

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA No. 437/2001

(6)

Thursday, this the 23rd day of April, 2002

HON'BLE MR. S.A.T. RIZVI, MEMBER (ADMN)

Angrej Singh & Another
(By Advocate: Shri Ashok Kumar)

...Applicants

Versus

Union of India & Others
(By Advocate: Shri G.R. Nayyar)

...Respondents

Corum:-

HON'BLE SHRI S.A.T. RIZVI, MEMBER (A)

1. To be referred to the reporter or not? YES
2. Whether it needs to be circulated to
Benches of the Tribunal? NO

(S.A.T. RIZVI)
MEMBER (A)

(S.A.T. RIZVI)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 437/2001

New Delhi, this day the 2nd April, 2002

(16)

HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

1. Angrej Singh, (Major) Husband of Late Smt. Rajwanti, S/o Late Shri Bhoj Singh, R/o Village Jagdishpur, P.O. Ratdhana, District 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, District Sonipat, Haryana Through applicant No.1 being the natural and Legal guardian

... Applicants

(By Advocate : Shri Ashok Kumar)

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, Paanchdeep Bhaavan,
Kotla Road,
New Delhi - 110 022
3. The Director (Medical) Delhi
E.S.I. Scheme, Hospital Complex,
Basaidarapur, Ringh Road,
New Delhi - 110015
4. The I.M.O. Incharge
E.S.I. Dispensary, Subzi Mandi,
Delhi - 110 007

... Respondents

(By Advocate : Shri G.R. Nayyar)

O R D E R

Shri Bijender Singh, an employee of the E.S.I. Corporation died leaving behind his widow Smt. Rajwanti and a son named Rohit. Smt. Rajwanti was appointed on } compassionate ground on 23.1.1991 as a Peon. In addition
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to the aforesaid employment, Smt. Rajwanti was the recipient of the family pension also. She married again on 14.1.1997 and thereby lost her claim for family pension. The aforesaid family pension was, however, transferred on to Rohit vide PPO dated 18.8.1998. Smt. Rajwanti continued to work as a Peon, however. On 7.7.1997 a daughter, named Shalu was born to her from the second marriage with Shri Angrej Singh, one of the two applicants in the present OA. The other applicant is the aforesaid daughter Ms. Shalu. On 5.1.2000 Smt. Rajwanti also died leaving behind the aforesaid Shri Angrej Singh and Ms. Shalu, both the applicants in the present OA as well as Rohit, her son from the previous marriage. The grievance raised is that the pensionary and the other benefits arising from Smt. Rajwanti's death have not been released in favour of the applicants, and this is despite the Memorandum dated 21.7.2000 (Annexure -G) issued by the respondents which clearly recognizes the fact of Smt. Rajwanti's re-marriage with Shri Angrej Singh (one of the applicants in the present OA) on 14.1.1997.

2. The respondents' case is that insofar as the Death-cum-Retirement Gratuity and the Group Savings Linked Insurance Scheme are concerned, the deceased employee (Smt. Rajwanti) had in her life time nominated her son, Rohit aforesaid, as her nominee (Annexures R-1 and R-2). Thus, the corresponding benefits will, according to the respondents, go to Rohit alone.

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3. Further, according to the respondents, the name of Ms. Shalu, the daughter born to the deceased employee Smt. Rajwanti from her second marriage has not been shown in the official records. Her name does not find mention in the aforesaid Memorandum dated 21.7.2000 by which the deceased employee's re-marriage was notified. Ms. Shalu cannot, therefore, prefer a claim for the grant of pensionary and other benefits.

4. According to the respondents, the applicants' claim is to be considered necessarily vis-a-vis the claim of Rohit in whose favour valid nominations were made by the deceased employee (Smt. Rajwanti) in respect of Death-cum-Retirement Gratuity and Group Savings Linked Insurance Scheme. Rohit has not been made a party in the present OA and, therefore, the respective claims cannot be decided. On the other hand, according to the respondents, the present OA should be dismissed for non joinder of essential party.

5. The learned counsel appearing on behalf of the applicant has submitted that since the issues raised in the present OA are required to be decided in accordance with the relevant rules, there is no merit in the argument that Rohit aforesaid has not been impleaded as a party. The learned counsel has, therefore, placed reliance on the relevant rules. I have perused the relevant rules.

6. Rule 54 deals with Family Pension, 1964. Sub rule (2) of rule 54 provides that where a Government

servant dies, the family of the deceased shall be entitled to family pension the amount of which is to be determined separately. There is no doubt that the deceased employee (Smt. Rajwanti) has left behind the two applicants and Rohit as the members of her family. It is to be noticed that in their pleadings, the respondents have not specifically denied the birth of applicant No.2 herein (Ms. Shalu). Family Pension is, therefore, required to be paid to the aforesaid family consisting of three persons. Insofar as Rohit is concerned, his claim is, on the face of it, fortified by rule 54 (7)(b) which provides as under:

"Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she has been alive at the time of death of the Government servant or pensioner."

Since the deceased Government servant in the present case happened to be a lady, the aforesaid rule will have to be read by substituting widower for widow and by making other changes mutatis mutandis in the said rule. By doing so, it will clearly emerge that Rohit who is the son of the deceased employee from an earlier marriage will also be entitled to his share in the family pension. A subsequent sub-rule will, as we shall readily see, however, exclude Rohit's claim for share in family pension.

Rule 8 (i) provides as under:

"Except as provided in sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time."

7. I have just noticed that since the present case

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is covered by sub-rule (7) (b), the above sub-rule (8)(i) will not apply in the circumstances of the present case and, therefore, the family pension can be paid to more than one member of the family at the same time. Sub-rule (8) (ii) provides as under:

"If a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

The aforesaid provision would seem to indicate that the family pension in this case should be paid to the widower, namely, the applicant No.1 alone. This provision, however, will not apply as the case is covered, as I have noticed above, by sub-rule (7)(b).

8. Rule 54 (13-B) provides as under:

"Family Pension admissible under this rule shall not be granted to a person who is already in receipt of Family Pension"

The aforesaid provision is an independent provision which does not lay down any exception. Rohit is admittedly receiving family pension transferred to him in consequence of re-marriage of his mother with the Applicant No.1. That Rohit is still getting the aforesaid family pension has not been disputed. In view of this, he is not entitled to receive family pension arising from employment/death of Smt. Rajwanti. He is, no doubt, part of the family of the deceased employee (Smt. Rajwanti) in terms of the definition of the family given in Rule 54 (14-B). All the same on account of the application of the aforesaid sub-rule (13-B) Rohit cannot

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share the family pension arising from the employment/death of Smt. Rajwanti with the other members of Smt. Rajwant's family, namely, the two applicants herein. *Held as accordingly.*

9. Insofar as the payment of Gratuity is concerned, the applicant has relied on Rule 53 of the CCS (Pension) Rules, 1972 which deals with nominations. Sub-rule (4) of the aforesaid Rule provides as under:

"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."

Nomination in favour of Rohit insofar as Death-cum-Retirement Gratuity is concerned, was made on 11.10.1991. At that time, the deceased employee (Smt. Rajwanti) lived with her son Rohit and had not re-married. Thus, factually speaking, there were only two members of the deceased employee's family at the time of nomination. In other words, the family of the deceased employee at the material time consisted of the deceased employee herself and her son Rohit. Clearly, therefore, the deceased employee had a family at the time of making nomination in favour of Rohit. The circumstances of the present case are not covered by the second proviso to Clause-(i) of sub-rule (3). The question of the aforesaid nomination becoming invalid due to the operation of the aforesaid sub-rule (4), therefore, does not arise. In the absence of any specific rule showing to me in that regard, the same will hold good in respect of the nomination made in *-n.v-*

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favour of Rohit in respect of Group Savings Linked Insurance Scheme also arising from the employment/death of Smt. Rajwanti. I hold accordingly.

10. In the background of the discussion contained in the preceding paragraphs based as it is on the rule position, it is clear that Rohit will be entitled to the benefit of Death-cum-Retirement Gratuity as well as the Group Savings Linked Insurance Scheme to the exclusion of the applicants. At the same time Rohit, who is already receiving family pension as above, will not be entitled to receive a share in the family pension to which the applicants herein are entitled following the employment/death of Smt. Rajwanti.

11. In the light of the foregoing, the OA is partly allowed in terms of the findings recorded above. Since it has been found that Rohit is not entitled to a share in the family pension, the respondents will proceed to release family pension arising from the employment/death of Smt. Rajwanti in favour of the applicants. I notice that Ms Shalu, the applicant No.2 herein is a minor. The family pension may, in the circumstances, be paid to the applicant No.1 in full by treating him as the natural guardian of applicant No.2. If, however, on account of operation of some rules it is not possible to do so, the family pension will have to be shared between the two applicants with the share of the applicant No.2 being paid to whosoever is found to be her legal guardian. The period for which family pension will be payable is determined by rule 54 (6). This will also have to be

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kept in view. The respondents are directed, in any case, to carefully observe the relevant rules before proceeding to release family pension in favour of the applicants herein. I direct accordingly and also provide that the directions given herein will be carried out by the respondents in a period of three months from the date of receipt of a copy of this order.

12. Since the matter in dispute needed to be decided wholly in accordance with the rule position vide para 5 above, the non-impleadment of Rohit cannot be said to have resulted in any prejudice insofar as he is concerned. The corresponding plea raised on behalf of the respondents is, in the circumstances, negatived.

13. In the light of the foregoing, the OA is partly allowed. The orders dated 6.8.2001 placed before me during the course of hearing sanctioning family pension separately in favour of both the applicant No.1 and Rohit aforesaid will, needless to say, stand quashed and set aside. There shall be no order as to costs.



(S.A.T. RIZVI)
Member (A)

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