

GAHC010014782024



2024:GAU-AS:10683-DB

**THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

Case No. : WA/282/2024

SAHADEV SARAN
S/O LT. PUTHAN SARAN,
R/O EBW GREF, C/O 99 APO, PIN-931642

VERSUS

- 1: THE UNION OF INDIA AND 4 ORS.
THROUGH THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF SURFACE TRANSPORT AND COMMUNICATION, NEW DELHI-1
- 2:THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF DEFENCE DPGC
206 "A" WING SENA BHAWAN NEW DELHI
- 3:THE DIRECTOR GENERAL BORDER ROADS ORGANISATION GOVT. OF INDIA HEAD QUARTER DIRECTOR GENERAL BORDER ROADS SEEMA SARAK BHAWAN RING ROAD DELHI CANT NEW DELHI-11-10
- 4:THE COMMANDANT
1642 PIONEER COY GREF C/O.99 APO
- 5:ASSTT. ADMINSTRATIVE OFFICER
OFFICER COMMANDING 1642 PIONEER COY GREF C/O.99 APO
- 6:PCDAP, ALLAHABAD DRAUPATI GHAT
ALLAHABAD-211014 UTTAR PRADES

For the Appellant(s) : Mr. S.C. Biswas, Advocate.

For the Respondent(s) : Mr. R.K.D. Choudhury, Deputy Solicitor General of India.

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

04.11.2024

(Vijay Bishnoi, CJ)

This writ appeal is preferred on behalf of the appellant/writ petitioner being aggrieved with the order dated 21.12.2023 passed by the learned Single Judge in WP(C) No.5476/2013.

The appellant/writ petitioner has approached the writ Court with a claim that the respondents be directed to pay the arrears of family pension payable to his late parents from 10.05.1996 to 18.10.2003 as they were dependants on his late brother, who expired while in service under the GREF.

The brief facts of the case are that the elder brother of the appellant/writ petitioner was working as Sepoy under 1642 Pioneer Coy CGREF, C/o 99 APO. He died in harness on 10.05.1996 leaving behind his parents and the appellant/writ petitioner. The late elder brother of the appellant/writ petitioner was a bachelor at the relevant point of time.

It is not in dispute that the father of the appellant/ writ petitioner expired on 21.08.2002 and the mother of the appellant/writ petitioner expired on 18.10.2003. During the said period, in the year 1998, precisely on 22.12.1998, the appellant/writ petitioner was provided with compassionate appointment in lieu of death of his elder brother.

The learned Single Judge, after taking into consideration the Office Memorandum dated 27.10.1997 issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare and the provisions of the scheme of Family Pension, 1964 read with CCS (Pension) Rules, 1981, has held as under:-

“10. In the facts of the present proceedings there is no dispute that the deceased elder brother of the petitioner was a bachelor and there is no material to dispute the contention of the petitioner that the late parents of the petitioner at the relevant point in time were not wholly dependent on the deceased elder brother. The elder brother of the petitioner late Bhim Saran expired on 10.05.1996 and the petitioner was appointed on compassionate ground only in the year 1998 and the late elder brother of the petitioner, namely, late Bhim Saran expired on 10.05.1996 and as such the Office Memorandum dated 27th October, 1997 will be applicable as it is reflected in the said Office Memorandum that this revised provisions will be applicable to the Government Servants, who retires/die-in-harness on or after 01.01.1996. The fact that the petitioner was employed on compassionate ground and thereafter the late parents of the petitioner during their lifetime were dependent on the petitioner cannot be a ground to deny the claim of the late parents of the petitioner for grant of family pension for the period during which they were shown to be dependent on the late elder brother till the time the petitioner got employed. The requirement under the OM dated 27.10.1997 is that the family members (which will include the late parents of the petitioner) is required to be wholly dependent on the Government Servant.

11. Under such circumstances, this Court is of the considered view that the late parents of the petitioner ought to have been granted the family pension in terms of the Office Memorandum dated 27th October, 1997 read with the CCS (Pension) Rules, 1981 as they were included in the definition of the family and there is no material to counter the submissions of the petitioner that the late parents were not wholly dependent on the deceased elder brother of the petitioner till the petitioner was gainfully employed under GREF in the year 1998. There is also no dispute that the late brother of the petitioner was a bachelor at the time of his demise.

12. In that view of the matter, it must be held that the late parents of the petitioner were indeed wholly dependent on the late elder brother of the petitioner and the late elder having expired as a bachelor, they are included within the definition of the ‘family’ in terms of the Office Memorandum dated 27th October, 1997 read with the CCS (Pension) Rules, 1981 and therefore, their entitlement for family pension under the Rules cannot be negated. However, the fact remains that as on date both parents have expired and therefore the petitioner being the next of kin being the only surviving member of his late parents is entitled to receive his claim of arrear of the family

pension which has payable to the late parents of the petitioner for the period immediately after the demise of the elder brother of the petitioner, namely, Bhim Saran till the period the petitioner was appointed in service, which is 22.12.1998. The department will now calculate the exact amount of family pension, which was required to have been paid to the late parents of the petitioner and release the same, to the next of kin of late Puthan Saran and late Saptami Saran, who were at the relevant point in time the dependent family members of late Bhim Saran, to the present petitioner. The arrears of family pension payable shall include all other such benefits as may be provided for under law."

Taking into consideration the above facts and circumstances of the case, particularly the fact that the appellant/writ petitioner was provided with compassionate appointment on 22.12.1998, his claim for payment of family pension from 10.05.1996 to 18.10.2003 has rightly not been accepted by the learned Single Judge. The learned Single Judge has rightly observed that the appellant/writ petitioner is entitled for the arrears of family pension payable to his parents from 10.05.1996 to 22.12.1998, i.e. the date when the appellant/writ petitioner was provided with compassionate appointment.

In view of the above discussion, we do not find any merit in this writ appeal, the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant