

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

OA No.2822/2016

Reserved on:06.09.2018
Pronounced on:10.09.2018

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

Renu Gupta (Pension Claimant)
Age 47 years
W/o Late Shri Pawan Kumar Gupta
R/o H.No.6, Pkt-1, Paschim Puri
New Delhi. ... Applicant

(By Advocate: Shri M.K.Bhardwaj)

VERSUS

1. Union of India & Ors.
Through its Secretary
Ministry of Defence
South Block, New Delhi.
2. The Principal Controller of Defence Accounts
Ministry of Defence
Draupadighat, Allahabad.
3. The Commandant
Ordnance Depot
Shakur Basti, Delhi -110 056.
4. Shri Karan Gupta
S/o Late Shri Pawan Kumar Gupta
R/o H. No.686, Pkt -I, Paschim Puri
New Delhi – 110 063. ...Respondents

(By Advocate:Shri Rajinder Nischal)

O R D E R

The applicant in the OA was appointed as Store Keeper on 06.11.1998 on compassionate ground after the death of her husband late Shri Pawan Kumar Gupta on 07.09.1997. The applicant was also granted family pension in terms of CCS (Pension) Rules 1972 by CDA

(P) Allahabad vide PPO No.C/AOC/FP/06041/98 and given other retiral benefits.

2. The applicant got re-married to the brother of her late husband on 30.04.1999. Thereafter, the family pension in respect of Smt. Renu Gupta was stopped and sanctioned afresh to their son i.e. Karan Gupta in 2002. This transfer of pension was at the request of the applicant herself.

3. On 04.02.2013, the applicant requested the respondents to restore her family pension. She was informed vide their letter dated 17.05.2013 that her request for grant of family pension cannot be granted to her since she has re-married. The applicant has relied upon letter dated 20.01.2014 written by respondent no.3 to respondent no.2 wherein the case of the applicant has been duly recommended for transfer of family pension from her son Shri Karan Gupta to herself (the applicant).

4. On 14.02.2015, the applicant again represented to the respondents requesting for transfer of pension in her name. The respondents rejected her claim vide their communication dated 27.03.2015. Being aggrieved by the action of the respondents, the applicant again submitted a detailed representation on 19.05.2015 stating that she is entitled for extraordinary pension as per CCS (EOP) Rules, 1972 and also justified her claim for restoration of her pension. However, the respondents reiterated their decision vide their letter dated 26.10.2015.

5. While not disputing the facts of the case, the respondents in their counter affidavit, state that the family pension in respect of the applicant was stopped at her behest and was transferred in the name of her son vide PPO No.C/AOC/FP/06471/2002. Her application for transfer of family pension to herself was considered as per the CCS (Pension) Rules, 1972. It was found that Rule 12 (2) of CCS (EOL) is not applicable in her case being applicable only to those who have been issued Pension Payment order for such pension earlier. Since, the applicant had been granted pension against CCS (Pension) Rules 1972 and not under Extra Ordinary Pension (EOL) Rules, her request was rejected.

6. During the course of hearing, the learned counsel for the respondents, Shri Rajinder Nischal reiterated that Extra Ordinary Pension Rules are applicable only when death of the employee is attributable to Government service, which is not the case here. He argued that the claim of the applicant for grant of Extra Ordinary Pension after 20 years of death of her husband has no merit and that she had already been granted family pension under CCS (Pension) Rules as per her entitlement. The same was however transferred in the name of her son, on her (applicant) own request and she cannot be allowed to change her request, intermittently, as per her whims.

7. The learned counsel for the applicant, Shri M.K.Bhardwaj vehemently argued that the applicant is entitled for family pension in view of the OM No.1/4/2011-P&PW(E) dated 01.04.2011 of Ministry of

Personnel, Public Grievances and Pensions. In the said OM it has been held that :-

"4. The issue has been examined in this Department in consultation with Department of Expenditure. It is hereby clarified that the childless widow of a deceased Central Government employee who had expired before 1.1.2006, shall be eligible for family pension in the light of 6th CPC's recommendations irrespective of the fact that the remarriage of the widow had taken place prior to/on or after 1.1.2006. The financial benefits in such cases, however, will accrue from 1.1.2006. This, however, would be subject to the fulfilment of certain conditions laid down therein, including the income criterion that the income of the widow from all sources does not become equal to or higher than the minimum prescribed for family pension in the Central Government."

He therefore prayed that her requests may be considered favourably.

8. On going through the facts of the case, I am of the view that applicant's claim for grant of Extra Ordinary Pension under CCS (EOP) Rules is not maintainable for the reasons that the death of her husband late Shri Pawan Kumar Gupta is not attributable to the government service, nor has this been agitated/claimed by the applicant. After having availed of family pension for almost 15-16 years she cannot conveniently be allowed to agitate the issue with no fresh cause of action.

9. However, regarding grant of family pension, transferred to her son in the year, 2002, I find that there is no dispute that (childless) widow of a deceased government servant, is eligible for family pension even if she remarries. I do not agree with the contention of learned counsel for respondents, Shri Rajinder Nischal that OM dated 01.04.2011 can only be prospective in nature since the OM is only

clarificatory in nature. Principally, it has been held by the Government that even in the case of re-marriage of a widow, family pension can be given.

10. The applicant in the OA was sanctioned family pension as per her entitlement. Without understanding the consequences, she requested for transfer of the family pension in the name of her son after her marriage. However, the said family pension will become inadmissible after the son attains the age of 25 years. This fact is also mentioned by the respondents in their letter dated 17.05.2013.

11. Since the applicant is legally entitled for family pension under CCS (Pension) Rules, 1972, there seems no legal bar in re-transferring the pension in her name. The NOC from her son, current recipient of the family pension, is also reportedly available.

12. In view of these facts, the respondents are directed to restore the family pension of the applicant in her name, prospectively. The rejection orders dated 26.10.2015, 05.10.2015, 27.03.2015 and 25.09.2014 are set aside. The respondents are directed to transfer the claim of the applicant for transfer of family pension to herself from her son, within a span of four months from the date of receipt of a certified copy of this order. No costs.

**(Praveen Mahajan)
Member(A)**

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