

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

Original Application No.21/833/2018

Reserved on: 02.07.2019

Pronounced on: 15.07.2019

Between:

Mr. KMA Hakeem, 'C',
S/o. KMA Raheem,
Aged about 60 years, Retd. MTS (Model RR),
Department of Health & Family Welfare,
Dy. Director, CGHS, Hyderabad,
R/o. H. No. 16-7-103, Azampura,
Chaderghat, Hyderabad – 500 024.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Health & Family Welfare,
Government of India, New Delhi.
2. Senior Accounts Officer,
Government of India,
Ministry of Health & Family Welfare,
Pay & Accounts Office,
C-Wing, Rajaji Bhavan,
Besant Nagar, Chennai – 90.
3. The Additional Director,
CGHS, Government of India,
Ministry of Health & Family Welfare,
Himayat Nagar, Hyderabad.

... Respondents

Counsel for the Applicant ... Mr. K. Sudhakar Reddy

Counsel for the Respondents ... Mr. B. Rajesham, Addl. CGSC

CORAM:

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

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

2. OA is filed challenging the cancellation of the Pension Payment Order No.215459100171 vide impugned order dt. 09.07.2018 on the ground that the applicant was drawing family pension though he got re-married.

3. Brief facts of the case are that the applicant joined the respondent organization on 03.09.1992 on compassionate appointment consequent to the death of his wife Ms. Padma alias Ayesha Begum, who died on 07.12.1989. The applicant retired from service from the respondent organization on 28.02.2018 and was granted family pension on the death of his wife w.e.f. 08.12.1989. Later, the respondents cancelled the family pension order on 09.07.2018 claiming that he is not eligible since he is re-married on 04.08.1993. The applicant, though retired in the month of February 2018, till today, his pension and retirement benefits have not been released. Aggrieved over the same, the OA has been filed.

4. The contentions of the applicant are that letter dt. 09.07.2018 addressed by the 2nd respondent to the concerned State Bank of India does indicate that the official has informed the office in the year 1994 that he got re-married Smt. Nasreen Sulthana on 04.08.1993. However, 2nd respondent office came to know about this only after receipt of pension papers. Family pension was used to take care of the minor children born out of first marriage. There is no suppression of any

information by the applicant regarding his re-marriage. Therefore, cancellation of his PPO on 09.07.2018 is illegal and arbitrary. Family of the applicant is in serious financial problem due to lack of pension. It virtually tantamounts to awarding punishment without proceeding under CCS (D & A) Rules, 1965. No notice was given to the applicant before withholding pension and retirement benefits.

5. The respondents in their reply statement opposed the contention of the applicant by stating that the pension payment order of the applicant has not been cancelled. They have only cancelled the family pension drawn by the applicant as he is ineligible for drawal of family pension from 04.08.1993, the date on which he got remarried. As per Rule 54(6)(i) of CCS (Pension) Rules, the period for which family pension is payable shall be, in case of a widow or widower, up to the date of death or re-marriage, whichever is earlier. In the present case, the applicant got remarried on 04.08.1993 and therefore, he was ineligible for family pension from the said date. The applicant drew family pension for a period of 25 years from 08.12.1989 onwards till June 2018. Applicant states that the family pension is drawn by minor children from his first marriage. However, there are no records available in the office of the respondents to confirm that the pension was drawn by the minor children. The monthly pension has not been denied to the applicant as stated by him. The respondents admit that the applicant informed them about his re-marriage and it was recorded in the service books as per rules.

However, drawl of the family pension by the minor children of the first marriage was not informed to the respondents.

6. Heard both counsel and perused the pleadings on record.

7 (I) Applicant getting remarried on 04.08.1993 and informing the respondents about the same is not in dispute. The fact that the applicant got remarried has been recorded in the service books. The respondents have admitted the same in the reply statement. Nevertheless, the respondents have stated that being a Government official, he did not inform that his children were drawing the family pension. They also stated that there is no record as to whether the children are drawing the family pension, which is surprising. Pension is paid on a monthly basis under acquittance. Not having such an important record is difficult to appreciate. Nevertheless, as per Rule 54 (6), (8) to (10) of CCS (Pension) Rules, 1972, family pension can be drawn by children of the deceased employee, namely, in case of unmarried son, until he attains the age of twenty – five years or until he gets married or until he starts earning his livelihood, whichever is the earliest; and in case of unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier. Therefore, family pension can be drawn by the children of the deceased employee as per cited Rule. Therefore, stoppage of family pension from the date of re-marriage is incorrect. Besides, it is also to be noted that the applicant has not suppressed any information. It was for the respondents to act as

per the endorsement in the service book. Not doing so is a mistake committed by the respondents. Hence, penalizing the applicant for the mistake of the respondents is not fair. The Hon'ble Supreme Court has observed that the mistake of the respondents should not recoil on the applicant. The observations of the Hon'ble Apex Court are as under:

- (i) *The Apex Court in a recent case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna, C.A. No.8208/01**) held that the mistake of the department cannot be permitted to recoil on employees.*
- (ii) *In yet another recent case of **M.V. Thimmaiah vs. UPSC, in C.A. No. 5883-5991 of 2007** decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*

Therefore, stoppage of family pension till the children become ineligible is not as per rule.

(II) Further, respondents have made it clear that the pension of the applicant has not been stopped. They have been paying regularly and they have also filed material papers regarding sanction of Pension, Gratuity and Commutation of pension, along with the reply statement. Hence, the contention of the applicant in this regard is unsustainable.

(III) Payment of pension to the children of the deceased employee has to be upheld since the rules cited provide for the same. Applicant filed Family Members Details as Annexure VI to the OA, which shows that he has two sons and one daughter, whose dates of birth are 13.04.1982; 14.01.1986 and 22.03.1993 respectively. A copy of the very same details is also filed by the respondents along with their reply. As per the said details, respondents are to examine with reference to the dates of birth of the children of the applicant and ascertain the date up to which children of the applicant born out of his first marriage are entitled for family pension, as per rules cited. Therefore, recovery of family pension up to the said date should not be undertaken since it goes against the very spirit of CCS (Pension) Rules cited. Beyond the said date too, for the mistake on the part of the respondents, the applicant should not be penalized as per the judgments of the Hon'ble Supreme Court cited supra. Hence, the remaining amount should also not be recovered from the pension and pensionary benefits of the applicant as per the judgment of the Hon'ble Supreme Court in State of Punjab Vs. Rafiq Masih case. Applicant belongs to MTS category with little understanding of rules. The family pension received would have been used to take care of the needs of the minor children born out of first marriage. Applicant did not misguide or misrepresent to avail family pension. Proposing to recover from the pension of the applicant would be too harsh and iniquitous. It is open to the respondents to fix responsibility on those who committed the mistake in allowing the family pension to be paid to the applicant. This will send an appropriate signal to all those concerned that they need to be careful in

dealing with the disbursement of pension, which is of a very sensitive nature, involving senior citizens.

(IV) Thus, from the aforesaid, it is clear that the action of the respondents is against rules, arbitrary and illegal. Therefore, the impugned order dated 09.07.2018 is quashed. Consequently, respondents are directed to consider as under:

- (a) To pay the family pension to the children of the applicant born out of his first marriage till they are eligible, as per relevant provisions of CCS (Pension) Rules referred above. Arrears of family pension, if due may be drawn and paid.
- (b) No recovery be made from the pension of the applicant, if any excess amount has been made, after examining the issue as per (a) above.
- (c) Time allowed to implement the order is three months from the date of receipt of this order.
- (d) With the above directions, the OA is allowed. There shall be no order as to costs.

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

Dated, the 15th of July, 2019

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