

(2018) 12 CAT CK 0124

In the Central Administrative Tribunal

Case No : Original Application No. 1247 Of 2016

Anjali Puri

APPELLANT

Vs

Ministry Of Railways Through And Ors

RESPONDENT

Date of Decision : 24-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0124

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Jagrati Singh, Satpal Singh

Final Decision : Allowed

Judgement

1. Through the medium of this OA, the applicant has prayed for the following reliefs :-

"(i) To quash and set aside the order dated 12.01.2016.

(ii) To direct the respondents to release the Family Pension to the applicant.

(iii) To grant 18% interest on the of arrears.

(iv) To allow the original application with cost of the litigation.

(vi) To pass such other and further order which their Lordships of this Hon"ble Tribunal fit and proper in existing terms and circumstances of the case."

2. Briefly stated the facts of the case are that the applicant"s father (Late) Sh. Kundan Lal Puri was working as Wireless Operator at Northern Railway, Firozpur expired on 31.05.1962.

3. After his death, his wife, late Smt. Leelawati was sanctioned family pension w.e.f.01.06.1962 vide PPO No.P9/Pen/FZR 580. She continued to receive the family pension till her death 25. 06.2004.

4. The applicant"s contention is that she is the unmarried and unemployed

sibling of late Shri Kundan Lal Puri and is entitled for getting the family pension. In support, she has relied upon the OM dated 06.09.2007 (Annexure A-4) of Department of Pension & Pensioner's Welfare wherein the scope of family pension has been extended to widowed/unmarried/divorced daughter of a government servant/pensioner. As per this OM unmarried daughters beyond 25 years of age will also be eligible for family pension at par with the widowed/divorced daughters subject to fulfilling other conditions. Vide another OM dated 02.09.2008, the Department of Pension and Pensioner's Welfare (Annexure - A/5) has clarified the issue by categorising "Family" for the purpose of grant of family pension. It has been stated therein that:-

"8.4 For the purpose grant of Family Pension, the "Family" shall be categorised as under:

(a) Widow or widower, upto the date of death or re-marriage; whichever is earlier;

(b) Son/daughter (including widowed daughter), upto the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of 25 years, whichever is the earliest.

(c) Unmarried/widowed/Divorced daughter, not covered by Category I above, upto the date of marriage/re-marriage or till the date she starts earning or upto the date of death, whichever is earliest.

(d) Parents who were wholly dependent on the Government servant when he/she was alive provided the deceased employee had left behind neither a widow nor a child. Family pension to dependent parent unmarried/divorced/widowed daughter will continue till the date of death.

Family pension to Unmarried/widowed/divorced daughters in Category II and dependent parents shall be payable only after the other eligible family members in Category I have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension, Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category."

5. In this regard another OM has been issued by Department of Pension & Pensioner's Welfare dated 28.04.2011, stipulating that -

"5. The matter has been considered in this Department in consultation with Department of Expenditure, Ministry of Finance. It is hereby clarified that subject to fulfilment of other conditions laid down therein, the widowed/divorced/unmarried daughter of a Government servant/Pensioner, will be eligible for family pension with effect from the date of issue of respective orders irrespective of the date of death of the Government servant/Pensioner. Consequently, financial benefits in such cases will accrue from the date of issue of respective orders. The cases of dependent disabled siblings of the Government servants/Pensioners

would also be covered on the above lines."

6. The applicant approached the respondents for grant of family pension in accordance with OM dated 06.09.2007 (Annexure A-4). However, the respondents vide their letter dated 12. 01.2016 informed her that the mother of the applicant had died on 25.06.2004 and the applicant, being third beneficiary on 23. 10.2013, does not fulfil the dependency criteria for grant family pension, and is thus not eligible for the same.

7. The respondents in their counter affidavit submit that grant of family pension to the mother of the applicant late Smt. Leelawati w.e.f.01.06.1962 was granted erroneously. The applicant's mother had died on 25.06.2004 and the applicant (who is the 3rd beneficiary) has claimed grant of family pension after a period of nine years of her mother's death. Hence her case is hit by limitation and on merit too she does not fall in the dependency criteria.

8. The respondents further aver that service record of late Shri Kundan Lal are not available since the case is extremely old and the period prescribed for preservation of record settlement is 15 years.

9. The applicant challenged the order dated 12.01.2016 vide OA No.1247/2016 by which she had been informed that her claim for family pension is not covered under 3rd beneficiary rules. The Tribunal in its judgment dated 18.08.2017 held that the applicant has agitated her claim for family pension after an unexplained delay of 09 years and in the light of the ratio of law laid down by the Hon"ble Supreme Court in the case of Ratan Chandra Sammanta & Ors. v. Union of India & Ors., [AIR 1993 SC 2276], the OA was dismissed.

10. The applicant filed an appeal against this order before the Hon"ble High Court of Delhi vide WP (C) No.9967/2017. Vide order dated 24.07.2018, the case has been remanded back to the Tribunal for fresh adjudication of the case, hence the present OA.

11. The case was taken up for hearing today. Both sides reiterated the issues already raised in the OA and the counter affidavit, respectively.

12. The thrust of arguments advanced by the learned counsel for the respondents Shri Satpal Singh was two folds. Firstly, that the case of the applicant is hit by delay and laches as already held in OA No.1247/2016. Secondly, that the Railway Board Policy does not extend the benefit of family pension of ex-gratia pension under rule 1986 to the then DPO/FZR. The learned counsel submitted that the father of the applicant died on 31. 05.1962 and the benefit of family scheme was introduced in the year 1964, when the Railway Service (Pension) Rules, 1993 were not extended/admissible.

13. Per contra, the learned counsel for the applicant, Ms. Jagrati Singh strongly argued that it has wrongly been held by the respondents that there is a delay of nine years in her case. She stated that DoP&T had issued the O.M. dated 06.09.2007 (Annexure A-4), which was adopted by the Railways on 20. 05.2011

(Annexure A-6), when the applicant got to know about the said policy she represented to the respondents in 2013, since she was not eligible for family pension prior to issue and subsequent adoption of this policy by the Railways. So effectively, the delay was only of two years. Being a pension matter, the same is a recurring cause of action and hence would not attract law of limitation.

14. I have gone through the facts of the case carefully and also considered the rival submissions made by both sides.

15. The fact that law of limitation is not a hurdle to the claim of the applicant for family pension can clearly be inferred from the observations of the Hon"ble High Court in Para-5 of order dated 24. 07.2018 wherein their Lordships held that :-

"5. We are of the opinion that since the respondent does not deny the entitlement of the petitioner's mother to family pension, which was being granted to her till she expired on 25.06.2004, any claim of the petitioner as a third beneficiary on the demise of her mother would still survive since the period of 15 years, which is a mandatory period for the respondent to retain the records, would have to be reckoned from 25.06.2004 and the said period would end only on 24.06.2019. In any case, the relief for grant of pension being a recurring cause of action, the law of limitation cannot be construed strictly for non-suiting the petitioner. The offer made by learned counsel for the petitioner of confining the monetary relief to a period of three years reckoned from the date of filing of the O.A. before the Tribunal, is found to be a reasonable one. The petitioner shall remain bound by the same."

16. It is also a fact that the petitioner's mother was the recipients of family pension from 62 onwards till 25.06.2004. In terms of Annexures A-4 and A-5 of DoP&T, unmarried daughter is eligible for grant of pension. The contention that these are not applicable to Railways is not correct in view of OM dated 20.05.2011 (Annexure A-6). The claim of the applicant as third beneficiary and on limitation also finds strength in the above mentioned observations of the Hon"ble High Court of Delhi.

17. In view of the facts discussed above, I quash and set aside the order dated 12.01.2016. The respondents are directed to release the Family Pension in favour of the applicant within two months from the date of issue of a certified copy of this order. However, in view of the undertaking given by the applicant before the Hon"ble High Court of Delhi, the monetary relief to the applicant is confined to a period of three years from the date of filing of the OA. The OA is allowed. No costs.