

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.744/2018

Reserved on: 29.01.2019

Pronounced on: 13.02.2019

Hon'ble Mr. A.K. Bishnoi, Member (A)

Usha Tyagi (Aged about 61 years)
W/o late Shri Ram Kumar Tyagi
Who was working as Sub-Inspector
with Delhi Police, Govt. of NCT, Delhi,
(Group 'C')
R/o A-1/66/11, East Gokul Pur,
Delhi-94.

-Applicant

(By Advocate: Shri Anil Singhal)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
Delhi Secretariat,
ITO, New Delhi.
2. The Commissioner of Police
Delhi Police,
Delhi Police Headquarters,
I.T.O., New Delhi-110 002.

-Respondents

(By Advocate: Shri Jagdish. N)

O R D E R

The present OA has been filed seeking the following relief:-

- “i) That this Hon'ble Tribunal may graciously be pleased to pass an order directing the respondents to release the pension, its arrears and other benefits with interest @ 15% per annum from the respondents till realisation in view of the facts and grounds explained with heavy cost.
- ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant”.

2. Briefly the facts of the case, as stated in the OA, are that the applicant's husband late Shri Ram Kumar Tyagi was a Sub-Inspector (SI) in Delhi Police. In the year 2009, a criminal case was registered against him and he was also placed under suspension by order dated 05.02.2009. He superannuated on 31.01.2012 and under Rule 85 (2) read with Rule 69 of CCS (Pension) Rules, 1972, it was directed by Govt. of NCT of Delhi vide order dated 25.10.2012 that he be paid provisional pension upto the date of finalization of his judicial proceedings.

2.1 Shri R.K. Tyagi, the applicant's husband was convicted by the judgment dated 20.08.2014 and a sentence was awarded to undergo R.I. for three years and fine along with one co-accused. Meanwhile, a charge sheet was issued on 24.10.2009 which was kept in abeyance pending final decision in the Trial Court.

2.2 On 21.05.2015 Shri Ram Kumar Tyagi expired. Following the death of her husband, the applicant sent a letter dated 02.06.2015 to the respondents informing about his death and asking for payment of family pension to her. The respondents in response informed that the matter was being processed for payment of family pension to the applicant.

2.3 The applicant further submits that her husband Shri Ram Kumar Tyagi had filed an appeal against the conviction in the Hon'ble High Court of Delhi, which was admitted with detailed reasons and the sentence was suspended by the Hon'ble High Court in terms of order dated 15.05.2015. In January 2017, after the death of her husband, the applicant moved an application along with all other legal heirs for making her as party in the said criminal appeal. The Hon'ble High Court of Delhi vide order dated 02.08.2017 (Annexure A-11) allowed the applicant to be impleaded as LR in the said criminal appeal No.1291/2014. Meanwhile, the applicant made a representation to the Prime Minister's Office subsequent to which she received a letter dated 20.07.2017 from the office of Dy Commissioner of Police, New Delhi (Annexure A-1) asking her to submit certain documents for preparation of her family pension case. She was also informed vide letter dated 08.09.2017 (Annexure A-2) that the case for provisional family pension has been sent to PAO for approval and on receipt of the approval from the PAO the same would be conveyed to her immediately. However, the provisional family pension has not been granted.

2.4 The applicant has contended that the impugned action of the respondents is bad in law since pension is not a bounty and cannot be stopped. It is further submitted that the appeal in the criminal case relating to her late husband has been admitted by the Hon'ble High Court of Delhi through a detailed order and the respondents are well

aware of the case. Under these circumstances, no other formality was required for grant of family pension since the applicant's husband was already getting a provisional pension till his death. The applicant has been suffering for want of money for her bare subsistence and the respondents have caused grave mental agony and harassment to her and hence she is liable to be compensated by imposing exemplary cost.

3. Respondents in their counter reply have given details of the criminal case relating to the late husband of the applicant as also of the departmental action taken against him. It is submitted that the case of SI Ram Kumar Tyagi has been referred to the Govt. of NCT of Delhi for taking final decision by the competent authority separately under Rule-9 of CCS (Pension) Rules, 1972. The respondents have also submitted that the appeal of SI Ram Kumar Tyagi against his conviction has been admitted by the Hon'ble High Court of Delhi and his sentence has been suspended. Following his death on 21.05.2015, Smt. Usha Tyagi (applicant in the present OA) wife of late Shri Ram Kumar Tyagi has been appointed as legal representative and the criminal appeal No.1291/2014 against the conviction is on regular hearing since 02.08.2017. The decision of the Hon'ble High Court in the said criminal appeal is still awaited. It is submitted that on conviction by the trial court, the matter has been referred to the competent authority and the decision is still awaited.

3.1 As regards the payment of provisional family pensionary benefits, the matter was referred to the Financial Advisor to Commissioner of Police, Delhi who has given the following opinion:-

“there is no such rule for grant of provisional family pension to the family of the Government servant drawing provisional pension”.

Hence, on the death of SI Ram Kumar Tyagi, the provisional pension was stopped.

3.2 Respondents have further contended that the family of late SI Ram Kumar Tyagi is not entitled to receive the pension/family pension from the Government, as per the entitlement of the Government servant. It is averred in the counter reply that, “Had SI Ram Kumar Tyagi being alive today, he would have been dismissed from service under the provision of amended Rule 11(1) of Delhi Police (Punishment and Appeal) Rules, 1980 being a convicted police officer in the court of law.”

4. The applicant has filed rejoinder to the reply filed by the respondents, more or less reiterating the pleas made in the OA.

5. Shri Anil Singhal, learned counsel appearing on behalf of the applicant submitted that the husband of the applicant was drawing a provisional pension till death and after that the applicant, as a widow, should have been granted family pension but it was denied to her unlawfully. The applicant has been drawing provisional pension even

after his conviction since the appeal was pending before the Hon'ble High Court of Delhi, so the only effect of the death of the applicant's husband on the present matter should have been that while during his life time the applicant's husband was getting provisional pension, after his death, the applicant should have been granted family pension. In this connection he has cited the Punjab and Haryana High Court judgment in **Savitri Devi vs. State of Punjab & Others**, CWP No. 13733/2011 decided on 25.03.2013.

6. Shri Jagdish. N, learned counsel appearing on behalf of respondents submitted that there is no rule which provides for provisional family pension and hence this cannot be provided.
7. None of the counsels have clearly drawn my attention to any rule which specifically provides for grant of provisional family pension or prohibits the same.
8. I have carefully gone through the pleadings on record as also the arguments advanced by the learned counsels for the two sides.
9. As far as the judgment in the case of **Savitri Devi** is concerned, it is with reference to Punjab Civil Services Rules whereas the present case is governed by the provisions of CCS (Pension) Rules. Hence the judgement referred to does not provide any support to the contention of the applicant in the present case.

10. In the present case the following rules are applicable. Rule-9 (4) of CCS (Pension) Rules, 1972 reads as follows:-

“(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.”

11. Rule-69 (1) (a) (b) of CCS (Pension) Rules, 1972 reads as follows:-

“(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.”

Rule-69 sub-rule (2) of CCS (Pension) Rules, 1972 reads as follows:-

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but **no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”**

(Emphasis supplied)

It can be seen even from a plain reading of Rule-69 that the payment of provisional pension is mandatory. This has been explicitly clarified by the Govt. of India OM No. 11 (6)-E,V(A)/73 dated 22nd July, 1973, which reads as follows:-

"It has come to the notice of Finance Ministry that some of the administrative authorities are not following Rule 69 of the CCS (Pension) Rules, 1972, which provide that Government servant who has retired and against whom any departmental or judicial proceedings are instituted or are continued, shall be paid provisional pension. **The payment of provisional pension under these rules is mandatory.** But **some administrative authorities appear to be under the impression that in cases where the departmental proceedings instituted against a Government servant were for a major penalty and in which ultimately no pension might become payable on the conclusion of the proceedings after his retirement under Rule 9 of the CCS (Pension) Rules, 1972, even the provisional pension need not to be sanctioned. This view is against the letter and spirit of the rule.** The Ministry of Home Affairs, etc., are, therefore, requested to bring to the notice of administrative authorities under them the correct position under the **rules so that the provisional pension under Rule 69 ibid is not denied to the retired Government servants.**"

12. Thus, it is beyond doubt that during the life time of the applicant's husband, he was entitled to be payment of provisional pension right from the date of retirement and if for any period he was not paid the provisional pension, the same was wrong and arrears for the same need to be paid.

13. It would be worthwhile at this stage to spend time analysing the implication of the word 'provisional' used to qualify the word 'pension'. Provisional pension is different from a regular pension only in as much as the duration is concerned. It continues only till after the conclusion of departmental or judicial proceedings final orders are passed by the final authority. Its quantum is fixed as provided by Rule 69(1) (a) of CCS (Pension) Rules, 1972 as follows:

"(1) (a) In respect of a Government servant referred to in sub-rule (4) of Rule 9, the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service

up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.”

Irrespective of the outcome of the proceedings, no recovery can be made against the provisional pension as laid down by Rule-69 sub-rule (2) of CCS (Pension) Rules, 1972 quoted above. Thus, in effect, while it lasts, it is no different from regular pension.

14. From this it follows as a natural conclusion that just as on the death of a Government servant drawing regular pension the family of the deceased is entitled to Family Pension as per Rule 54(2) of CCS (Pension) Rules, 1972, on the death of a Government servant drawing provisional pension the family of the deceased should also be entitled to Family Pension. For further clarity this Rule is reproduced below:-

“54.(2) Subject to the provisions of sub-rule 13-B and without prejudice to the provisions contained in sub-rule (3), where a Government servant dies -

- (i) after completion of one year of continuous service; or
- (ii) before completion of one year of continuous service, provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for Government service; or
- (iii) after retirement from service and was on the date of death **in receipt of a pension**, or compassionate allowance, referred to in these rules,

the family of the deceased shall be entitled to Family Pension (hereinafter in this rule referred to as family pension) under the Family Pension Scheme for Central Government Employees, 1964, the amount of which shall be determined at a uniform rate of 30% of basic pay subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of twenty-seven thousand rupees per mensem.” [emphasis supplied]

The Rule simply mentions 'was on the date of death in receipt of a pension'. It is simply mentioned 'pension' making no distinction between provisional or otherwise. Thus, not providing family pension in this case is clearly not as per law.

15. As regards the criminal proceedings, provisional pension was paid to the now deceased husband of the applicant even after his conviction by the Trial Court since the appeal against the conviction was pending before the Hon'ble High Court of Delhi. The appeal is still pending and the applicant has been impleaded as LR of the appellant by the order of the Hon'ble High Court dated 02.08.2017. Since the proceedings are still pending, the family of the deceased cannot be deprived of the right to Family Pension.

16. Rule-69 embodies the spirit that a retired Government servant should not be put to undue financial hardship because of the pendency of judicial or departmental proceedings. This rule even goes to the extent that even on a conclusion of such proceedings "no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period." Surely the same consideration would apply to the family of the retired Government servant in the event of his death.

17. Before concluding, let me also examine the implication of Rule 11(1) of Delhi Police (Punishment and Appeal) Rules, 1980. This reads as follows:-

“11. Punishment on judicial conviction. - (1) When a report is received from an official source, e.g. a court or the prosecution agency, that a subordinate rank has been convicted in a criminal court of an offence, involving moral turpitude or on charge of disorderly conduct in a state of drunkenness or in any criminal case, the disciplinary authority shall consider the nature and gravity of the offence and if in its opinion that the offence is such as would render further retention of the convicted police officer in service, *prima facie* undesirable, it may forthwith make an order dismissing or removing him from service without calling upon him to show cause against the proposed action **provided that no such order shall be passed till such time the result of the first appeal that may have been filed by such police officer is known.**”

(Emphasis supplied)

Hence the contention of the respondents that had SI Ram Kumar Tyagi being alive today, he would have been dismissed from service under the provision of amended Rule 11(1) of Delhi Police (Punishment and Appeal) Rules, 1980 is totally invalid.

18. In view of the above discussion, it is abundantly clear that following the death of the applicant's husband who was still at that time getting provisional pension, family pension should have been granted to the applicant.

19. The OA is accordingly allowed and the respondents are directed to grant family pension to the applicant from the date of her husband's death along with all arrears. They shall also release to the applicant if not already released the arrears of provisional pension payable to the

now deceased Shri Ram Kumar Tyagi for such period as may have elapsed from the date it became due after his superannuation till the date of commencement of the payment of provisional pension. On all arrears, interest at the prevailing GPF rates shall also be paid to the applicant. It is not possible to compute in monetary terms the agony caused to the applicant by the act of the respondents in not paying to her what was legally her due in the understandably harsh circumstances following her husband's death. However, in acknowledgement of the same, as a token, a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) is imposed on the respondents to be paid to the applicant. All payments shall be made within ninety days of the receipt of a certified copy of this order.

(A.K. BISHNOI)
MEMBER (A)

cc.