

(2008) 01 GUJ CK 0088

In the Gujarat High Court

Case No : Special Civil Application No. 29940 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Kantaben B. Dalal

RESPONDENT

Date of Decision : 17-01-2008

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 54, 54(2), 54(3)
Constitution of India, 1950 — Article 226, 227
Family Pension Rules, 1964 — Rule 37
Railway Services (Pension) Rules, 1993 — Rule 75, 75(2)

Citation : (2008) 1 GLH 445

Hon'ble Judges : R.R. Tripathi, J;M.S. Shah, J

Bench : Division Bench

Advocate : Y.N. Ravani, for Petitioners 1-4, for the Appellant; None for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Shah, J.—In this petition under Articles 226 and 227 of the Constitution, the Union of India and the officers in the Postal Services Organisation have challenged the judgment and order dated 02.07.2007 of the Central Administrative Tribunal, Ahmedabad.

2. The respondent is the widow of a postman employed by the petitioner authorities. The deceased was proceeded for the charge of unauthorised absence for about five months. The disciplinary authority imposed the punishment of removal from service. After exhausting the departmental remedies, the deceased approached the Central Administrative Tribunal, which allowed the application of the deceased and by order dated 17.01.2002 directed the authorities to consider the Original Application before the Tribunal as a Revision Petition and to decide it on merits. Member (Personnel) Postal Service by his order dated 19.04.2002 modified the order of penalty for removal from service to that of compulsory retirement, in view of the length of the services already put in by the deceased. Thereafter, the deceased expired on 13.11.2005. When the respondent requested

the authorities for granting her family pension, the authorities turned down the request on the ground that the deceased had not put in the qualifying service of 10 years and that he had put in only 7 years and 11 months service.

3. After considering the relevant Rules and after hearing the learned Counsel for the parties, the Tribunal allowed the application and directed the authorities (petitioners herein) to pay family pension to the present respondent with a further direction that if arrears are not paid within three months from the date of receipt of the order, the amount shall be paid with interest at the rate of 9% per annum from the date of the order till the date of payment. While rendering the above decision, the Tribunal followed the decision of the Tribunal in Original Application No. 102 of 2004 (against which the petition is dismissed by this Court) taking the view that even if a railway servant retires after putting in continuous service of more than one year, but less than the qualifying service and dies thereafter, the case will be governed by Rule 75(2)(a) and not by Rule 75 (2)(c) of the Railway Servants (Pension) Rules. Accordingly, the widow will be entitled to family pension. The relevant provisions of Rule 75 of Railway Servant Pension Rules, 1993 also have been found to be *pari materia* with the relevant provisions of Rule 54 of the Central Civil Services (Pension) Rules.

It is against the aforesaid decision that the authorities have moved this Court.

4. There is no dispute about the fact that the relevant Rules applicable in the facts of the present case are the Central Civil Services (Pension) Rules, more particularly, Sub-rule (2) of Rule 54 thereof which reads as under:

(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 of post was examined by the appropriate Medical Authority and declared fit by that authority for Government 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 Rules, 1964 (hereinafter in this rule referred to as Family Pension) the amount of which shall be determined in accordance with the Table below:

A bare reading of the above provisions clearly indicate that when a Government servant dies after completion of one year of continuous service, the family of the deceased shall be entitled to Family Pension, 1964.

5. The submission of Mr. Ravani, learned Standing Counsel for the petitioners is that in view of Clause (b) where a Government servant was not drawing any

pension during his lifetime, upon his death, his widow cannot get family pension.

6. Family pension is payable to the widow of the deceased employee of the Central Government where the case falls under any of the three Sub-clauses (a), (aa) and (b). Reliance placed by Mr. Ravani on Sub-clause (b) does not carry the matter any further because the contingency contemplated by Sub-clause (b) is only one of the contingencies and the same does not exclude the applicability of Sub-clause (a) or Sub-clause (aa).

7. Apart from the fact that we are not inclined to accept the petitioner's submission on merits, we are also bound by the decision of another Division Bench of this Court in Special Civil Application No. 24395 of 2005 and Special Civil Application No. 22261 of 2005, wherein this Court had confirmed the interpretation placed by the Tribunal on similar Rules applicable to railway servants-that even if a Government servant retires after having put in continuous service of more than one year, but less than the qualifying service and dies thereafter, the widow will be entitled to family pension.

8. In view of the above discussion, the petition is summarily dismissed.