

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1871/99

199

T.A.No.

7

DATE OF DECISION 23-2-2000

Smt. Kamla Deyi

....Petitioner

Sh.U.Srivastava, learned counsel .....Advocate for the  
through proxy counsel Shri Harvir Singh Petitioner(s)

VERSUS

UOI through the GM(NR) &  
Ors.

....Respondent

Sh.P.M.Ahluwat, learned counsel .....Advocate for the  
through proxy counsel Ms.Sumedha Sharma Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member (J)

The Hon'ble

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

*Lakshmi Swaminathan*

(Smt.Lakshmi Swaminathan)  
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI  
OA 1871/99

New Delhi this the 23rd day of March, 2000

Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Smt.Kamla Devi  
w/O Late Sh.Basant Lal  
Cook R/O H.No.371, Gali No.10,  
Raj Nagar-II,  
Palam Colony, New Delhi.

.. Applicant

(By Advocate Sh.U.Srivastava, learned  
counsel through proxy counsel Sh.  
Harvir Singh )

Versus

- 1.Union of India, through  
The General Manager,  
Northern Railway, Baroda House,  
New Delhi.
- 2.The Divisional Railway Manager,  
Northern Railway, Bikaner.
- 3.The Divisional personnel Officer,  
Northern Railway, Bikaner.

.. Respondents

(By Advocate Sh.P.M.Ahluwat, learned  
counsel through proxy counsel Ms  
Sumedha Sharma )

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Member(J)

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 challenging the validity of the order passed by the respondents dated 8.2.99 (Annexure A-1) by which they have rejected her claim for grant of family pension.

2. The brief relevant facts of the case are that one Shri Basant (Basant Lal), Cook retired from the service of the respondents on 30.9.82 on superannuation. The applicant claims that she is the widow of the retired employee of the Govt. servant as she had been married to him in 1957. Applicant has submitted that because of cruelty and other circumstances which prevented her from living with her late husband, she was living separately. She has relied on the judgement of the Hon'ble Metropolitan Magistrate, Delhi dated 17.9.81 (Ann.A.2). In this order, the MM had, after referring to the facts of the case, come to the

conclusion that the respondent, late Sh. Basant had neglected to maintain the petitioner at <sup>all</sup> and she was living separately from him with sufficient reasons. It was accordingly directed that the respondent should pay Rs.150/- PM for the maintenance of the petitioner from the date of <sup>the</sup> application i.e. 25.9.79. (9)

3. The applicant, relying on the aforesaid judgement of the MM dated 17.9.81 under Section 125 Cr.PC, has submitted that she had made a representation to the respondents for grant of pensionary benefits/family pension which has been rejected by the impugned order. The main grounds taken by the respondents in the impugned order is that <sup>the</sup> late Sh. Basant had not mentioned any particulars of other members of his family in the form for the purposes of family pension, and had in fact, nominated himself (Ann.R.1). Sh. Harvir Singh, learned proxy counsel for the applicant has submitted that it is clear from the order of the MM <sup>re</sup>lied upon by the applicant, that she was legally married to Sh. Basant and she is his widow. He has, therefore, submitted that as the applicant had furnished copy of the MM's order to the respondents, there was no reason why they should not have relied upon it and acted on the same to grant her family pension as due to her, in accordance with the rules. He has relied on Rule 75 of the Railway Services (pension) Rules, 1993 and has submitted that since the deceased railway servant/pensioner has left behind <sup>a</sup> widow in this case, the applicant is entitled to family pension.

4. The respondents in their reply have submitted that late Sh. Basant, while in service had submitted <sup>the</sup> family pension forms on 30.11.82, showing his own name and not the name of any other <sup>as</sup> member of his family. They have also submitted that the applicant has kept mum for more than 15 years when Sh. Basant was alive and thereafter, submitted <sup>the</sup> first representation/claim for family pension only in 1999, after 14 months of his death. They have, therefore, submitted that the stand of the applicant is incorrect and illegal in the circumstances of the case. However, they have submitted that the judgement of the Hon'ble M.M. Delhi relied

upon by the applicant is a matter of record. According to them, as Sh. Basant has not considered it appropriate to give <sup>the</sup> name of any other <sup>person</sup> as member of his family, the representation of the applicant has been correctly rejected by order dated 8.2.99. 10

5. I have carefully considered the <sup>pleadings and</sup> submissions made by the learned proxy counsel for the parties.

6. A perusal of the proforma enclosed to the reply of the respondents, submitted by Sh. Basant on 30.11.82 (Ann.R.1) shows that he had not nominated any member of his family, other than himself in the form. It is also noted that during the <sup>life</sup> time of late Sh. Basant, the applicant had also not made any claim for being granted any ~~family~~ pension. However, the applicant has relied on the order passed by the MM, Delhi dated 17.9.81. In this order, after discussion of the relevant facts and law, the MM, Delhi had come to the conclusion that the petitioner - Smt. Kamla Devi was <sup>the</sup> legally wedded wife of <sup>the</sup> respondent i.e. late Sh. Basant. Accordingly, a direction was given to the respondent to pay Rs.150/- P.M. for the maintenance of the petitioner under Section 125 Cr.P.C. Nothing has been placed on record to show that the order dated 17.9.81 had not been complied with by Sh. Basant and accordingly this order has become final and binding. This order also clearly shows that the applicant is the widow of late Sh. Basant.

7. In view of the fact that he had not mentioned any member of his family other than himself in the pension form during his service or even upto the date of his death, the action of the respondents in not granting family pension to the widow cannot be faulted. The applicant had <sup>himself</sup> submitted an application for family pension in 1999 after 14 months of the death of her husband, Sh. Basant. The contention of the respondents that the OA is not maintainable as it is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985 is rejected as the claim for family pension is a recurring cause of ~~action~~, as held by the Apex Court. (See the judgement of the Hon'ble Supreme Court in M.R.Gupta Vs. UOI (1995) (5) Scale 29).

28.

8. In the facts and circumstances of the case, the claim of the applicant that she is entitled for family pension in accordance with the rules, as the widow of late Sh. Basant cannot be rejected merely on the ground that late Sh. Basant had not nominated her in the proforma of family pension. As there is nothing placed on record to show that the order of the MM dated 17.9.81 has been reversed, she has to be considered as the widow of late Sh. Basant i.e. <sup>the</sup> retired employee of the respondents. (11)

9. For the reasons given above, <sup>the</sup> OA is allowed <sup>with</sup> the following directions:-

(i) Respondents <sup>to</sup> ~~may~~ consider the case of the applicant as <sup>the</sup> widow of late Sh. Basant, deceased Railway servant, in accordance with the pension rules for grant of family pension. This action shall be taken within three months from the date of receipt of a copy of this order.

(ii) Having regard to the facts and circumstances of the case, the applicant shall not be entitled to any arrears of family pension but shall be entitled to the same from two months from the date of filing of this OA, namely, 20.10.99. Parties to bear their own costs.

*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan )  
Member (J)