra Cantt. had asked the pension authorities for release of family pension in favour of Smt. Chanda Devi wife of Shri Ram Sewak and submitted all the relevant documents for processing of her case. Subsequently, vide letter dated 15.10.2014, again the respondent no.3 has informed the Advocate of the applicant regarding the status of the case, stating that copies of the relevant documents of Smt. Chanda Devi have been sent to P.C.D.A., Allahabad. Relevant

paras of the aforementioned letter dated 15.10.2014 read as follows:

"On the request of Smt. Chanda Devi this office has already sent copies of all the relevant documents to PCDA, Allahabad vide this office letter No.1/A/146/Pension/RS/71 dated 12th Oct, 2010, and again CTC copies dated 13.12.2010 and 08.03.2011. On the retirement of PCDA the death certificate has also been sent to PCDA vide this office letter dated 23.10.2011 (copy enclosed). In this connection kindly also refer to this office letters dated 12.10.2010, 23.12.2010, 08.03.2011, 29.08.2011 & 29.09.2011.

Since the case pertains to grant of family pension to the widow, this office has already been sent copies of all requisite documents to PCDA Allahabad so many times, with request to release the family pension to the widow on the basis of the document, as the fixation of family pension is under purview of PCDA (Pension) Allahabad.

This office is again requesting to PCDA (Pension) Allahabad to realize the family pension in favour of Smt. Chanda Devi W/o Late Shri Ram Sewak (Ex-OS) from the date of death of Shri Ram Sewak from August 2006, on a procedural basis."

6. Learned counsel for the applicant further contended that Shri Ram Sewak was not a re-employed employee and there was no cessation of his service as is clear from the documents/record produced by the applicant. He produced a copy of the statement of Service Book duly audited by the respondents, which shows that Shri Ram Sewak was a regular employee and his Service Book appears to have been verified from time to time by the respondents.

7. Rebutting these arguments, learned counsel for the respondents stated that primarily, the OA is not maintainable due to lack of jurisdiction since the applicant is residing in Agra

and seeking reliefs from respondents no. 2 and 3. He also stated that the OA is hit by limitation, since the husband of the applicant died in 2006 and the applicant has come forward with her claim only in the year 2015.

8. On merits, the learned for the respondents reiterated the averments already made in the reply filed by the respondents.

9. The objection raised by the respondents of limitation does not hold good in view of the ratio laid down by the Hon'ble Supreme Court that if the issue relates to payment of pension or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of a third party [AIR 1997 SC 27, **S.R. Bhanrale vs. Union of India & Ors.**; 1974 (3) SCC 91, **Haryana State Electricity Board vs. Station of Punjab**; 2009 (1) AISLJ 371, **Union of India vs. Tarsem Singh**]. In Tarsem Singh (supra), the Supreme Court had categorically held as under:

"4. The principles underlying continuing wrongs and recurring/successive wrongs have been applied to service law disputes. A "continuing wrong" refers to a single wrongful act which causes a continuing injury. "Recurring/successive wrongs" are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. This Court in **Balakrishna Savalram Pujari Waghmare v. Shree Dhyaneshwar Maharaj Sansthan**, AIR 1959 SC 798, explained the concept of continuing wrong (in the context of **Section 23** of the Limitation Act, 1908 corresponding to **Section 22** of the Limitation Act, 1963): (AIR p. 807, para 31) "31. ... It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing

wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

10. As regards the plea of this OA being not maintainable due to lack of jurisdiction, I feel that this plea should have been taken at admission stage, and not raised belatedly by the respondents especially when the same counsel has represented the case all along. Further, it is noticed that at any point of time, respondent no.1 has not filed any application for deleting itself as a party in the array of respondents. In any case, the office of respondent no.1 is located at Delhi. Thus it is felt that since the cause of action has partly arisen at Delhi, the Principal Bench of the Tribunal has jurisdiction to entertain this Application.

11. The respondents have also failed to establish on basis of documents that the deceased government employee was re-employed and, therefore, was not entitled to pension. It is well settled that only a widow of the deceased government employee is entitled to family pension. It is also true that right to receive pension is 'property' and grant of pension is not a bounty, but is a vested and valuable right. Undoubtedly, the denial to pension affects Fundamental Right and the petitioner cannot be deprived of it except in accordance with law. Right to pension is a valuable right and it accrues as soon as a Government servant retires from service and similarly after the death of a government servant, the widow of the deceased is entitled to

family pension. However, it should be noted that such pensionary rights are subject to the rules governing the pension [Jeenabhai Bavabhai Patel Vs. Union of India, 1990 (3) SLJ 169 (CAT Ahmedabad Bench)].

12. On going through the pleadings on record, I find that Annexure P-1 mentions "family pension not notified being re-employed case". It appears that this has been inadvertently recorded since there is no evidence of the deceased having been re-employed. I also find that the name of Smt. Chanda Devi has been given by Late Shri Ram Sewak in the nomination form for death-cum-retirement gratuity.

13. In view of above, I find merit in the OA. It is, therefore, allowed with a direction to the respondents to release family pension in favour of the applicant with effect from 31.07.2006. She will also be entitled to arrears of family pension from that date with interest at the rate applicable on GPF. These directions shall be implemented within a period of 90 days from the receipt of a certified copy of this order.

(Praveen Mahajan)
Member (A)

/dkm/