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**Central Administrative Tribunal
Principal Bench**

**OA 806/1990
MA 887/2007
With
OA 2217/2003**

New Delhi this the 28th day of August 2007

**Hon'ble Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)**

U.S. Saxena,
(Ex-Supdt.B/R MES, CWE, Jhansi),

Through Legal Representative

Smt. Manorama Saxena,
W/o Late US Saxena,
714, Sector 28,
Noida-201301.

....Applicant

(By Advocate: Shri S.C.Saxena)

VERSUS

1. Union of India, through
Secretary, Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Military Engineering Service,
Kashmir House, New Delhi.
3. Commander Works Engineer,
Military Engineering Service,
Rani Laxmi Bai Road,
Jhansi (UP).

...Respondents

(By Advocate: Ch. Shamsuddin Khan)

ORDER (ORAL)

Shri Shanker Raju, Member (J)

As the issue involved in both the OAs is identical, OAs are disposed of accordingly, by this common order.

2. Applicant who was working as a Superintendent in MES filed the present OAs, which are now maintained by the legal heir of the deceased applicant on remand from High Court. The only prayer made is to grant pro-rata benefits and further accord of family pension to the widows i.e. legal heir of the deceased applicant.

3. The facts are not disputed, which transpires that the applicant who joined MES on 25.12.1953 against a temporary post was confirmed in 1975 by an notification dated 1.4.1987. Applicant with permission of MES went on deputation to Scooters India Limited, which was a public undertaking where his lien was extended by the respondents till 31.03.1980 and on that date, he resigned his post and was later on permanently absorbed in Scooters India Limited. After the death of the deceased, legal heir has been impleaded and the claim now ventilated before us is that in view of Rule 37 of the CCS Pension Rules, 1972 as well as Rule 49 of the rules ibid a Government servant when is absorbed in public undertaking is entitled to be accorded pro-rata benefits of pension having completed 10 years service.

4. Respondents' counsel has vehemently opposed the contentions and while relying upon G.I.M.H.Affairs Memo dated 22.1.1966 and DOPT's Memo dated 12.4.1972 contended that Government servant is not entitled to pro-rata liability if pensionary benefits concerns a person who has been in erstwhile Government service is permanently absorbed in employment in private business or industrial business forum.

5. It is further stated that the deceased has failed to complete 20 years of service is not entitled to the benefits of pro-rata benefits and family pension to the legal heirs.

6. We have carefully considered the rival contentions of the parties and perused the material on record.

7. As per Rule 13 of the CCS (Pension) Rules, 1972, the qualifying service would commence from the date when a Government servant takes charge of the post to which he is firstly appointed even in a temporary capacity.

8. As the applicant was in quasi permanent service against a permanent post or even against temporary post for the sake of presumption in law, yet his subsequent conferment of permanent status in 1975, he has completed

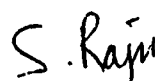
10 years' qualifying service, which would entitle him when absorbed in a public undertaking as per Rule 37 of the Rules *ibid* to be accorded pro-rata benefits by the Government having liability when the applicant had completed requisite service. Rejection of the claim of the applicant and the deceased husband on the ground that the deceased had failed to complete 20 years of service, cannot be countenanced in law and is misconceived as contrary to the rules.

9. In the light of above, as question of pensionary benefits, which is a fundamental right of the Government bestowed upon a Government servant cannot be denied on the *ipsi dixit* of the Government de hors the rules. It is a beneficial legislation, which has emanated the right of pension as per the trite law of the Apex Court. In such view of the matter, as the matter stood remanded back to the Tribunal to be dealt with on merit, question of limitation would not arise in such a compassionate case where pensionary benefits are involved, non-grant of pension constitute a recurring cause of action, which is a continuing wrong for which redressal has been sought before us.

10. In the result, for the foregoing reasons, we do not advert to the justification extended by the respondents to deny pro-rata benefits and arrears thereof to the deceased, now entitled to the legal heir i.e. widow from 1977 till the death on 24.06.1993 and further family pension. OA stands disposed of accordingly with a direction to the respondents to calculate the pro-rata benefits of the applicant in accordance with our observations and the rules. Arrears may be disbursed to the legal heir of the applicant, if otherwise eligible under the rules. Family pension shall also be accorded accordingly and the arrears thereof shall be paid within a period of three months from the date of receipt of a copy of this order. No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)