

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA-2567/2014

Reserved on : 19.05.2016

Pronounced on : 27.05.2016

Hon'ble Mr. Shekhar Agarwal, Member (A)

1. Vinod Verma, Aged about 67 years,
S/o late Sh. Late Shri Vimla Verma,
R/o C-372, Defence Colony,
New Delhi-110024.

2. Mrs. Aruna Moidu,
D/o late Shri Vimla Verma,
R/o 8601, Bradley's Landing Street,
Orlando, FL 32827,
(through Attorney Mr. Vinod Verma) ... Applicants
(By Advocate : Shri Sanjeev Sahay with Ms. Jaikhush Hoon)

Versus

Union of India
Through Secretary to the Govt. of India,
Department of Financial Services,
Ministry of Finance,
Jeevan Vihar Building, IIIrd Floor,
Parliament Street,
New Delhi-110001. ... Respondent
(By Advocate: Sh. R.N. Singh)

The applicants in this case are grand children of late Shri P.D. Seth and late Smt. Gyanvati Seth. They have claimed to be legal heirs of the deceased Seth couple and are claiming arrears of pension/family pension due to Seth couple. Briefly speaking, the facts of the case are that Shri P.D. Seth retired from the service of Government of India from the post of Assistant Controller of Insurance in the year 1975. He was sanctioned pension vide PPO No. 40643. According to the applicants, it appears from the record

available with them that remittance of pension stopped after sometime. Shri P.D. Seth made protracted correspondence with the authorities in this regard. He, however, unfortunately expired on 13.12.1994. After expiry of Shri Seth, his widow, Smt. Gyanvati Seth perused the matter with the respondents for release of arrears of pension of her late husband as well as payment of family pension to her. However, the respondents did not pay any heed to her request. She expired in December 2007. After her demise, her sole legal heir was Ms. Vimla Verma (mother of the applicants) continued pursuing the matter.

2. The applicants have further claimed that the respondents in their replies to Ms. Vimla Verma stated that the papers/files in respect of pension account of Shri P.D. Seth were not available and asked her to provide copies of the documents available with her, in order to enable the department to reconstruct the file. Vide their letter dated 4.2.2008, the respondents even asked for the following information from her:

“(a) Information relating to the PPO and other documents from Banks, which had disbursed pension to late Shri P.D. Seth.

(b) Late Shri Seth had drawn pension till his death (13.2.1994) in between the pension might have been revised w.e.f 1.1.1986 (copy of the revised PPO and other relevant documents.

(c) Circumstances under which the portion relating to family pension in the PPO has been struck off in the PPO No. 40643.

(d) The reason for the claimant not claiming family pension immediately after the death of the pensioner, i.e.

late Shri P.D. Seth – Has she ever approached the Banks and pension authority in this regard?"

However, despite her repeated request and demand, no favourable response was received from the respondents. On 7.6.2010, the respondents vide their letter of the same date called upon the applicant's mother to apprise them about the circumstances under which portion relating to family pension in the PPO had been struck off. Ms. Vimla Verma expired on 13.6.2013 without getting any favourable response. After demise of their mother, the applicants came to know of the pendency of this matter and have filed this OA. Applicant No. 1 has further stated that applicant no. 2, who is his sister, resides in USA and has executed special Power of Attorney in the name of applicant No. 1, who is now pursuing the case on behalf of both of them. This OA has been filed by him seeking the following reliefs:

"A) Declare the impugned action of the respondent to deny the arrears of pension/family pension to the applicants as illegal, arbitrary, discriminatory, unjust, unreasonable and mala fide in law and quash and set aside the same and direct the respondents to pay the arrears of pension/family pension of the predecessor in interest of applicants to the applicants with 12 per cent interest thereon within a specified time frame;

B) Award exemplary costs against the respondents and in favour of the applicant.

C) Any other or further relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

3. Learned counsel for the applicant argued that Shri P.D. Seth was recipient of pension from the respondents, as is evident

from PPO available at pages 17-20 of the paper-book. On his death, his widow, Smt. Gyanvati Seth wrote to the respondents on 7.11.2000 for release of family pension (page 21 of the paper-book). Thereafter, she issued a reminder on 10.1.2002 and again on 21.2.2002. On the same date, a legal notice was also sent to the respondents by advocate Shri B.B. Khare on behalf of the applicants. (page 26-27 of the paper-book). In response to the legal notice, the respondents asked Shri B.B. Khare vide their letter dated 27.07.2007 to make available all the relevant documents pertaining to the case. These documents were submitted on 24.08.2007. A reminder was again sent by Shri Khare on 10.09.2007. Thereafter, further correspondence was made vide letter dated 27.10.2007, 23.11.2007 and 24.06.2010. On 04.02.2008, the respondents wrote to Smt. Gyanvati asking her to supply information mentioned above. On 07.06.2010, the respondents wrote to Ms. Vimla Verma informing her that in absence of any justification or reasons given as to why family pension portion had been struck off from the PPO of Shri P.D. Seth, it was not possible for the respondents to take further action in the matter. On March 28, 2012, the case was again taken up by advocate Ankur Mahindro on behalf of Ms. Vimla Verma (page

38 of the paper-book). However, no response has been received from the authorities. Hence, this OA has been filed.

4. Along with the OA, the applicants have also filed an application for condonation of delay in which they have stated that although the OA was within limitation, they were filing this application as a measure of abundant precaution. Further, it has been stated that this case was not in the knowledge of the applicants and it was in August 2013 when they were sifting the belongings of her late mother that they happened to come across the files and folders pertaining to this case. It was only thereafter that they could file this OA.
5. In reply, the respondents have stated that this OA was barred by limitation and deserves to be dismissed *in limine*. In this regard, they have relied on the law laid down by Apex Court in the case of **S.S. Rathore Vs. State of Madhya Pradesh, AIR 1990 SC 10** as also in the case of **D.C.S. Negi Vs. Union of India** judgment dated 7.3.2011 in Civil Appeal No. 3709/2011. Further, they have stated that the case was more than 40 years old and no records pertaining to this case were available with the department. On the basis of information provided by the applicants themselves, it appears that Shri P.D. Seth retired on 31.08.1975 as Assistant Controller of Insurance from the office of the Controller of Insurance, Shimla. During 1976, this office was

shifted to Delhi and renamed as Insurance Division of the Department of Economic Affairs. Presently this division is part of Department of Financial Services in the Ministry of Finance. Further, the respondents have stated that every PPO ought to contain particulars about family pension. However, in this case, there is no mention of family pension in the PPO of Shri P.D. Seth. Moreover, Shri P.D. Seth expired on 13.12.1994 as per records produced by the applicants themselves and the claim for family pension was taken up by their legal heirs only in 2007, i.e. after a delay of almost 13 years. It also appears that Shri Seth was paid pension only up to 31.12.1985 and there is no record thereafter to establish that he continued to be a pensioner till his death in 1994. In fact, the applicants themselves in their OA have mentioned that the pension payment to Shri Seth had stopped after sometime though they have not given the date or the reason for stoppage of pension.

6. Since, no record was available with the respondents, the claimants were requested to furnish certain information so that the file could be reconstructed. However, even the applicants have not been able to produce all the necessary documents to substantiate their claim. Hence, in the absence of relevant documents, the respondents were unable to examine the claim of the applicants in the OA.

7. I have heard both sides and perused the material on record. Learned counsel for the applicants relied on the judgment of the Apex Court in the case of **Deokinandan Prasad Vs. State of Bihar and Ors. (1971) 2 Supreme Court Cases 330** in which it has been held that the right of the petitioner to receive pension is property under Article 31(1) and State had no powers to withhold the same by a mere executive order. Further, it has been held that denial of pension was violative of Fundamental Rights of the petitioner under Articles 19(1)(F) and 31(1) of the Constitution. Applicants have also relied on the judgment of Hon'ble High Court of Madhya Pradesh in **Shrichand Jain And Ors. Vs. Union of India (Uoi) And Anr.** wherein it has been held that legal representatives of the pensioner were entitled to claim the pension after his death. It has also been held that pension was not a bounty nor a matter of grace.
8. Learned counsel for the respondents, Shri R.N. Singh emphasised that this case was inordinately delayed and deserves to be dismissed on the ground of limitation. He also stated that at this belated stage, when necessary relevant documents were not available, it was not possible for the respondents to process the claim of the applicants.
9. After perusal of the material on record and after hearing both sides, I find that there were certain gaps in the information

provided by the applicants. For instance, while the applicants have mentioned that payment of pension to late Shri P.D. Seth had stopped after sometime, neither the date nor the reason for such stoppage has been given by them. The applicants have also not attached any correspondence which Shri P.D. Seth might have undertaken during his lifetime for getting the pension released. The first document that they have produced is a letter dated 7.11.2000 written by Smt. Gyanvati Seth asking for release of family pension to her. In this letter also, it is not mentioned as to why after the death of her husband on 24.4.1995, she had taken up the claim for release of family pension after more than five years. In this letter also, she has not claimed arrears of pension and only asked for release of family pension. Even in the letters dated 10.1.2002 and subsequent reminders written by her, she has been asking for release of family pension only. Even in the legal notice given by advocate Shri B.B. Khare, arrears of pension have not been mentioned and notice has been given only for release of family pension to Smt. Gyanvati Seth. In subsequent communication also undertaken by advocate Shri B.B. Khare and even advocate Ankur Mahindro, there is no mention of arrears of pension. Hence, it appears that as far as arrears of pension are

concerned, the applicants have taken up this issue for the first time through this OA only.

10. The respondents have prayed that this OA be dismissed on the ground of limitation alone. While I am not inclined to agree with them since payment of pension is a recurring cause of action and not barred by limitation as laid down by Hon'ble Supreme Court in the case of **M. R. Gupta Vs. Union of India & Ors. 1996 AIR 669**, yet I cannot overlook the fact that there has been inordinate, unexplained delay on the part of family members of Shri P.D. Seth in taking up this issue. The respondents have stated that the records pertaining to this case were not available and have expressed their inability to process the claim of the applicant. In absence of necessary record it is not possible for me to adjudicate on admissibility of claim made by the applicants.
11. Under the circumstances, I dispose of this OA with a direction to the respondents to once again make effort to try and search the relevant documents and reconstruct the file. The applicants are also directed to provide all the relevant documents available with them. In case the respondents succeed and are able to process the claim of the applicants, they may make the necessary payment to the applicants. However, I direct that interest shall not be payable in this case

considering its facts and circumstances. In case they fail to reconstruct the case, they may communicate their decision to the applicants. This exercise be completed within four months from the date of receipt of certified copy of this order. No costs.

(Shekhar Agarwal)
Member (A)

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