

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/1141/2016

**Reserved on: 12.12.2018
Order pronounced on: 14.12.2018**

Between:

Ch. Roopavathi, D/o. late A. Rambabau,
Aged about 34 years, Occ: Unemployed,
Door No. 11-3-101B, Radhalpeta,
Pithapuram, East Godavari District,
Andhra Pradesh – 533 450.

...Applicant

And

1. Union of India, rep. by Secretary,
Ministry of Railways, Railway Board,
Rail Bhavan, New Delhi.
2. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
3. The Senior Divisional Finance Manager,
South Central Railway, Vijayawada Division,
Vijayawada, Krishna Dist., AP.
4. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada, Krishna Dist., AP.

...Respondents

Counsel for the Applicant ... Mr. M.C. Jacob
Counsel for the Respondents ... Mrs. A.P. Lakshmi, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA has been filed for rejecting the claim of the applicant for restoring the secondary family pension to her.

3. Brief facts of the case are that the applicant is the daughter of A. Rambabu, who worked for the respondent organization and died while in service on 20.08.1999. The wife of the deceased employee Smt. A. Manga Ratnam was granted family pension. Unfortunately, she also passed away on 31.01.2011. Before the death of the mother of the applicant, the applicant was married. However, the applicant became a dependent on her mother since her husband was suffering from chronic liver disease. The husband of the applicant also died on 02.02.2012. The applicant on approaching the respondents for sanction of secondary family pension, the same was granted by the respondents w.e.f. 03.02.2012. However, on 05.11.2014 the applicant received an intimation that her pension has been stopped. The applicant represented on 03.09.2015, but it was rejected by the 4th respondent on the ground that she is not fulfilling the condition of dependency on the family pensioner.

4. The contention of the applicant is that the family pension is to be granted to divorced/ widowed daughter beyond the age of 25 years as per DOP & PW OM dt. 30.08.2004. Further, another OM dated 28.04.2011 issued by DOP & PW clarified that widowed/ divorced/ unmarried daughters are eligible for family pension irrespective of the death of the pensioner from the date of issue of the orders. However, vide OM dated 18.09.2014 of DOP & PW, it was stated that pension paid in cases where widowed/ divorced daughter is leading a married life at the time of death of the family pensioner they are ineligible for such pension and therefore, it should be discontinued.

5. The respondents contend that they had to act as per the rules on the subject. The respondents stated that on the death of the applicants husband on

02.02.2012, the respondents organization has granted secondary family pension. Subsequently, based on the Railway Board clarificatory instructions vide letter dated 26.09.2013 (RBE No. 99/13) the applicant should be a widow before the death of her parents. However, in the present case, the applicant has become widow on 02.02.2012 i.e. after the death of her mother on 31.01.2011. Therefore, as per the cited Railway Board instructions, the applicant is not eligible and hence, was not granted family pension.

6. Heard learned counsel for both sides and perused the documents on record. Learned counsel for the applicant fairly accepted that as per the DOP & PW OM, the applicant is not eligible for family pension. Learned counsel for the respondents has stated that the respondents have to act as per the rules and therefore based on rules, the applicant is not eligible for family pension.

7(a) During deliberations learned counsel for the applicant submitted a citation of the Hon'ble Supreme Court of India in Chairman, Railway oard & Ors Vs. C.R. Rangadhamaiyah & ors, in Appeal (Civil) Nos. 4174-82 of 1995, dt. 25.07.1997, reported in 1997 (6) SCC 623, wherein the Hon'ble Supreme Court observed as under:

"The question which, therefore, needs to be examined is whether the amendments made in Rule 2544 by the impugned notifications, to the extent they have been given effect from January 1, 1973 and April 1, 1979, can be treated as a valid exercise of the power to make rules under the Proviso to Article 309 of the Constitution."

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"In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc. of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the

benefits available under the rule in force at that time. It has been held that such an amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon (supra), B.S. Yadav (supra) and Raman Lal Keshav Lal Soni & Ors., (supra). “

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“ The fundamental right to receive pension according to the rules in force on the date of his retirement accrued to the appellant when he retired from service, By making a retrospective amendment to the said Rule 299(1) (b) more than fifteen years after that right had accrued to him, what was done was to take away the appellant's right to receive pension according to the rules in force at the date of his retirement or in any event to curtail and abridge that right, To that extent, that said amendment was void, ” (pp. 938-939) It is no doubt true that on December 5, 1988 when the impugned notifications were issued, the rights guaranteed under Articles 31(1) and 19(l)(f) were not available since the said provisions in the Constitution stood omitted with effect from June 20, 1979 by virtue of the Constitution (Forty-fourth Amendment) Act, 1978. But the notifications G.S.R. 1143 (E) and G.S.R. 1144 (E) have been made operative with effect from January 1, 1973 and April 1, 1979 respectively on which dates the rights guaranteed under Articles 31(1) and 19(l)(f) were available. Both the notifications in so far as they have been given retrospective operation are, therefore, violative of the rights then guaranteed under Articles 19(1) and 31(1) of the Constitution.

Apart from being violative of the rights then available under Articles 31(1) and 19(l)(f), the impugned amendments, in so far as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.”

- (b) One another judgment of the Hon'ble Supreme Court in the State of Madhya Pradesh & ors Vs. Yogendra Shrivastava, reported in 2010 (12) SCC 538 was cited by the learned counsel for the applicant wherein the Hon'ble Supreme Court has observed as under:

"15. It is no doubt true that Rules made under Article 309 can be made so as to operate with retrospective effect. But it is well settled that rights and benefits which have already been earned or acquired under the existing Rules cannot be taken away by amending the Rules with retrospective effect. (See N.C. Singhal v. Armed Forces Medical Services [(1972) 4 SCC 765] ; K.C. Arora v. State of Haryana [(1984) 3 SCC 281 : 1984 SCC (L&S) 520] and T.R. Kapur v. State of Haryana [1986 Supp SCC 584 : (1987) 2 ATC 595] .) Therefore, it has to be held that while the amendment, even if it is to be considered as otherwise valid, cannot affect the rights and benefits which had accrued to the employees under the unamended rules. The right to NPA @ 25% of the pay having accrued to the respondents under the unamended Rules, it follows that respondent employees will be entitled to non-practising allowance @ 25% of their pay up to 20-5-2003. "

(c) The core content of the observations of the Hon'ble Supreme Court is that a rule should not be applied retrospectively to the disadvantage of an individual. Particularly in cases where a benefit has been extended then the same cannot be withdrawn by issuing an order at a later date. An order can have a prospective but not a retrospective effect. In the present case the applicant was granted family pension on 3.2.2012 , but later based on revised instructions dated 26.09.2013 (RBE No. 99/2013), family pension was stopped. Applying the principle laid down by the Hon'ble Supreme Court, the respondents may have to examine the issue as the law has been set by the Hon'ble Apex Court. Learned counsel for the respondents claimed that the issues involved in both the Hon'ble Supreme Court judgments are different. The judgments of the Hon'ble Supreme Court will be on different subjects, but the principle involved is the key in applying them. Though the respondents have taken appropriate action as per the rules on the subject, yet, since the law as set by the Hon'ble Supreme Court provides scope to re-examine the issue, the respondents may have to have a second look on the claim of the applicant, particularly given the tragic circumstances in which the applicant is placed. She has lost her father, mother and husband. Based on the

family pension granted by the respondents she has been eking out her livelihood. Denying the same would obviously put her to untold hardship particularly on the financial front, which, the Tribunal is sure is not the objective of secondary family pension introduced by the Govt. of India.

8. Therefore, the respondents are directed

(i) to consider the case of the applicant for second family pension after due verification of the financial status of the applicant, employment and other details based on the observations of the Hon'ble Supreme Court (supra).

Accordingly, after making such verification, the respondents to consider grant of secondary family pension sought by the applicant.

(ii) Time allowed to implement this order is three months from the date of receipt of this order.

9. OA is allowed as above, with no orders as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 14th day of December, 2018

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