

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO.1874/2002

Tuesday, this the 2nd day of September, 2003

HON'BLE MRS. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)

1. Angrej Singh, (Major) Husband of Late Smt. Rajwanti,
S/o Late Shri Bhoj Singh,
R/o Village Jagdishpur, P.O. Ratdhana,
Distt Sonipat, Haryana
2. Ms. Shalu, (Minor) daughter of Shri Angrej Singh,
Husband of Late Smt. Rajwanti,
S/o Late Shri Bhoj Singh,
R/o Village Jagdishpur, P.O. Ratdhana,
Distt Sonipat, Haryana
Through applicant No.1 being the natural and
legal guardian

...Applicants

(By Advocate : Shri A.K. Sharma)

Versus

1. Union of India
Ministry of Labour,
Through Director General,
ESI Corporation, Panchdeep Bhavan,
Kotla Road, New Delhi-110 022
2. The Financial Commissioner,
ESI Corporation, Panchdeep Bhavan,
Kotla Road, New Delhi - 110 022
3. The Director (Medical) Delhi
E.S.I. Scheme, Hospital Complex,
Basaidarapur, Ring Road, New Delhi-110 015
4. The I.M.O. Incharge,
E.S.I. Dispensary, Subzi Mandi, New Delhi-110 007
5. Master Rohit Khatri,
S/o Late Bijender Singh, C/o Rai Singh,
R/o Village & Post Kulasi,
Tehsil Bahadurgarh, District Jhajjar, Haryana

...Respondents

By Advocate : Ms. Jyoti Singh for Respondents 1 - 4
and Shri Satender Verma for Respondent-5)

O R D E R (Oral)

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J) :

This is the second round of litigation by the
applicants, who had earlier filed OA 437/2001 which was

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decided by order dated 2.4.2002. By this order, the OA was partly allowed and the impugned order dated 6.8.2001 sanctioning family pension separately in favour of both applicant No.1 and Rohit/present respondent No. 5 were quashed and set aside. Thereafter the applicants filed Writ Petition (Civil) No. 2667 of 2002 before the Hon'ble Delhi High Court. The High Court vide order dated 29.4.2002 came to the conclusion that the opinion of the Tribunal that Rohit, a minor and step-son of the petitioner was not a necessary party was a wrong conclusion. Such a contention would go against the interest of Rohit. The High Court found that Rohit was a necessary party and accordingly the entire judgement was set aside with a direction that Rohit be impleaded as a party through his natural guardian and the Tribunal to consider the entire matter afresh.

2. Thereafter the applicants have filed the present application on 5.7.2002 in which Rohit, son of the deceased employee Smt. Rajwanti has been impleaded as respondent No.5.

3. Applicant No.1 is the husband of the deceased employee Smt. Rajwanti and applicant No.2 Ms. Shalu is the minor daughter of the two persons. Admittedly, Master Rohit/Respondent No.5 is the son of the deceased employee Smt. Rajwanti who was married to Shri Bajender Singh, an employee of official respondents/ESI. On his death the deceased employee Smt. Rajwanti was employed as Peon on

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compassionate grounds in 1991. She had made a nomination in respect of Death-cum-Retirement Gratuity (DCRG) in favour of Rohit/Respondent No.5 on 11.10.1991. At that time the deceased employee (Smt. Rajwanti) had not remarried. It is an admitted fact that she subsequently remarried applicant No.1, Shri Angrej Singh on 14.1.1997 and a daughter was borne to them, i.e., Ms. Shalu on 7.7.1998. It is also an admitted fact that the deceased employee had not, in any way, altered her nomination for DCRG or CGEGIS under the CCS (Pension) Rules, 1972, from what she had made in 1991, i.e., in favour of her son Rohit/Respondent No.5.

4. I have heard Shri A.K. Sharma, learned counsel for applicants, Ms. Jyoti Singh, learned counsel for respondents 1-4 and Shri Satender Verma, learned counsel for respondent 5 and perused the documents on record including the previous judgement of the Tribunal in OA No. 437/2001. According to Ms. Jyoti Singh and Shri Verma, learned counsel for respondents, the Tribunal in the order dated 2.4.2002 had correctly come to the conclusion that there was no Rule in respect of nominations for DCRG and CGEGIS and other benefits in favour of applicant No.2 by the deceased employee. According to the learned counsel for the respondents, as there was only one nomination by the deceased employee in favour of respondent No.5, who was also her son, the amounts in question under the said nomination can only be paid to him and not to the daughter, i.e., applicant No.2. Shri Verma, learned

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counsel, has also been heard who has submitted that as per the nomination of the deceased employee, the amounts can be paid only to the son/respondent No.5 and not to the daughter of the deceased employee/applicant No.2.

5. Learned counsel for applicants has submitted that in terms of the aforesaid order of the Tribunal dated 2.4.2002, the family pension ought to have been paid to applicants No.1 and 2 which has, however, been stopped after the order of the Hon'ble High Court dated 29.4.2002. Ms. Jyoti Singh, learned counsel for respondents, has fairly submitted that this is not correct but in case the same has been stopped, the respondents shall commence paying the same to applicants No. 1 and 2 immediately.

6. Noting the above submissions, the official respondents are directed to verify their records and in case family pension due to applicants No. 1 and 2 has been temporarily discontinued, the same shall be arranged to be paid to them at the earliest and in any case within two weeks from the date of receipt of a copy of this order, including all arrears. In the circumstances of the case, the claim for interest at 24% per annum on amount of arrears of family pension is rejected. In case the family pension is not paid within the aforesaid period, interest on arrears at 10% simple interest per annum shall become payable from the due date till the date of actual payment.

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7. The other benefits claimed by the applicants in the present OA are not specified. However, Shri A.K. Sharma, learned counsel, submits that these benefits pertain to DCRG and CGEGIS for which admittedly the deceased employee Smt. Rajwanti had made a nomination in favour of her son Master Rohit/Respondent No.5. No nomination had, however, been made by the deceased employee in favour of her minor daughter Ms. Shalu/applicant No.2. Respondent No.5 is stated to be staying with his grant father, i.e., late Bijender Singh's father who had vide his letter dated 7.2.2000 claimed that all the benefits may be paid to Rohit in his presence.

8. Learned counsel for applicants has submitted that since the applicants are the family members of late Smt. Rajwanti, they are entitled to the benefits of family pension as well as the benefits under DCRG and CGEGIS in respect of the minor daughter, under the provisions of sub-rule (3) (i) read with sub-rule (4) of Rule 53 of the CCS (Pension) Rules, 1972. He has also submitted that under Rule 50 (6) of the said Pension Rules, for the purposes of Rules 51, 52 and 53 "family", in relation to a government servant, has been defined to include, son including stepsons and adopted sons and unmarried daughters, including stepdaughters and adopted daughters. In order to better appreciate the relevant Pension Rules, it is necessary to quote sub-rules (3) and (4) of Rule 53 which read as follows :-

"(3) A Government servant may provide in the nomination-

(i) that in respect of any specified nominee

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who predeceases the Government servant, or who dies after the death of the Government servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination:

Provided that if at the time of making the nomination the government servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family:

Provided further that where a government servant has only one member in his family, and a nomination has been made in his favour, it is open to the Government servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not;

(ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein."

"(4) The nomination made by a Government servant who has no family at the time of making it, or the nomination made by a Government servant under the second proviso to clause (i) of sub-rule (3) where he has only one member in his family shall become invalid in the event of the Government servant subsequently acquiring a family, or an additional member in the family, as the case may be."

(Emphasis added)

9. Taking into account the definition of 'family' as provided in Rule 50 (6) of the Pension Rules, the daughter born to the deceased employee Smt. Rajwanti on 7.7.1998 will be included as her family. She will also fall under the expression of the Government servant subsequently having an additional member in the family, i.e., in addition to her son Rohit/Respondent No.5 in respect of whom a nomination had been made previously on 11.10.1991. The second proviso to clause (i) of sub-rule 3 of Rule 53 provides for a situation, inter alia, where a Government servant has only one member in his family and a nomination

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has been made in his favour, it is open to the Government servant to nominate an alternate person or a body of individuals, whether incorporated or not. However, under sub-rule (4) of Rule 53, on the Government servant subsequently acquiring a 'family' or an additional member in the 'family', as in the present case, when the deceased employee had given birth to her daughter i.e. applicant No.2 in 1998, the earlier nomination made in favour of one member of her family, i.e., Rohit/Respondent No.5 becomes invalid.

10. It is not disputed that in the present case the deceased employee has left two children, namely, Rohit and Shalu, both of whom are minor. Taking into account the provisions of the Pension Rules mentioned above, including Rule 51 of the Rules, one cannot come to the conclusion that the nomination made by the deceased employee will totally deprive her minor daughter of all the pensionary benefits and leave the nomination exclusively to one member of her family, i.e., her son. Such a conclusion would appear not only against public policy and public interest but is also against the provisions of sub-rule(4) of Rule 53. In this sub-rule, a specific provision has been made that in cases where there was no member of the family when the nomination was made by the Government servant and subsequently he/she acquires a family or an additional member in the family, the nomination become invalid. No doubt, the deceased employee could have left a nomination regarding payment of DCRG and other benefits to both her

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minor children, i.e. the son/respondent 5 and her daughter/applicant No.2. However, she had not made a nomination in favour of her two year old daughter at the time of her death will not necessarily mean that under the Rules the mother had intended that no financial benefits should go to her minor daughter or that applicant No.2 is to be deprived of getting any benefit, she is otherwise entitled to. That ^{is} also not the intention of the Rules where there is a provision in Rule 53(4) that on acquiring an additional member in the 'family' as defined in Rule 50 (6), the earlier nomination made in 1991 in favour of the son becomes invalid. Therefore, from whatever angle the issue is looked ^{at} ~~into~~ at, it cannot be held that the intention of the Rules was to deprive the minor daughter of the benefits accruing to her as a 'family' of the deceased employee, Smt. Rajwanti.

11. In the circumstances and the provisions of Rule 53 (4) of the Pension Rules, the contention of the learned counsel for the respondents that only the deceased employee's son, i.e., Respondent No.5 will be the beneficiary of the nomination for DCRG etc. is not understandable. The respondents have to pay only the amounts as due under these heads to one or two members of the family of the deceased employee, as the case may be. Even looking at it from a humanitarian point of view, it is unthinkable that in the circumstances of the case, the deceased mother would have wanted that nothing at all should be given to her minor daughter, i.e. applicant No.2.

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12. In this view of the matter, taking into account the orders of the Hon'ble Delhi High Court which has directed the Tribunal to reconsider the entire matter afresh, there is no hesitation to come to the conclusion that under the provisions of Rule 53 of the CCS (Pension) Rules, the nomination in favour of Respondent 5 has become invalid. In the circumstances of the case, applicant No.2 shall also be entitled to an equal share i.e. 50% in DCRG and CGEGIS and other benefits of the deceased Govt. employee together with Rohit/Respondent No.5.

13. After the conclusion of the hearing and when this order was being dictated Ms. Lipika Sharma, learned proxy counsel for respondents has submitted that the amounts of DCRG etc have already been paid to Respondent No.5. However, Shri A.K. Sharma, learned counsel for applicants has submitted that no document to this effect has been filed in the counter affidavit or there is any such averment in the reply. These contentions are also not controverted by the learned proxy counsel for respondents. Be that as it may, it is necessary for the official respondents to disburse the pensionary and other benefits of the deceased employee strictly in accordance with the relevant Rules, as referred to above, and they should, therefore, take necessary action in accordance with law.

14. In view of what has been stated above, the OA is disposed with the following directions:-

- (a) With regard to the claim for pensionary benefits, the respondents to comply with the directions contained in paragraphs 5 and 6 above;

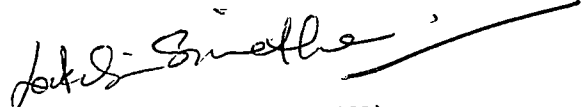
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(b) With regard to the other benefits, namely, DCRG and CGEGIS, as the nomination of respondent has become invalid, applicant No.2 shall also be entitled to be paid the benefits along with respondent No.5;

(c) The above directions shall be carried out within one month from the date of receipt of a copy of this order.

No order as to costs.


(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN (J)

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