

(2010) 12 SHI CK 0215
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 11399 of 2008

Radha Krishnan and Others	Vs	APPELLANT
State of Himachal Pradesh and Another		RESPONDENT

Date of Decision : 27-12-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 37, 38, 39, 54

Citation : (2010) 12 SHI CK 0215

Hon'ble Judges : V.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Sharma, J.—The petition has been filed on the following averments set up vide para-6(1) to (5):

1. That the applicant is a Scheduled caste widow having three children to look after, inasmuch as one of them is a handicapped boy and cannot be expected to work hard to look after the family. Her husband, Raj Kumar, was serving as a Home Guard volunteer to the post of Havaladar since 29.9.1974. He was declared completely and permanently incapacitated for further service. As a result, an invalid pension was granted to him w.e.f. 27th June, 1990, which was received by him till his death i.e. 4th December, 1996.
2. That after his death, the applicant was entitled to receive family pension, but she was not granted the same. Accordingly, she approached the authorities concerned, from time to time and finally, detailed representations were made to the different authorities, copies of which are A-1 & A-2 annexed hereto and marked as Annexures A-1 and A-2 respectively.
3. That the Director General of Police, Home Guards, Civil Defence and Fire Services, H.P. Shimla took up the matter with the Respondent No. 2 for the grant of pension but the Respondent No. 2 raised certain objections and sought certain clarification, which was given vide letter No. HOME(HC)H(B)(2)14/75-II-2514-18

dated 18.4.2002, whereby it has been clarified that the family of a volunteer Home Guard who was declared medically unfit and given invalid pension is entitled to family pension in terms of Rule 54 of CCSA, 1972 as stated in para 2 of above notification dated 2.1.09 issued by H.P. Govt. No. HG-Miss.6-16/66 A-3 copy of letter dated 16.4.2002 is annexed as Annexure A-2.

4. Being not satisfied with the above clarification, Respondent No. 2 took up the matter with Respondent No. 1 vide letter dated 10.5.2002 and thereafter reminder dated 13.10.2003, by way of Demi-official letter in the name of the Special Secretary(Home) to the Govt. of H.P., copies of which are annexed hereto and marked as Annexure A-4 & A-5 respectively, but to no avail.

5. That the action of the Respondents in delaying the matter pertaining to the family pension was agitated before this Hon'ble Tribunal by way of OA No. 641 of 2004, which was taken up by this Hon'ble Tribunal and directed the Respondent No. 1 to decide the representations made by the applicant, vide its order dated 17.3.2004. Accordingly, Respondent No. 1 decided the representation by the Respondent No. 1 vide letter No. Home(B)(B)15-5/2000-Loose dated 29.4.04 without any opportunity of being heard and that too without considering the earlier mentioned by the Director General of Police, Home Guards, Civil Defence and Fire Services, H.P. Shimla in its letter, Annexure A-3, nor any reference has been made in the decision given by the Respondent No. 1. Once a decision has been taken by the Govt. regarding the grant of family pension to those, who have been granted invalid pension then the plea of Rule 39 of the CCS(Pension) Rules, 1972 would not come its way and the applicant is entitled to the family pension, for which she has been agitating throughout. Copy of the letter dated 29.4.2004 issued by the Principal Secretary(Home) to the Govt. of Himachal Pradesh to the applicant is annexed hereto and marked as Annexure A-6.

6. That the action of the Respondent No. 1 in rejecting the representation of the applicant is wrong, illegal, arbitrary, unconstitutional and against the principles of natural justice, equity and good conscience besides being ultravires to the instructions contained in the Notification issued by the State Government keeping in view the practical difficulty and hardship being caused to the bereaved families of those Home Guards who rendered their valuable and prime life for the National activities and societies etc. etc. but they have been deprived of their legitimate right of family pension although they have otherwise considered eligible for the same. In this view of the matter, interest of justice requires that the Respondents may be commanded by an appropriate writ, order or direction directing the Respondents to act in accordance with law and to grant family pension to the applicant in view of the instructions issued by the State Govt. in this behalf, which if not done, will result into miscarriage of justice.

2. On the above averments, the petition has been filed on the following substantive prayer vide para 7(b):

7(b) Impugned order contained in Annexure A-6, dated 29.4.04 may kindly be

quashed and set aside and the Respondents may be directed to grant family pension and other benefits be released in favour of the applicant, alongwith interest as may be found due and payable to the applicant.

3. In reply on behalf Respondent No. 1, the following stand has been taken vide para 6(1), (2) & (6):

6(1) Admitted to the extent that the late Raj Kumar the husband of the applicant had been as a Home Guard volunteer since 29.9.1974 and he was granted invalid pension w.e.f. 8.5.1991 for being declared permanently incapacitated on account of injuries sustained while on duty. He received the invalid pension till his death i.e. 4th December, 1996 6(2) In reply to this para, it is submitted that Rule 38 of C.C.S.(Pension) Rules, 1972 covers the invalid Pension, but there is no specific provision under the Rules-ibid to convert family pension into family pension. Besides there is no specific provision in the H.P. Home Guard Rules 1971 to grant family pension in case of a Home Guard volunteer who retires on invalid pension. 6(6) In reply to this para it is submitted that the representation of applicant has been rejected in the light of provisions of Rule-39 of CCS Pension Rules-1972 which does not entitle the applicant to family pension. Therefore, the decision conveyed by the Respondent No. 1, vide letter dated 29th April, 2004 as annexed as R/4 is legal and as per the provisions of the existing Rules. In view of the above facts and under of H.P. Home Guards (1st amendment) Rule-1988, dated 2nd January, 1989, readwith Rule-39 of C .C.S. Pension Rule-1972, is not entitled to the family pension.

4. By filing separate reply, Respondent No. 2 has averred as under vide para-6:

6. In reply to this para it is respectfully submitted that Shri Raj Kumar, husband of the applicant, was Home Guard volunteer. He was granted invalid pension @ Rs. 375/- P.M. (minimum) w.e.f. 8.5.1991. But at the time of issuing of P.P.O. granting invalid pension, family pension payable to the wife in the event of death of Govt. servant was not reported upon due to the reason that there were/are no provision for allowing Family Pension as per H.P. Govt. Notification No. HG-Misc. 6-16/66 dated 08-02-1972 and amended vide Notification No. Home-II(B) 15-10/77-II dated 2-01-1989. Extract of Rule 15(3) of Notification dated 2-01-1989 is attached as Annexure R-1. Clarification in this regard was sought from the Respondent department vide Para.8 of Certificate and Report dated 21-8-1991. But no reply was received from the Respondent Deptt. Thereafter, the applicant Smt. Savitri Devi(wife) represented to the Replying Respondent for the grant of family pension in the event of death of her husband on 4-12-1996. To this effect matter was again taken up with the State Govt. (Respondent No. 1) vide letter No. Pension-1/R-21/91-92/8541-43 dated 3-4-2002. In response to this letter, the Respondent Department vide their letter dated 16-4-2002 and not 16-4-2001 as mentioned in the annexure (Annexure A-3) had send the reply. Since the reply was not found correct, the matter was taken up with the Special Secretary(Home) to the Government of H.P. Shimla-2 demi officially vide d.o. letter dated 10-5-2002 (Annexure A-4). A d.o. reminder dated 13-10-2003

(Annexure A-5) was also issued. But no reply was received. Feeling aggrieved, the applicant has filed O.A. No. 641/2004 before Hon"ble Tribunal Shimla. The Hon"ble Tribunal vide its order dated 17-3-04 directed the State Government to take into consideration the above letter (Annexure A-5) before deciding the representation.

D.O. letter dated 6-7-2004 was issued to the Replying Respondent No. 1 to convey the decision of the Govt. Respondent No. 1 vide its letter dated 30-08-2004 informed that the Plaintiff's representation was considered and her request could not be agreed to vide letter dated 29-4-2004 (Annexure A-6). Reply Respondent No. 2 vide letter No. Pension-1/R-21/91-92/2004-054263-64 dated 20-10-2004 again requested the Principal Secretary(Home) to the Govt. of H.P., shimla-2 to convey the exact decision of the Government (copy enclosed as annexure R-2). Reminder was also issued vide this office letter dated 12-01-2005 (copy enclosed as annexure R-3). But replying Respondent No. 1 has not so far conveyed any decision to Replying Respondent No. 2. In view of the above, there is no action now on the part of the Replying Respondent. Rest of the averments need no submission.

5. The claim of the Petitioners for family pension has been rejected by Respondent No. 1 vide letter dated 29th April, 2004, Annexure A-6, on the following ground:

In compliance of the directions of the Hon"ble H.P. Administrative Tribunal, your representation has been considered in consultation with the Finance Department who are of the view that Rule 39 of CCS(Pension) Rules, 1972 covers the invalid pension, but there is no such provision under the Rules *ibid* for conversion of invalid pension into family pension.

Keeping in view the advice of Finance Department your request has been considered but the same could not be agreed to.

6. A bare perusal of the aforesaid letter dated 29th April, 2004, Annexure A-6, would go to show that a reference has been made therein to Rule 39 of the CCS(Pension) Rules, 1972 (in short the "Rules"), which Rule on the face of it has no application in a case of invalid pension and instead the same relates to Compensation pension.

7. Admittedly, the deceased, late Shri Raj Kumar was getting invalid pension under Rule 38 of the Rules. The matter with regard to grant of family pension is covered under Rule 54 of the Rules, sub rule (1) & (2) whereof being relevant for the present controversy, are extracted below:

(1) The provisions of this rule shall apply-(a) to a Government servant entering service in a pensionable establishment on or after the

1st January, 1964; and (b) to a Government servant who was in service on the 31st December, 1963 and came to the governed by the provisions of the Family Pension Scheme for Central Government Employees, 1964, contained in the

Ministry of Finance, Office Memorandum No. 9(16)-E.V(A)/63, dated the 31st December, 1963, as in force immediately before the commencement of these rules.

{Note- The provisions of this rule will also extend, from 22nd September, 1977, to government servants on pensionable establishments who retire/died before 31-12-1963, as also to those who were alive on 31-12-1963, but had opted out of 1964 Scheme.}

(2) Without prejudice to the provisions contained in Sub-rule (3), where a Government servant dies-(a) after completion of one year of continuous service; or (aa) before completion of one year of continuous service, provided the deceased Government servant concerned immediately prior to his appointment to the service or post was examined by the appropriate Medical Authority and declared fit by that authority for Government service; or (b) after retirement from service and was on the date of death in receipt of a pension, or Compassionate Allowance, referred to in Chapter V, other than the pension referred to in Rule 37, the family of the deceased shall be entitled to Family Pension, 1964 (hereinafter in this rule referred to as family pension) the amount of which shall be determined in accordance with the Table below:

Not printed. See GID(19) below this rule. Explanation-The expression "continuous one year of service" wherever it occur in this rule shall be construed to include "less than one year of continuous service" as defined in Clause(aa).

8. Thus, in view of sub rule (2)(b) of Rule 54, it is manifest that where a Government Servant dies after retirement from service and was on the date of death in receipt of pension, other than the pension referred to in Rule 37, the family of the deceased shall be entitled to family pension. In this case, there is no doubt that invalid pension was being paid to the deceased under Rule 38. It being so, even if "the H.P. Home Guards Rules as amended from time to time are silent in regard to the admissibility of family pension to the family members of the Home Guard Volunteers who suffered from permanent disability and drawing invalid pension and died subsequently", it would not make any difference in view of express provisions of sub rule (2)(b) of Rule 54, which covers invalid pension under Rule 38. Furthermore, it is settled that in case the special Rules are silent on a particular matter, the General Rules would apply.

9. In view of the above, the petition is allowed. Consequently, Annexure A-6, dated 29th April, 2004, whereby the claim of the Petitioners for grant of family pension was rejected, is quashed with a direction to the Respondents to grant family pension to the Petitioners within three months from the date of production of copy of this judgment by them before both the Respondents separately, failing which interest at the rate of 9% p.a. shall also be payable from the due date(s).

10. The petition stands disposed of, so also pending CMP(s), if any.