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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WRIT PETITION(C) No. 3194/2016**

Date of decision: 20<sup>th</sup> October, 2016

DELHI DEVELOPMENT AUTHORITY ..... Petitioner

Through Mr. Arun Birbal & Mr. Sanjay Singh,  
Advocates.

versus

USHA RANI ..... Respondent

Through Mr. Saurabh Ahuja, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SANJIV KHANNA**

**HON'BLE MS. JUSTICE SUNITA GUPTA**

**SANJIV KHANNA, J. (ORAL):**

The petitioner-Delhi Development Authority in this writ petition has impugned the order dated 20<sup>th</sup> August, 2015 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 2129/2014. The aforesaid OA was filed by Usha Rani, the respondent before us, challenging the order dated 9<sup>th</sup> January, 2014 stopping family pension and order/letter dated 12<sup>th</sup> March, 2014 directing her to refund family pension of Rs.6,38,522/- paid to her.

2. The respondent is daughter of late Lala Ram, a retired employee of the Delhi Development Authority who has superannuated on 31<sup>st</sup> March, 2009.

3. An year after his retirement, Lala Ram expired on 8<sup>th</sup> May, 2010.

The respondent at that time was about 35 years of age. She had applied for family pension, which was allowed vide pension payment order dated 12<sup>th</sup> July, 2011, with effect from 9<sup>th</sup> May, 2010.

4. Subsequently, the petitioner received complaints that the respondent was working and earning and, therefore, was not entitled to family pension. On ascertaining that the respondent had been working as News Reel Steno in Prasar Bharti from 1<sup>st</sup> January, 2012 to December, 2012 and had earned more than Rs.3,500/- per month, family pension was stopped and a direction of refund of the payments already made was issued.

5. The impugned order holds that the respondent being a divorced daughter of the deceased Government servant was entitled to family pension till she re-marries or up to her lifetime or till she starts earning monthly income exceeding Rs.3,500/- plus dearness allowance, whichever was earlier. The income received by the respondent was irregular and in the nature of contractual payments which were made depending on the work that was allocated to the respondent by the News Services Division of All-India Radio. It was unclear and whether the respondent had received more than Rs.3,500/- plus dearness allowance per month at any relevant point of time. In such circumstances, the respondent cannot be denied family pension for the income earned by her was not in excess of the limit mentioned and prescribed under the Pension Rules. Moreover, the Ministry or the Department of the Government, under Rule 88 of the

Central Civil Service (Pension) Rules (Rules, for short), has the power to relax the operation of the Rules. At the same time, the impugned order records that the respondent had accepted that she was earning between Rs.1000/- to Rs.9,720/- per month.

6. For the sake of convenience, least there be any confusion, we would like to reproduce paras 6 and 7 of the impugned order:-

“6. On merits, there is no dispute that the applicant was found entitled to receive family pension and was being paid the same from time to time. As has been noticed hereinabove, the dispute is whether after starting earning she should continue receiving pension or not. As can be seen from the rules placed on record by the applicant as enclosure to Original Application (pages 69-70), widow daughter/ divorced daughter/ unmarried daughter of deceased Government servant is also entitled for the family pension till her remarriage or up to life time or starts earning a monthly income exceeding Rs.3,500 + DA admissible from time to time p.m. whichever is earlier. In the present case, admittedly, the applicant started earning from January 2012. Nevertheless, the earning is not regular but is perquisite of contractual employment, which she got in New Service Division of All India Radio from time to time. It is not clear whether the amount (perquisites) received by her from New Service Division of All India Radio every month was more than Rs.3500/- + DA admissible to a Government servant at relevant point of time or not. In any case, from the averments made in paragraph 4.9 of the Original Application, it is clear that the applicant could receive different amounts of perquisites between Rs.1000/- to Rs. 9720/-. The intent of the rules relied upon by learned counsel for applicant is very clear, i.e., the payment of family pension should

be discontinued when the recipient received some regular monthly amount @ Rs. 3500/- + DA. In the present case, it is not so. In such a situation, the applicant could be denied family pension during the month she received the amount of perquisites in excess of the limit mentioned in the aforementioned rules (as revised from time to time). The provisions of Rule 88 are incorporated in CCS (Pension) Rules to deal with such situations, which read thus:-

“88. Power to relax

Where any Ministry or Department of the Government is satisfied that the operation of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.”

7. In the wake, the Original Application is disposed of with direction to the respondents to verify the amount received by the applicant from New Service Division of All India Radio after January 2012 and finalize her claim for family pension within three months from the date of receipt of a copy of this Order. For the month the applicant received perquisites from New Service Division in excess of limit mentioned in the relevant rules (ibid), the family pension would be nixed to her and the amount already paid would be recovered. Nevertheless, if in any month the amount received by her was less than the specified limit, no recovery should be made. For future period, the family

pension would be released only on furnishing certificate by the applicant that she had not earned any amount in excess of the limit mentioned in the relevant rules as well as the certificate from the agency where she is gainfully employed in this regard. No costs.”

7. In the original application, the respondent did not deny or contest that she was working in Prasasr Bharti or All-India Radio and had earned Rs.73,642.50 during the period 1<sup>st</sup> January till 31<sup>st</sup> December, 2012. It is not denied that family pension plus dearness allowance was paid during the same period. For the sake of completeness and as the table in the original application is of some relevance, we would like to reproduce the same in entirety without making any changes or modifications:-

“

| <b>Months January 2012 to 31<sup>st</sup> March, 2013</b> | <b>Min. family pension + Dearness Allowance/Relief. (2)</b> | <b>Amount received from Prsar Bharti (3)</b> | <b>Difference between (2) &amp; (3)</b> |
|-----------------------------------------------------------|-------------------------------------------------------------|----------------------------------------------|-----------------------------------------|
| January, 2012                                             | Rs.5775/- (Rs.3500 + DA 65% of Rs.3500 i.e. Rs.2275)        | Rs.4009.50/-                                 | Rs.1765.50/-                            |
| February, 2012                                            | Rs.5775/-                                                   | Rs.2916/-                                    | Rs.2859/-                               |
| March, 2012                                               | Rs.5775/-                                                   | Rs.7290/-                                    | (Rs.1515/-)                             |
| April, 2012                                               | Rs.5775/-                                                   | Rs.9720/-                                    | (Rs.3945/-)                             |
| May, 2012                                                 | Rs.5775/-                                                   | Rs.8100/-                                    | (Rs.2325/-)                             |
| June, 2012                                                | Rs.5775/-                                                   | Rs.2592/-                                    | Rs.3183/-                               |
| July, 2012                                                | Rs.6020/- (Rs.3500 + DA 72% of Rs.3500 i.e. Rs.2520)        | Rs.4738.50/-                                 | Rs.1281.50/-                            |
| August, 2012                                              | Rs.6020/-                                                   | 5832/-                                       | Rs.188/-                                |
| September, 2012                                           | Rs.6020/-                                                   | Rs.5103/-                                    | Rs.917/-                                |
| October, 2012                                             | Rs.6020/-                                                   | Rs.5832/-                                    | Rs.188/-                                |
| November, 2012                                            | Rs.6020/-                                                   | Rs.9409.50/-                                 | (Rs.3389.50/-)                          |
| December, 2012                                            | Rs.6020/-                                                   | Rs.8100/-                                    | (Rs.2080/-)                             |

|                                           |                    |                      |                       |
|-------------------------------------------|--------------------|----------------------|-----------------------|
| <b>Total (Jan, 2012 to Dec, 2012)</b>     | <b>Rs.70,770/-</b> | <b>Rs.73642.50/-</b> | <b>(Rs.2872.50/-)</b> |
| January, 2013                             | Rs.6020/-          | Nil                  | Rs.6020/-             |
| February, 2013                            | Rs.6020/-          | Rs.1000/-            | Rs.5020/-             |
| March, 2013                               | Rs.6020/-          | Rs.4000/-            | Rs.2020/-             |
| <b>Total (April, 2012 to March, 2013)</b> | <b>Rs.71505/-</b>  | <b>Rs.64427/-</b>    | <b>Rs.7078/-</b>      |

”

A reading would show that the respondent had received payment of Rs.73,642.50 during the period 1<sup>st</sup> January, 2012 and December, 2012. She had also received payment of Rs.1,000/- and Rs.4,000/- in the month of February and March, 2013. The minimum family pension and dearness allowance/relief payable to a person entitled to family pension during the period 1<sup>st</sup> January to 31<sup>st</sup> December, 2012 was Rs.70,770/-. Thus, the respondent had received and earned income of Rs.73,642.50, which was more than the minimum amount of family pension and dearness allowance/relief. The position would be different if the financial year is taken as the criterion.

8. Rule 54(6) of the CCS (Pension) Rules reads as under:-

**“54. Family Pension, 1964**

(6) The period for which family pension is payable shall be as follows:-

- (i) subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;
- (ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his

livelihood, whichever is the earliest;

- (iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier;
- (iv) subject to sub-rule (10-A), in the case of parents, who were wholly dependent on the Government servant immediately before the death of the Government servant, for life;
- (v) Subject to sub-rule 10(B) and the fourth proviso, in the case of disabled siblings (i.e. brother and sister) who were dependent on the Government Servant immediately before the death of Government servant , for life.”

The aforesaid Rules are self-explanatory and do not require an elaborate discussion. The second proviso to the Rule is applicable where a son and a daughter of a Government servant is suffering from any disorder or disability. The said proviso is not applicable to the present case. An unmarried, widowed or divorced daughter is entitled to family pension till she gets married, remarries or starts earning a livelihood. This is subject to the second and third proviso which we would not refer to for no reliance is placed on them by either side.

9. The Explanations 1 and 3 to the said Rule are relevant and are reproduced below:”-

“EXPLANATION 1 .- An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter shall become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.

XXXX

EXPLANATION 3 .- It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after her re-marriage or by the disabled son or daughter or by parents to the Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.”

As per Explanation 1, a widowed or a divorced daughter is ineligible to get family pension from the date she gets married or re-married. The end point in such situations is stipulated. Explanation 3 states that it is the duty of son or daughter to furnish a certificate to the Treasury or the Bank once a year that he or she has not started earning his or her livelihood and that she has not got married or re-married. The term “livelihood” is not specifically defined in the pension regulations. It obviously has reference to income of the son or daughter who seeks family pension. Learned counsel for the respondent on the said aspect has relied upon Office Memorandum dated 11<sup>th</sup> September, 2013 issued by Ministry of Personnel, Public Grievance and Pensions. Paragraphs 4 and 5 of the said circular read as under:-

“4. It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or

more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes. Similarly, family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes.

5. As regards opening of old cases, a daughter if eligible, as explained in the preceding paragraph, may be granted family pension with effect from 30<sup>th</sup> August, 2004. The position is illustrated through an example. Shri A, a pensioner, died in 1986. He was survived by his wife, Smt. B, a son Shri C and a daughter, Kumari D, the daughter being the younger. Kumari D married in 1990 and got widowed in 1996. Smt. B died in 2001. Thereafter, Shri C was getting family pension, being disabled, and died in 2003. Thereafter, the family pension was stopped as Kumari D was not eligible for it at that time. She applied for family pension on the basis of O.M., dated 30<sup>th</sup> August, 2004. Since she was a widow and had no independent source of income at the time of death of her mother and on the date her turn came, she may be granted family pension. The family pension will continue only till she remarries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon.”

As per the said circular, a child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his or her parents and this criteria or test is also applicable to determine whether unmarried, widowed or divorced

daughter of a deceased Government servant is entitled to family pension. Thus, when the unmarried, widowed or divorced daughter of a Government servant re-marries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon, then she is not entitled to family pension.

10. In order to determine and decide whether widowed or divorced daughter of a Government servant has started earning her livelihood, reference to a particular month may lead to a difficulty. Explanation 3 to Rule 54 (6) of the CCS (Pension) Rules quoted above refers to and postulates that it is the duty of the son or daughter entitled to family pension to furnish a certificate to the Treasury or the Bank once a year that he/she has not started earning his or her livelihood. Ergo, in the present case counsel for the petitioner has submitted that the period of one year should be counted from 1<sup>st</sup> January till 31<sup>st</sup> December, 2012. The said contention of the counsel for the petitioner would be in consonance with the definition of the term “year” as per sub-section (66) to Section 3 of the General Clauses Act, which stipulates that the expression “year” would generally refer to the British calendar year. It is clear from the table mentioned by the respondent in her OA itself that she had earned a sum of Rs.73,642.50 from Prasar Bharti during the period 1<sup>st</sup> January till 31<sup>st</sup> December, 2012. This amount is more than the minimum amount of family pension, which was payable during the same period, even if we

include the dearness allowance relief.

11. Thus, the respondent had earned more than Rs.73,000/- in the calendar year January to December, 2012. She was earning her livelihood and was therefore, not entitled to get family pension from 1<sup>st</sup> January, 2013 as her income was more than the minimum amount of family pension payable, after including dearness allowance/relief.

12. Family Pension payable to a major son or daughter especially after they have completed their education and are capable of earning a livelihood, must be distinguished from the pension payable to a retired employee or after his/her death, to the spouse. A divorced or widowed daughter is entitled to family pension, provided she is not in a position to work and earn a livelihood. The right to claim family pension is not earned by her, albeit her parent being a retired government servant, the government has extended the said benefit. Provisions pertaining to the grant of family pension in such cases, have to be reasonably construed and not stretched or given an extra-liberal interpretation by applying the principles normally applied to pension provisions. An able-bodied and mentally fit daughter, having had the benefit of education, when found to be working and earning an income beyond the specified limit, should not claim family pension. When she has earned the income of the level indicated over a period of time spanning one calendar year, it is indicative of her ability to earn a living. The nature or source of income of livelihood

can be diverse and need not be confined to earnings as an employee in the public or private sector. Earnings through self employment or from contractual employment are equally good sources of livelihood, when the income is earned over a span of 12 calendar months. The respondent is a graduate and has been working in Prasar Bharti on contractual basis and work assignment basis. Documents placed on record by the petitioner indicate that she has been enlisted by them to work on assignment basis in the Talk/Short Stories Branch. We would hasten to clarify, in the given case, family pension can stop immediately after the son or daughter starts earning when it is apparent that the income earned would be more than the amount specified.

13. In case the respondent in future faces grave difficulty or financial problem, she can make an application under Rule 88 of the CCS (Pension) Rules, which provides for and refers to power of relaxation. Learned counsel for the petitioner has stated that in case of extreme difficulty and in exceptional circumstances, the said power can be exercised.

14. However, there is one aspect on which the respondent has rightly succeeded before the Tribunal. The petitioner had claimed refund of Rs.6,38,522/-, being the family pension, etc. paid to her. The order would indicate that certain amounts paid were also claimed by the brother of the respondent, namely, Bhim Singh. We do not find that there is any material or basis to hold that the respondent had incurred the disqualification prior

to January, 2013. We also note that the respondent had earned amount of Rs.9,409.50 in November, 2012 and Rs.8,100/- in December, 2012. Therefore, we do believe and accept the case of the respondent that she was entitled to family pension upto 31<sup>st</sup> December, 2012 and had only then incurred the disqualification. Recoveries thus are not justified and would not be made.

15. The aforesaid observations and directions would, however, not affect any litigation between the respondent and his brother or any litigation filed by a third person for recovery of the amounts, which are due and payable to the third person or brother, who is not a party before us.

16. The writ petition is accordingly allowed to the extent indicated above. The impugned order passed by the Tribunal will be treated as modified to the aforesaid extent. No order as to costs.

**SANJIV KHANNA, J.**

**SUNITA GUPTA, J.**

**OCTOBER 20, 2016  
VKR**