

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH AT BANGALORE

ORIGINAL APPLICATION NO.170/00159/2018

DATED THIS THE 29TH DAY OF JULY, 2019

HON'BLE DR K. B SURESH....MEMBER (J)

B.S. Vijaya Kumar
S/o late B. Suryanarayana Rao,
Retired Asst. Accounts Officer,
Since deceased represented by his LR's

1. Kamala V. Kumar W/o B.S. Vijaya Kumar
Aged: 65 years,
Residing at No. 21, 2nd Cross,
P.F. Layout, 21st Main,
Vijayanagar,
Bangalore 560 040

2. Kavya D/o B.S. Vijaya Kumar
Aged: 28 years,
Residing at No. 21, 2nd Cross,
P.F. Layout, 21st Main,
Vijayanagar,
Bangalore 560 040

...Applicants

(By Advocate Shri Ranganatha S. Jois)

Vs.

1. The Regional Provident Fund Commissioner,
Karnataka Region,
No. 13, Rajaram Mohan Roy Road,
P.B. No. 2584, Bangalore 560 025

2. The Union of India,
Rep. by its Secretary,
Ministry of Labour,
Karmika bhavan,
New Delhi 110 001

3. The State Bank of India
Chandra Layout Branch,
Rep. by its Manager,
CPPC, Kempegowda Road,
Chandra Layout,
Bangalore 560 011

...Respondents

(By Smt. Shwetha Anand, Counsel for Respondent No. 1)

ORDER (ORAL)

HON'BLE DR K.B.SURESH, MEMBER (J)

The question seems to be whether the husband and wife together are entitled to fixed monthly allowance. The matter seems to be covered by the Ernakulam Bench orders which was challenged by the respondent here in OP (CAT) No. 25/2017 which was against the order in OA No. 693/2014 dated 26.11.2015 and which was taken up by the Hon'ble High Court of Kerala on 12.01.2018 and passed the following order which we quote:

"JUDGMENT

Devan Ramachandran, J.

In issue before us is whether a pensioner of the Employees Provident Fund Organization is entitled to the benefits of Fixed Monthly Allowance when his or her spouse is also a pensioner drawing such benefit.

2. A Fixed Monthly Allowance (FMA), as is commonly known, is a fixed sum of money paid to employees or pensioners on a monthly basis, irrespective of whether they submit bills to substantiate the expenditure or not. This is in distinction to medical reimbursement, where payment is made to the employees or pensioners against specific medical bills submitted by them, subject to entitlement. Thus the Fixed Medical Allowance is virtually, though not legally, a part of the salary or pension, as the case may be, which is also fully taxable under the provisions of the Income Tax Act, contrary to medical reimbursement to which tax benefits are applicable.

3. When an attempt was made to deny the benefits of FMA to the respondents herein, who are all pensioners under the Employees Provident Fund Organization, they moved the Central Administrative

Tribunal, Ernakulam Bench and obtained the order impugned herein proscribing such action.

4. The Chairman, Central Board of Trustees of the Employees Provident Fund Organization, New Delhi and two other functionaries of the said organization are before us assailing the order of the Learned Tribunal, in O.A. No. 180/693/2014.

5. Under the order impugned herein, the learned Tribunal had allowed the Original Application filed by the respondents, wherein they sought for a declaration that they are entitled to the benefits of Fixed Medical Allowance ['FMA' for short] irrespective of their marital status.

6. The pleadings show that the respondents were impelled to make this request before the learned Tribunal because of Annexure A11 order, issued by the Assistant Provident Fund Commissioner, New Delhi, which is shown to be one clarifying certain queries raised by the various Authorities under the Employees Provident Fund Organization [hereinafter referred to as the 'EPFO' for brevity], as to whether the pensioners, whose spouses are also drawing pension under the Organization, would be entitled to an independent FMA. As per Annexure A11, the clarification offered by the said Authority was that this was impermissible, based on which, we see that certain attempts were made to recover the amounts from the petitioners on the ground that they have collected the FMA which was ineligible to them.

7. The learned Tribunal, after an in-depth assessment of all the various orders covering the field, concluded that Annexure A11 order was untenable and incompetent in law, since the clarification offered therein was not in tune or conformity with the specific prescriptions contained in the earlier orders granting the respondents the benefit of FMA. The petitioners have challenged this order of the learned Tribunal on various grounds; primarily that Annexure A11 has been issued without adverting to the definitive mandate of the various earlier orders issued by the Competent Authority of the EPFO and that had it been so adverted, the said order would not have been issued at all.

8. We have heard Sri. S. Sujin - the learned standing counsel appearing for the petitioners and Sri. C. S. Gopalakrishnan Nair, learned counsel appearing for the 1st respondent.

9. Before we embark on an examination as to the validity of the order of the learned Tribunal impugned in this O.P., we deem it appropriate to place on record certain very basic facts.

10. The FMA was introduced by the EPFO under the provisions of Sections 6D (vi) and 6D (vii) of the Employees Provident Fund and Miscellaneous Provisions Act 1952 [herein after referred to as the 'EPF Act' for brevity]. Initially, the benefit of FMA was offered only to the serving employees and not to pensioners, as is clear from Annexure R1 order dated 15.06.1984, under which the benefit was offered w.e.f. 01.07.1984. After Annexure R1 was issued, the authorities followed it up with Annexure

R2 order dated 05.03.1986, whereby a restriction was placed in the entitlement of the employees in availing FMA. This restriction was that if both the husband and wife are working in the EPFO, then only one of them would be entitled to avail the benefit of FMA.

11. Matters continued so until 14.08.1998, when Annexure R5 order was issued by the Authorities, extending the benefit of FMA to pensioners also. This benefit, through the said order, was made applicable to the pensioners w.e.f. 01.12.1997 and an amount of Rs.100/- was made entitled to them, which was at par with the Central Government Pensioners. The order also made it clear that the FMA offered therein was in addition to the reimbursement of the medical expenses under the Central Services [Medical Allowances] Rules 1944 [hereinafter referred to as 'CS [MA]' Rules]. The amount of the FMA was, thereafter, raised by issuing Annexure A2 order, dated 14.09.2005, to make it Rs.250/- w.e.f. 14.09.2005. A minor modification was made to Annexure A2 through Annexure A3 order, dated 02.12.2005, whereunder the applicable date was modified. It is ineluctable from Annexure R5 and Annexure A2 that no other conditions other than what is stated therein were imposed against the pensioners while availing the FMA.

12. While so, the amount of FMA was enhanced by Annexure A4 order, dated 05.01.2007, whereby it was raised to Rs.600/- w.e.f. 05.01.2007. In this order, four conditions are seen incorporated; firstly, that those persons who are under the cover of the Central Government Health Services ['CGHS' for short] will be excluded; secondly, that if the spouses are both working under the EPFO and both are in the same station, then they would only obtain one FMA; thirdly, that if the spouse is a government servant or working in other organizations, including private organizations, he/she will have to give an undertaking that no other medical facility is availed; and finally, the FMA is in lieu of the outdoor treatment under the CS [MA] Rules 1944.

13. The monetary benefits under the FMA was thereafter enhanced from Rs.600/- to Rs.1200/- through Annexure A5 order, dated 11.01.2010, and further to Rs.2000/-, w.e.f. 01.03.2013, as per Annexure A6 order. As is clear from Annexure A6, condition numbers 2 and 3 of Annexure A4 is incorporated therein also.

14. It transpires that in the backdrop of the aforeseen Government Orders certain queries were raised by the various Authorities before the Central office of EPFO relating to the admissibility of the benefits of FMA to employees whose spouses were also getting such benefits. This led to Annexure A11 clarification, which is also seen to be adverting to certain audit objections, whereunder it was clarified that restrictions placed in Annexures A4 and A6, with respect to serving employees, would also be applicable to pensioners like the respondents.

15. The respondents challenged Annexure A11 before the Learned Tribunal, as we have already indicated above, on the primary ground that it is not in consensus with the mandate of the relevant orders afore noticed.

16. We have examined the orders involved in this case in detail. The relevant orders are Annexures R1, R2, R5, A4 and A6. As per Annexure R1, FMA was introduced in the year 1984, but only for the serving employees of the EPFO. Axiomatically, the restriction shown in Annexure R2 order, against both husband and wife availing such benefits when both of them are employed with the EPFO, would therefore, apply only to the employees still serving, since at that time pensioners were not granted that benefit. It was only through Annexure R5 order, dated 14.08.1998, that the benefit of FMA was made applicable to pensioners, but without any condition, akin to those contained in Annexure R2, being incorporated therein. In fact, the subsequent orders enhancing the amount of FMA from time to time, namely, Annexures A2, A4, A5 and A6, do not contain any constraining restrictions on the right of the pensioners to obtain FMA, whether they are married or otherwise and whether they are in the same station or otherwise, except that it says that one of them ought not to be the beneficiary of the other under any other medical scheme.

17. The conditions in Annexure A4, as we have already seen above, are specifically with respect to serving employees and not with respect to pensioners at all. It is the same conditions, which are available in Annexure A4, that are incorporated in Annexure A6 also. It goes without saying, therefore, that Annexure A6 cannot have any greater restrictions imposed on the rights of the pensioners, than what was available in Annexure A4. However, the fact remains that there were no restrictions in Annexure A4 as regards the rights of the pensioners. Viewed from that angle, we fail to understand how the Authority, who issued Annexure A11 order, could have mandated that restrictions applicable to serving officers are applicable to pensioners also. This appears to be made without any cogitable basis, but underpinned on his incorrect interpretation of the orders, which the learned Tribunal has justifiably found untenable.

18. We cannot find fault with the view of the Tribunal because Annexure A11 order is not an independent order but is stated to be only a clarificatory one. In other words, Annexure A11 cannot impose fresh conditions or restrictions but can only clarify those which are available in the earlier orders. It is indubitable and the fact remains that there are no restrictions in the earlier orders with respect to pensioners and hence that there could not have been any further restrictions imposed through Annexure A11. Obviously, therefore, Annexure A11 to the extent to which it imposes restrictions on the rights of the pensioners, whether they be married or in the same station, cannot be found sustainable or justified in the scrutiny of law.

19. In the overview of the above factual standing, we are firmly of the opinion that the learned Tribunal has not erred in issuing the impugned order. We find that the same is, therefore, irreproachable and deserving of our approval. We, thus, dismiss this Original Petition, but deem it appropriate not to make any orders as to costs, leaving the parties to suffer their respective cost."

2. Therefore, the matter has now become concretized as apparently no SLP is seen filed. Therefore, the OA is allowed on the same grounds and to the same extent. All the benefits to be made available to the applicant within two months next. No order as to costs.

(DR K B SURESH)
MEMBER (J)

/ksk/

Annexures referred to by the Applicant in OA No.170/00159/2018

Annexure A1 : Copy of the pension payment order

Annexure A2 : Copy of the letter dated 29.06.2017

Annexure A3 : Copy of the representation dated 06.12.2017

Annexure A4 : Copy of the representation dated 27.12.2017

Annexure A5 : Copy of the letter dated 16.01.2018

Annexure A6 : Copy of the statement made by the applicant of salary particulars

Annexure A7 : Copy of the order dated 12.01.2018 in OP (CAT) No. 25/2017

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