

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.87/2018

Reserved on:18.07.2019
Pronounced on:22.07.2019

Hon'ble Ms. Aradhana Johri, Member (A)

Ms. Abida Khatoon aged about 67 years
Widow of late Mehmood Khan
Daughter of late Fazal-Ur-Rehman,
Resident of K-499, Shakurpur,
JJ Colony, Delhi – 110 034. ...Applicant

(By Advocate: Mr. G.P. Srivastava)

Versus

1. Director General,
Council for Scientific and Industrial Research
Headquarter, Anusandhan Bhawan,
2, Rafi Marg,
New Delhi – 110 001.
2. Director, National Physical Laboratory,
National Physical Laboratory,
Council for Scientific and Industrial Research,
Dr. K.S. Krishnan Marg,
New Delhi – 110 012.
3. Administrative Officer,
National Physical Laboratory,
Council for Scientific and Industrial Research,
Dr. K.S. Krishnan Marg,
New Delhi – 110 012. ...Respondents

(By Advocate: Mr. Bhuvnesh Satija & Mr. Ajankya Tiwary)

ORDER

The father of the applicant Mr. Fazal-Ur-Rehman, who was a Technician working under Respondent no.2 superannuated on 28.02.1992 and passed away on 04.11.2007 after regularly getting pension. The applicant's mother Smt. Zohra Begum pre-deceased her husband on 02.10.2007. She was widowed on 09.06.2007. The

applicant has claimed that she is the only surviving legal heir and eligible for grant of family pension. She has prayed that family pension of Rs.4,329/- plus dearness relief be paid to her w.e.f. 05.11.2007 and revisions in dearness allowances and family pension may also be given to her.

2. It is the contention of the applicant that since she is the sole surviving legal heir of late Mr. Fazal-Ur-Rehman and she was widowed on 09.06.2007 before the demise of her father, as per Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners Welfare OM dated 30.08.2004 (Annexure A-7) and OM dated 11.09.2013, she is entitled to the family pension. Vide these OMs, widowed daughters are eligible for family pension provided they do not have an income exceeding Rs.2,550/- per month. Earlier there was an age limit of 25 years but vide OM dated 30.08.2004 this was relaxed. She has relied on Para 4 of OM dated 11.09.2013, which reads as under:-

“It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family

pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes. Similarly, family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes.”

Vide this para, it is clarified that the family pension is payable to the children as they are considered to be dependent on the government servant/pensioner or his/her spouse. A child, who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon, is considered to be dependent on his/her parents. Only those children, who are dependent and meet other conditions of eligibility for family pension at the time of death of the government servant or his/her spouse, whichever is later, are eligible for family pension.

3. During the hearing, the applicant filed a copy of her bank statement dated 01.07.2019 of State Bank of India, SME Branch, Netaji Subhash Place, New Delhi to support the contention that she was earning less than the amount indicated in the OMs referred to above, therefore, she should be treated as dependent on her father at the time of his demise.

4. The respondents have filed their reply and opposed the claims of the applicant. They have quoted Rule 54 (6) of CCS (Pension) Rules, which reads as under:-

“54. Family Pension, 1964

(6) The period for which family pension is payable shall be as follows:-

*(iii) subject to second and third provisos, **in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier**”*

“EXPLANATION 2 – The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning his or her or their livelihood.”

This rule has been used by them to counter the claim of the applicant by stating that she was receiving an income on account of employment as an Anganwari Teacher as well as retirement benefits under Social Welfare Scheme.

5. The respondents have further stated that as per Explanation -3 of Rule 54 (6) *ibid*, she was also required to furnish a certificate to the Treasury/Bank declaring that she is earning independent income from other sources namely employment in private and public sector, self employment etc. but she has failed to comply with the above rule by not submitting the proof that she was earning her livelihood. For the sake clarity, Explanation-3 of Rule 54(6) of the Rules *ibid* is extracted hereunder:-

“EXPLANATION 3 .- It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after her remarriage or by the disabled son or daughter or by parents to the Treasury or Bank, as the case may be, once in a year

that she or he or they have not started earning her or his or their livelihood.”

6. They have also cited a decision of the Hon’ble High Court of Delhi in the case of ***Delhi Development Authority vs. Usha Rani*** [WP(C) No.3194/2016] wherein the following was held:-

“Family Pension payable to a major son or daughter especially after they have completed their education and are capable of earning a livelihood, must be distinguished from the pension payable to a retired employee or after his/her death, to the spouse. A divorced or widowed daughter is entitled to family pension, provided she is not in a position to work and earn a livelihood. The right to claim family pension is not earned by her, albeit her parent being a retired government servant, the government has extended the said benefit. Provisions pertaining to the grant of family pension in such cases, have to be reasonably construed and not stretched or given an extra-liberal interpretation by applying the principles normally applied to pension provisions. An able-bodied and mentally fit daughter, having had the benefit of education, when found to be working and earning an income beyond the specified limit, should not claim family pension....The nature or source of income of livelihood can be diverse and need not be confined to earnings as an employee in the public or private sector. Earnings through self employment or from contractual employment are equally good sources of livelihood”

7. In light of this, they have contended that since the applicant was employed and earning more than the stipulated amount as per OMs, she cannot be said to be dependent on her father at the time of his demise. They have also pointed out that the applicant filed a Suit before the Court of Sh. Bhupinder Singh, ACJ-cum-ARC N/W, Rohini Court, Delhi on similar lines, which was dismissed as withdrawn on 06.09.2017 with liberty to take

appropriate remedy in respect of grant of pension. They have also stated that since the father of the applicant died in 2007 and the first application was submitted by the applicant only in 2014, there is a delay of seven years in filing this OA which makes it very difficult to verify the record.

8. The respondents have also averred that the cited OM dated 11.09.2013 clearly says that the relevant time is the time of death and eligibility conditions, including dependency on the deceased and income criteria etc. all pertain to the time of death and any subsequent change in the situation does not change the entitlement. By referring para 4.12 of the OA, they have pointed out that the applicant herself has stated that she was employed as Anganwari Teacher with monthly salary of Rs.5,000/- at the time of her retirement in 2013 and further, as per para 4.13, she started getting pension of Rs.1,000/- per month which was subsequently enhanced to Rs.2,000/- per month. As per para 8(A), the applicant herself has stated that the pension of her deceased father was only Rs.4,329/- plus dearness relief, which is less than her salary of Rs.5,000/- per month. Therefore, they have asserted that the applicant is not entitled to family pension as per the rules and OMs in force.

9. Heard Sh. G.P. Srivastava, learned counsel for the applicant and Shri Bhuvnesh Satija, learned counsel for the respondents.

10. Perusal of Rules and OMs issued, clearly echo the sentiment that the applicant for grant of family pension must be dependent on the deceased employee and the relevant time for considering eligibility is the time of death of the government servant or his spouse. Though the applicant has filed her bank statement during final hearing but it is not clear at all that the said bank statement is about her salary. It has been contended by the applicant herself that she was earning Rs.5,000/- per month at the time of retirement and subsequently started getting pension from the Government. It was incumbent on the applicant to prove that her earning was less than the stipulated earning laid down in the concerned OMs, but she has not filed any salary slip to this effect. Therefore, she has not been able to prove that her income was below the stipulated level which would bring her into the category of dependent on the deceased Government servant.

11. Though the applicant applied for the family pension vide letter dated 10.02.2014 (Annexure A-6), but neither had she mentioned therein anything about her income nor established her eligibility. The respondents replied on

12.12.2014 (Annexure A-1) stating that since the applicant did not submit any valid proof that she is widow and was dependent on the deceased government employee, her claim was not accepted. The applicant could well have replied to the respondents in 2014 itself giving the necessary details but she failed to do so and instead went to the District Court where the suit filed by her was dismissed as withdrawn in 2017 after which she filed this OA. It was only after she retired as Anganwari Teacher in 2013 and pension was below the stipulated level that she applied to the respondents for sanctioning the family pension to her. This, read with the fact that she has not yet filed her salary slip of 2007 i.e. the time of death of the deceased government employee, leads to a reasonable inference that she was not eligible for family pension at the relevant point of time i.e. in the year 2007. In para 4.12 of the OA, the applicant herself has stated that she was earning Rs.5,000/- per month at the time of retirement whereas the family pension of the deceased at the time of his death was stated by her to be Rs.4,329/- per month plus dearness relief.

12. Keeping the aforementioned points in mind, I am of the view that the applicant is not eligible for grant of family pension as per the relevant Rules/OMs. The OA is

accordingly dismissed being devoid of merits. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

/Ahuja/