

(2014) 07 DEL CK 0188**Delhi High Court****Case No:** W.P.(C) 18694-96/2006

UOI

APPELLANT

Vs

Shakuntala

RESPONDENT

Date of Decision: July 17, 2014**Hon'ble Judges:** Vipin Sanghi, J; S. Ravindra Bhat, J**Bench:** Division Bench**Advocate:** Anuj Aggarwal, Niti Jain and Gaurav Khanna, Advocate for the Appellant;
Pushpinder Yadav and Ankur Chhibber, Advocate for the Respondent**Final Decision:** Dismissed**Judgement**

S. Ravindra Bhat, J.

The Union of India (UOI) claims to be aggrieved by an order of the Central Administrative Tribunal (CAT) dated 28.08.2006 whereby the respondent/applicant's case for grant of Family Pension is directed to be considered in the light of Rule 88 of the CCS (Pension) Rules, 1972.

2. Briefly the facts are that the respondent Ms. Shakuntala is the widow of one Ram Mehar, who had worked as a Civilian Driver in the army. After serving for 15 years, 7 months and 13 days, he was discharged from service. He was not recipient of any form of pension from the army. Much later, on 06.01.1987, he died on account of prolonged illness. In these circumstances, Ms. Shakuntala approached the CAT some time in 2006 with an application, complaining that her representations for grant of Family Pension were of no avail and that she was entitled to it. The UOI resisted the application, contending that since late Ram Mehar is not recipient of any form of pension and that his case could not be considered under any of the eventualities spelt-out in Rule 54(2)(i) and (ii) of the CCS (Pension Rules), his widow was not entitled to claim the benefit. The CAT, however, negatived the UOI's plea and directed consideration of her case. It is argued that Rule 54 of the CCS Pension Rules which governs the conditions for grant of family pension envisions only three eventualities and that late Ram Mehar did not fall in any of those. Since he did not

die in harness, there was no question of application of Rules 54(2)(i) and 54(2)(ii). Likewise, he was not recipient of any form of pension and, therefore, his case was not covered by Rule 54(2)(ii). It was also urged that the inordinate delay in approaching the CAT is an important factor which should have alerted the CAT, which, therefore, ought to have desisted from issuing any direction for consideration of the case.

3. Rule 54, to the extent, it is relevant is extracted below:

"Family Pension, 1964

(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 be 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 retired/died before 31-12-1963, as also to those who were alive on 31-12-1963, but had opted out of 1964 Scheme.]

(2) Subject to the provisions of sub-rule 13-B and without prejudice to the provisions contained in sub-rule (3), where a Government servant dies -

(i) after completion of one year of continuous service; or

(ii) 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

(iii) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in these rules, the family of the deceased shall be entitled to Family Pension (hereinafter in this rule referred to as family pension) under the Family Pension Scheme for Central Government Employees, 1964, the amount of which shall be determined at a uniform rate of 30% of basic pay subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of twenty-seven thousand rupees per mensem.

EXPLANATION - The expression 'one year of continuous service" wherever it occurs in this rule shall be construed to include 'less than one year of continuous service" as defined in clause (ii). (2-A) The amount of family pension shall be fixed at monthly

rates and be expressed in whole rupees and where the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee :

Provided that in no case a family pension in excess of the maximum prescribed under this rule shall be allowed. (2B) In addition to family pension admissible in accordance with sub-rules (2), (2A) and (3), after completion of eighty years of age or above, additional family pension shall be payable in the following manner:-

XXXXXX XXXXXX XXXXXX"

4. The CAT noted that Rule 54 may not be applicable in its own terms; however, it was persuaded to issue a direction to the respondent in the light of Rule 88 of the CCS (Pension) Rules. The relevant discussion in that regard is as follows:

"22. Rule 88 of CCS (Pension) Rules ibid envisage relaxation. If in the opinion of the Government, any undue hardship is caused by implication of the rules with approval of the DOPT, the same may be relaxed.

23. In the present case, the deceased employee had rendered more than 15 years of service in quasi permanent status, though Rule 54 provides after one year's continuous service right to family pension, yet the undue hardship has been caused to the widow, which ultimately affected her right of family pension with arrears thereof, which would have sustained her in the life and is a well-earned reward of service rendered by the deceased employee. It is a fit case where of undue hardship relaxation of the provisions should be approved and needful be done because the Government in a welfare State should be more concern about the welfare of its employees and especially when family pension and pension are fundamental rights of the person. Any impediment of rules in any category or class should not come in the way to deprive such a right."

5. This Court has considered the submissions of the parties. The UOI reiterates that since Rule 54 does not entitle the family of a deceased employee in cases like the present, to claim family pension, the CAT ought not to have exercised its discretion at all. As is evident, Rule 54 envisions two contingencies where an employee dies in harness - which entitles his family to pension. The first instance is covered by Rule 54(2)(i) where an employee completes one year of service. In such case, if he dies in service after he has completed one year, the family would be entitled to pension in terms of Rule 54(2). In case where an employee dies in harness without having completed even one year of service, the only condition necessitated by the Rules is that the employee should have been medically examined once prior to his appointment. This contingency too does not apply. The third eventuality provided for by Rule 54 is where a pensioner dies after retirement. In such case, his family members are entitled to family pension. If one keeps in mind that even a government employee who has put in less than one year's service is entitled to family pension under Rule 54(2)(ii), the fact that Ram Mehar had 15 years, 7 months and 13 days" service, is an important consideration which cannot be ignored at all.

Whilst the plain terms of the Rules, no doubt, did not entitle the respondent, as a matter of fact, to claim family pension, the rigors of a strict application of the Rules are sought to be relieved by Rule 88 which authorizes the competent authority to relax the Rules in case of undue hardship. Having regard to the facts of the case, even though the respondent approached the CAT about 41 years after her husband's discharge from the army, the approach and the impugned order of the CAT cannot be said to be unreasonable. The delay in approaching the CAT, by itself, cannot be a ground to defeat the entitlement if it exists. The reasoning of the Supreme Court on the question of entitlement to pay and pension is that it constitutes a continuing cause of action, accruing month to month. In these circumstances, the impugned order of the CAT cannot be termed as unreasonable. In the event of entitlement of the applicant being accepted, he/she at best would be in a position to claim the benefit from the date it is asserted, but would not be able to claim it for the previous period. For the foregoing reasons, there is no reason to interfere with the order of the CAT. The petitioner is directed to pass appropriate orders in compliance with the CAT's impugned order within four weeks from today, and communicate the same to the respondent. The writ petition is accordingly dismissed but subject to the above terms.