
(2018) 03 CAT CK 0069
In the Central Administrative Tribunal
Case No : Original Application No. 4286 Of 2016

Rajni Gupta

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 12-03-2018

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2018) 03 CAT CK 0069

Hon'ble Judges : K.N. Shrivastava, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, K M Singh

Final Decision : Disposed Of

Judgement

1. Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

"(i) That the Hon"ble Tribunal may graciously be pleased to pass an order of quashing the impugned 6.9.2016 (A/1) and order dated 30.11.2016 (Annex.A/2), declaring to the effect that the same is illegal, arbitrary and discriminatory and consequently pass an order directing the respondents to restore the family pension of the applicant as per revised PPO dated 28.10.2015 w.e.f. 1.1.2006 and as per OM dated 6.4.2016 with all consequential benefits including arrears of difference of family pension with interest.

(ii) That the Hon"ble Tribunal may graciously be pleased to pass an order directing the respondents not to recover any amount from the family pension of the applicant and also refund the same if already recovered with interest."

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant is widow of late Mr. D K Gupta, who was working as an Inspector in Central Excise & Customs Department and died in harness on 27.01.2000. He was then in the pay scale of `5500-9000. The applicant was

sanctioned family pension vide Annexure R-1 order dated 09.05.2000. It indicates that the applicant would be getting family pension at enhanced rate @ `3275/- per month from 28.01.2000 to 27.01.2007 and thereafter she would be getting the family pension at the normal rate @ `1965/- per month w.e.f. 28.01.2007.

2.2 After the implementation of 6th Central Pay Commission (CPC) recommendations, the respondents issued Annexure A-4 order dated 06.10.2015 whereby the family pension of the applicant has been enhanced to `9230/- w.e.f. 01.01.2006 considering the revised pay of her late husband in 5th CPC as `7450-225-11500, whose replacement pay scale under the 6th CPC was Pay Band-2 - `9300-34800 with Grade Pay of `4600/-. The applicant was accordingly getting revised family pension in terms of Annexure A-4 order dated 06.10.2015. Subsequently, the respondents discovered that the applicant was being paid higher revised pension under 6th CPC. They declared that the pre-revised pay scale of her late husband as per 5th CPC was wrongly considered as `7450-225-11500 and that Mr. D K Gupta, late husband of the applicant at the time of his death, was in the pre-revised pay scale of `5500-9000 as per 5th CPC, whose replacement scale under 6th CPC is Pay Band-2 - `9300-34800 with Grade Pay of `4200/-. Accordingly, the respondents have downwardly revised the family pension of the applicant vide impugned Annexure A-1 letter dated 06.09.2016. As a result, the revised enhanced family pension w.e.f. 01.01.2006 to 27.01.2006 is fixed @ `7403/- per month instead of `9230/- per month and at normal rate w.e.f. 28.01.2016 @ `4442/- instead of `5538/- per month. Annexure A-1 order has entailed in recovery from the applicant towards alleged excess payment. This factum was communicated to the applicant vide Annexure A-2 order dated 30.11.2016.

Aggrieved by the Annexures A-1 & A-2 orders, the applicant has filed the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The respondents have also filed an additional affidavit.

4. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 30.01.2018. Arguments of Mr. Yogesh Sharma, learned counsel for applicant and that of Mr. K M Singh, learned counsel for respondents were heard.

5. I have considered the arguments of learned counsel for the parties and have also perused the documents placed on record, including the pleadings.

6. From the documents placed on record, it is quite evident that late Mr. D K Gupta, husband of the applicant at the time of his death in harness on 27.01.2000, was working as Inspector, Central Excise & Customs in the pay scale of `5500-9000 as per 5th CPC. The said pay scale of `5500-9000 was much later upgraded to `6500-10500 vide 21.04.2004. There is no document on record to prove that the pay scale of Inspector, Central Excise and Customs was ever

revised to `7450-11500, whose replacement pay scale in 6th CPC was Pay Band-2 - `9300-34800 with Grade Pay of `4600/-. The replacement scale for `5500-9000, under 6th CPC, is Pay Band-2 - `9300-34800 with Grade Pay of `4200/-. Pertinent to mention that the revision of pension of a government servant or after his death, family pension for his legal representatives is required to be fixed in accordance with the pay scale in which he retired or he was working at the time of his death in harness. Such family pension undergoes revision in accordance with the replacement scales recommended by the CPCs from time to time.

For civilian staff, the benefits of "one rank one pension" (OROP) are not available, meaning thereby that in case of revision of pay scale of a post to higher level, a retiree of the post does not get benefits of such revision, unlike the defence personnel. Admittedly, the applicant's husband at the time of his death was in the pay scale of `5500-9000, for which the replacement scale in 6th CPC is Pay Band-2 - `9300-34800 with Grade Pay of `4200/-. Hence, I am of the view that no fault can be attributed to Annexures A-1 & A-2 orders of the respondents whereby they have corrected their mistake and have refixed the family pension of the applicant, post-6th CPC, in accordance with Pay Band-2 - `9300-34800 with Grade Pay of `4200/-, which is the replacement scale for `5500-9000, in which the applicant's husband, at the time of his death, was.

7. The second issue, which is to be considered, is with regard to the excess payment made to the applicant by virtue of Annexure A-4 order dated 06.10.2015. In this regard, it is to be stated that the applicant has not indulged into any kind of misrepresentation or suppression of fact for getting higher family pension. The mistake is entirely attributable to the respondents since the Annexure A-4 order and thereafter corrective Annexures A-1 & A-2 orders have been issued by them on their own without any infringement from the applicant. Hence, placing reliance upon the judgment of Hon"ble Supreme Court in State of Punjab & others etc. v. Rafiq Masih (White Washer) etc. (Civil Appeal No.11527/2014 with connected Appeals) decided on 18.12.2014, I am of the view that the respondents are not justified in making any recovery from the applicant towards the excess payment.

8. In the conspectus of discussions in the pre-paragraphs, this O.A. is disposed of in the following terms:-

i) Annexure A-1 order dated 06.09.2016 and Annexure A-2 order dated 30.11.2016 are upheld. The family pension of the applicant has been correctly fixed as per Annexure A-1 order dated 06.09.2016.

ii) The recovery ordered by the respondents towards excess payment as per Annexure A-7 communication dated 13.11.2016 is hereby quashed and set aside. The respondents are directed to pay back the recovered amount to the applicant. This shall be done within two months from the date of receipt of a copy of this order.

iii) The applicant shall be paid family pension in accordance with Annexure A-1 order dated 06.09.2016 with effect from this month, i.e., March 2018.

No order as to costs.