

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/00013/2018

Dated, this Tuesday the 30th day of July, 2019

CORAM: R.VIJAYKUMAR, MEMBER (A)

Miss Kusum Modu Lote, Age : 64 years,
Daughter of late (Smt.) Mohini Modu Lote,
Ex. Safaiwala, Command Hospital,
Southern Command, Wanorie, Pune 411 040.
(R/at : S.No.744, Bhawani Peth,
Fakir Mohammed Chawl, Pune 411 002).
(By Advocate Ms. Sujatha Krishnan)

.. ***Applicant***

VERSUS

1. The Union of India, Through the Secretary,
Ministry of Defence, DHQ PO, New Delhi – 11.
2. The Commandant H.Q. Command Hospital,
Southern Command, Pune 411 040.
3. The Principal Controller of Defence Accounts (Pension),
Draupadi Ghat, Allahabad 211 014.
4. The Branch Manager, Bank of Maharashtra,
Camp Branch, 628 /29, Khudamrad Bdg.,
Sachapir Road, Pune 411 001.
5. The Additional Director, C.G.H.S.,
Mukund Nagar, Pune 411 009.
(By Advocate Shri D.A.Dube)

... ***Respondents***

Reserved on 18.07.2019

Pronounced on 30.07.2019

ORDER

Heard the learned counsels for the parties.

2. This application has been filed on 29.11.2017 under Section 19 of the Administrative Tribunals Act, 1985 seeking

the following reliefs :-

- “8(a) To allow the application,
- 8(b) To issue a writ of mandamus or any other writ or Order in the nature of Mandamus to the Respondents,
- 8(c) To start paying family pension to the Applicant @ 30% of the amount of basic pension last received by the Applicant's mother Smt. Mohini M. Lote, after ascertaining the last pension amount paid to the deceased as per the Bank Records,
- 8(d) To direct the Respondents No.2 and 3 to prepare an appropriate P.P.O in regard to the family pension payable to the Applicant and issue copy of the same to the Applicant.
- 8(e) To direct the Respondents to pay the arrears of the family pension effective from 13.08.2005 onwards till the date the actual payment is made,
- 8(f) To direct the Respondents No.2 and 3 to complete the above direction within a period of three months,
- 8(g) To pass any other appropriate orders which may be just and equitable in the facts and circumstances of the case,
- 8(h) To award the cost of application.”

2. The applicant is stated to be an illiterate and unmarried daughter of Smt. Mohini Modu Lote who is claimed to be an employee of the respondent No.2 and retired from that office on an unspecified date. The applicant suffers from Physical Impairment and is in possession of a CGHS Card No.82027 issued by the CGHS at Pune and

this is the only evidence available for her claim for family pension. Her mother is stated to have been receiving pension at Bank of Maharashtra at Pune in Pension Account No.PNP 228 and the applicant learned that pension credits had been stopped with effect from 12.08.2005 when the mother died. She has not received family pension ever since and first approached the respondent authorities for release of family pension on 01.05.2014 (Annexure A-1) estimating her mother's retirement date as between 1980-88.

3. After the applicant filed this OA, the matter was heard on multiple occasions and finally, the respondents have granted family pension in PPO No.CMISCFP000032019 dated 01.02.2019 granting the minimum family pension from 27.11.2014 onwards as per the rules established in Government. The payment was also planned through Bank nominated by the applicant. The applicant now emphasizes that she should have been granted family pension from the date of death of her mother by way of arrears and not merely three years prior to the date of her application before this Tribunal. In

granting family pension for three years preceding the date of filing this OA, the respondents have depended on the submissions of the Assistant Solicitor General of India (ASGI) before the Hon'ble Apex Court in the case of **Union of India Through Its Secretary and others Vs. SGT Girish Kumar**, in CA No.21811/2018 which was heard on 13.07.2018 and during which, the ASGI committed to payment of disability pension benefit for a period of three years prior to the date of filing of this OA by the beneficiary respondents who had made a claim for broadbending disability pension from 20% to 50% from the date on which such provision was made available by the Government. In our view, these submissions of the ASGI are in tune with the rulings of the Hon'ble Apex Court in **Union of India and Another Vs. Tarsem Singh** decided on 13.08.2008 in CA No.5151-5152 of 2008.

4. Respondent No.4 has filed a reply assigning the responsibility of ascertaining facts to the Administrative Authority (Respondent No.2) and asserts that the

applicant has not produced any useful documentary evidence to support her request.

5. Respondent No.5 states that they have been issuing plastic cards to beneficiaries since 2010 and all previous cards issued between 1999-2009 have been replaced and older records weeded out. Therefore, they have no records to verify the statements of applicant and her claim. Moreover, they also state that as on date, the Applicant is not a CGHS beneficiary.

6. In support of the claim of the applicant, the learned counsel for the applicant refers to the decision of the rulings of the Hon'ble Apex Court in **S.K.Mastan Bee Vs. General Railway, South Central Railway and Another, 2003 SCC (L&S) 93** in which the appellant was the widow of the Railway employee who died in harness on 29.11.1969 and only made a claim for family pension on 12.03.1991. The respondents railways had rejected her request on the ground that her husband was medically invalidated. The Railways contention that the appellant had the alternate remedy to

approach this Tribunal was also rejected. In Writ appeal before a Division Bench, the retrospective benefit was limited to a period after 01.04.1992, the date on which appellant had issued a legal notice to the respondents. In these circumstances, the Court noted as follows :

“We notice that the appellant's husband was working as a Gangman who died while in service. It is on record that the appellant is an illiterate who at that time did not know of her legal right and had no access to any information as to her right to family pension and to enforce her such right. On the death of the husband of the appellant, it was obligatory for her husband's employer, viz., Railways, in this case to have computed the family pension payable to the appellant and offered the same to her without her having to make a claim or without driving her to a litigation. The very denial of her right to family pension as held by the learned Single Judge as well as the Division Bench is an erroneous decision on the part of the Railways and in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. The factum of the appellant's lack of resources to approach the legal forum timely is not disputed by the Railways. Question then arises on facts and circumstances of this case, the Appellate Bench was justified in restricting the past arrears of pension to a period much subsequent to the death of appellant's husband on which date she had legally become entitled to the grant of pension ? In this case as noticed by us herein above, the learned Single Judge had rejected the contention of delay put forth by the Railways and taking note of the appellant's right to pension and the denial of the same by the Railways illegally considered it appropriate to grant the pension with retrospective effect from the date on which it became due to her. The Division Bench also while agreeing with the learned Single Judge observed that the delay in approaching the Railways by the appellant for the grant of family pension was not fatal in spite of the

same it restricted the payment of family pension from a date on which the appellant issued a legal notice to the Railways i.e. on 1.4.1992. We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate. The learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1.4.1992."

7. In the present circumstances, it has not been disputed that the applicant is illiterate although she is evidently able to be mobile. The major aspect of difference is that the present applicant has no evidence of the details of the pension or PPO number under which her mother was drawing pension. The only evidence available is a CGHS Card No.82027, which was issued to her mother in 1999 along with the applicant's name and mentioning her age as 40 years and relationship as daughter. However, as pointed out by Respondent No.5, this record is not verifiable. Moreover, the applicant has ceased to be a CGHS beneficiary on date. On both these aspects,

applicant has not filed any clarification in reply or rebuttal. However, on this basis, the respondents had extended their consideration by granting family pension to the applicant with retrospective effect of three years prior to filing this application.

8. The learned counsel for the applicant has relied on the above quoted observations of the Hon'ble Apex Court in **S.K. Mastan Bee** supra wherein the Hon'ble Apex Court looked at the circumstances of illiteracy of the applicant, her lack of knowledge of legal rights and also the aspect that her husband was a Gangman who might not have left behind sufficient resources for the appellant to agitate her rights. Further, the Court considered that it was an obligation of her husband's employer who had to compute the family pension and offer it to her without compelling her to litigate.

9. On the other hand, the learned counsel for the respondents refers to the decision of the Hon'ble Apex Court in **Tarsem Singh** supra which was decided on 13.08.2008 after

the case of **S.K.Mastan Bee** which was decided on 04.12.2002. This judgment does not refer to the previous judgment in **S.K.Mastan Bee**. However, the rulings of the Hon'ble Apex Court in Tarsem Singh are based on an analysis of how continuing wrongs and recurring/successive wrongs are to be considered by the Courts and Tribunals. In the present case, the applicant seeks family pension which was a claim that arose upon the death of her mother on 12.08.2005 whereupon the non-performance of the obligatory duty of the respondents to identify her as a dependent beneficiary and then, to grant her family pension was the single wrongful act which lead to continuing injury and lead to recurring/successive wrongs. It is also not the case of the respondents that the grant of family pension to the applicant would cause any effect or injustice to a third party. The Hon'ble Apex Court referred to this in a previous judgment in **Shiv Das Vs. Union of India, 2007 (9) SCC 274** wherein it held as below:-

“The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to

cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition...If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

10. After considering the impact of delay by way of limitation in the case of belated service claim, it held that one of the exceptions to the said rule of limitation were cases relating to continuing wrong. However, it went on to find an exception to this exception. One such case that fell outside the exception is in regard to the grievance in respect of any order or administrative decision which affected third parties and unsettled the existing position. In relation to the aspect involved in this present case, the Court held as below:-

"In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrong will apply. As a consequence, High Courts will restrict the consequential

relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.”

11. As consequence of this decision, the action of the respondents in granting family pension to the applicant for three years prior to filing of this OA is justified especially in view of the fact that the rulings in **Tarsem Singh** have been followed subsequently in a variety of decisions.

12. The problem in the present case arises from the fact that neither the applicant nor the respondents have any useful documents that can be depended upon trace the original pension record or summary detail of the mother who was the superannuated employee of the respondents. Even the sole record of CGHS is not useful for the reasons that the original record with the CGHS has been weeded out and the respondent No.5 (CGHS) has confirmed that the applicant is not any more a beneficiary of the CGHS. Therefore, the case differs in factual aspects itself from the case of **S.K.Mastan** Bee supra argued at the length by the learned counsel for the applicant. For these reasons, we prefer to follow the lead of the rulings given by the

Hon'ble Apex Court in **Tarsem Singh** and consider that the action of the respondents in granting family pension to the applicant and arrears from three years prior to filing of this OA, is in conformity with the reasons and the law as settled by the Hon'ble Apex Court.

13. In the aforesaid terms, this OA is disposed of as infructuous without any order as to costs.

(R. Vijaykumar)
Member (Administrative)

kmg*

JD
31/7/19