SPP Guiding Case No. 208: Litigation Supervision Case of Zhao Mou v. the Veterans Affairs Bureau of a Banner in Inner Mongolia (Payment of Periodic Living Allowances to Children of Martyrs)

Dan Young Business Consultancy — www.danyoungcpa.com

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Supreme People's Procuratorate Guiding Case No. 208 (Batch 51, 2024)

Keywords

Supervision of effective administrative judgments; administrative payment; commencement date of payment of living allowances to children of martyrs; retrial procuratorial suggestion; category-based supervision.

Holding

Granting regular living allowances to children of martyrs is an important manifestation of the implementation of China's pension and preferential treatment system, and administrative organs shall proactively perform their duties to ensure that eligible administrative counterparts receive material assistance in a timely manner. The commencement date of payment of living allowances to children of martyrs is determined in accordance with relevant laws, regulations and policies, and does not differ based on whether the child of a martyr is aware of the relevant laws, regulations and policy provisions or the time of filing an application. Where the people's court fails to correct an administrative organ's failure to pay living allowances to children of martyrs in accordance with the procedures and standards prescribed by relevant laws, regulations and policies, the people's procuratorate shall supervise in accordance with law.

Basic Facts

On January 20, 2012, the Notice of the Ministry of Civil Affairs and the Ministry of Finance on the Payment of Regular Living Allowances to Some Children of Martyrs (Min Fa [2012] No. 27, hereinafter the "Notice") provided that, starting from July 1, 2011, regular living allowances shall be paid to children of martyrs who live in rural areas or have no work unit in urban areas, who had not enjoyed regular pension benefits before the age of 18, and who have reached the age of 60. On February 16, 2012, the Implementation Opinions of the Department of Civil Affairs and the Department of Finance of the Inner Mongolia Autonomous Region on Implementing the Policy of Paying Regular Living Allowances to Some Children of Martyrs (Nei Min Zheng You [2012] No. 32, hereinafter the "Opinions") provided that the administrative organs responsible for the payment of regular living allowances to children of martyrs shall conduct thorough and meticulous investigation and verification work, conscientiously and accurately define the identities of the relevant personnel, and achieve no errors, no omissions and no blind spots, with the payment procedure being individual application, preliminary review and determination, and establishment of archives. In January 2019, this function was transferred from the county-level civil affairs bureau to the county-level veterans affairs bureau.

Zhao Mouxuan was recognized as a martyr for sacrificing himself in the War of Liberation. His son Zhao Mou (born in March 1946, a farmer), upon learning of the policy, filed an application for regular living allowances for children of martyrs with the county-level veterans affairs bureau and was approved in June 2019. From July 2019, Zhao Mou began enjoying regular living allowances. In early 2021, Zhao Mou applied to the county-level veterans affairs bureau for retroactive payment of regular living allowances for children of martyrs for the period from July 2011 to June 2019. In July 2021, the county-level veterans affairs bureau issued a Reply Opinion on Zhao Mou's Application for Performance of Administrative Functions, holding that "the time when Zhao Mou filed the application was December 5, 2018, and the approval time was June 27, 2019. From July 2019, Zhao Mou began receiving the child-of-martyr allowance, and the county-level

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veterans affairs bureau did not refuse or delay or otherwise act passively. Therefore, your child-of-martyr allowance for the period from July 1, 2011 to June 30, 2019 cannot be retroactively paid." Zhao Mou filed an administrative lawsuit with the people's court, requesting the revocation of the county-level veterans affairs bureau's reply opinion and a judgment for payment of regular living allowances for the period from July 2011 to June 2019.

On November 10, 2021, a county-level people's court rendered an administrative judgment, holding that the Opinions were a normative document for the payment of regular living allowances to some children of martyrs. The Opinions specified the process for verifying and determining the identities of personnel receiving regular living allowances, namely: individual application, preliminary review and determination, and establishment of archives. In this case, the county-level veterans affairs bureau, in accordance with the Opinions, conducted preliminary review and determination of Zhao Mou's application information, established archives, and began paying living allowances to Zhao Mou from July 2019. Zhao Mou requested retroactive payment of living allowances for the period from July 1, 2011 to June 30, 2019, but the evidence he provided could not prove that he had made an individual application to the relevant departments after the issuance of the Opinions, nor prove that the administrative organ had acted passively. Therefore, the county-level veterans affairs bureau's reply opinion of not retroactively paying living allowances in accordance with policy was procedurally proper and complied with legal provisions, and Zhao Mou's litigation claims were dismissed. After the first-instance judgment became effective, Zhao Mou, dissatisfied, applied to a municipal intermediate people's court for retrial. On May 26, 2022, the municipal intermediate people's court ruled to dismiss the retrial application.

Procuratorate Performance of Duties

Source of the case. Zhao Mou applied to a county-level people's procuratorate for supervision.

Investigation and verification. After reviewing the case file, the county-level people's procuratorate carried out the following investigation and verification work. First, it confirmed with the county-level veterans affairs bureau that Zhao Mouxuan sacrificed himself in the War of Liberation and was recognized as a martyr in November 1983. Second, it learned from the county-level veterans affairs bureau that Zhao Mou had not enjoyed regular pension benefits before the age of 18. Given the major dispute between the parties over whether the pension should be retroactively paid, to eliminate differences and build consensus, the county-level people's procuratorate organized a public hearing, inviting CPPCC members, people's supervisors and lawyers to participate and hear the opinions of both parties. After the hearing, the hearing participants assessed that dividing the commencement point of payment by the time of approval of application for eligible personnel in effect narrowed the scope of administrative payment and improperly reduced the rights and interests of administrative counterparts. The county-level veterans affairs bureau should pay Zhao Mou regular living allowances starting from July 1, 2011 as prescribed by the Notice.

Supervision opinions. The county-level people's procuratorate held upon review: 1. In accordance with the Notice of the Ministry of Civil Affairs and the Ministry of Finance and the Opinions of the Department of Civil Affairs and the Department of Finance of the Inner Mongolia Autonomous Region, the administrative organ responsible for the payment of regular living allowances to children of martyrs shall strictly grasp and implement the policy, and conduct thorough and meticulous investigation and verification work. The county-level veterans affairs bureau failed to provide evidence proving that it had conducted unified investigation and policy publicity work with relevant departments. The administrative organ's performance of duties was inadequate, and the main evidence for the original judgment's determination that the county-level veterans affairs bureau's reply opinion complied with legal provisions was insufficient. 2. Paragraph 1 of Article 34 of the Administrative Litigation Law of the People's Republic of China provides that "the defendant bears the burden of proof for the administrative act it has taken and shall provide the evidence of the administrative act and the normative documents on which it is based"; Article 37 provides that "the plaintiff may provide evidence proving that the administrative act is unlawful. Where the evidence provided by the

plaintiff does not stand, it does not exempt the defendant from the burden of proof." In this case, the county-level veterans affairs bureau was never able to provide the legal and policy basis for the claim that personnel reported or supplemented later could not enjoy living allowances after the implementation of the documents and before individual application, nor could it provide evidence proving that it had conducted investigation and verification work. The original judgment's allocation of the burden of proof to Zhao Mou was erroneous and constituted an erroneous application of law. In September 2022, the county-level people's procuratorate, upon decision by the procuratorial committee, put forward a retrial procuratorial suggestion to the county-level people's court.

Supervision results. The county-level people's court adopted the retrial procuratorial suggestion and, on December 30, 2022, rendered a retrial judgment, holding that the Notice and the Opinions were the basis for paying regular living allowances to children of martyrs. The evidence submitted by the county-level veterans affairs bureau could confirm that Zhao Mou enjoyed child-of-martyr living allowances from July 2019, but could not confirm that Zhao Mou should not enjoy child-of-martyr allowances for the period from July 1, 2011 to June 30, 2019. The Reply Opinion on Zhao Mou's Application for Performance of Administrative Functions issued by the county-level veterans affairs bureau lacked sufficient main evidence and should be revoked. The original judgment's determination of facts was unclear and its application of law erroneous, and should be corrected. It ruled to revoke the original judgment and the county-level veterans affairs bureau's reply opinion. After receiving the retrial judgment, the county-level veterans affairs bureau retroactively paid Zhao Mou more than RMB 30,000 in regular living allowances for children of martyrs for the period from July 1, 2011 to June 30, 2019.

Based on the circumstances reported by the county-level veterans affairs bureau at the hearing, the county-level people's procuratorate retrieved in accordance with law the list of children of martyrs within its jurisdiction and the payment data of regular living allowances to children of martyrs, and confirmed that the county-level veterans affairs bureau had also not calculated the regular living allowances of 23 other eligible children of martyrs from July 1, 2011. It therefore issued a procuratorial suggestion to the county-level veterans affairs bureau, recommending that it correctly grasp the policy provisions on the payment of regular living allowances to children of martyrs in accordance with law. The county-level veterans affairs bureau adopted the procuratorial suggestion, retroactively paid living allowances to the other 23 children of martyrs, and stated that in future work it would conduct thorough and meticulous investigation and verification work, accurately define the identities of relevant personnel, and fully protect the lawful rights and interests of children of martyrs.

Guiding Significance

(1) Where a people's procuratorate, in handling an administrative litigation supervision case, finds that an administrative organ failed to pay living allowances to children of martyrs in accordance with the payment time prescribed by relevant laws, regulations and policies, and the effective judgment of the people's court failed to correct it, it shall supervise in accordance with law. China's Constitution expressly provides for the state and society to provide pensions to the families of martyrs, and the National Defense Law, the Regulations on Commendation of Martyrs, and the Regulations on Pensions and Preferential Treatment of Military Personnel provide specific provisions. Granting regular living allowances to children of martyrs is an important manifestation of the implementation of China's pension and preferential treatment system. Administrative organs shall proactively perform their duties of investigating and verifying the circumstances of counterparts and determining payment recipients, and promptly perform their payment obligations in accordance with the payment commencement time and standards prescribed by policy, without difference based on the time when counterparts become aware of the policy and file applications. Where a pension recipient believes that an administrative organ has failed to pay pension funds in accordance with law, it shall first raise the matter with the administrative organ; where the administrative organ refuses payment or fails to respond, the pension recipient has the right to file an administrative lawsuit. Where a pension recipient

delays filing an administrative payment application due to lack of understanding of the relevant provisions, the administrative organ shall retroactively pay the pension benefits that the pension recipient should have enjoyed before the administrative payment decision was made. Where the people's court fails to correct an administrative organ's erroneous determination of the payment commencement time, the people's procuratorate shall put forward supervision opinions in accordance with law.

(2) Where a people's procuratorate, in performing its duties, finds that an administrative organ has failed to protect other counterparts in the same circumstances from enjoying pension benefits in accordance with law, it may issue a procuratorial suggestion to urge correction. While putting forward supervision opinions in individual cases, the people's procuratorate may, in response to pervasive problems such as the administrative organ's failure to perform its obligation of paying pension funds in a timely manner in accordance with law, causing infringement of the lawful rights and interests of counterparts, issue category-based procuratorial suggestions to urge the administrative organ to perform its duties in accordance with law and ensure that pension recipients fairly enjoy pension benefits in accordance with national policy.

Relevant Legal Provisions

Article 66 of the National Defense Law of the People's Republic of China; Article 2 of the Regulations on Commendation of Martyrs; Article 2 of the Regulations on Pensions and Preferential Treatment of Military Personnel; paragraph 1 of Article 34, Articles 37, 70, 91 and 93 of the Administrative Litigation Law of the People's Republic of China; Articles 119 and 122 of the Interpretation of the Supreme People's Court on the Application of the Administrative Litigation Law of the People's Republic of China; Articles 84, paragraph 2 of 119 and 120 of the Rules for the Supervision of Administrative Litigation by People's Procuratorates.

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