

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1916 of 1996

New Delhi, this the 3rd day of June, 1997

Hon'ble Mr. N. Sahu, Member (A)

Smt. Manjit Kaur,  
aged about 26 years,  
widow of late Shri Gurnam Singh,  
Constable No.8370, VII Bn. D.A.P.,  
and Resident of D-176, Rishi Nagar,  
Delhi - 110 034

- Applicant

(By Advocate : Shri M.L.Chawla along  
with Shri S.L.Lekhanpal)

Versus

1. Lt. Governor, Delhi (Through the Chief  
Secretary to the Govt. of National  
Capital Territory of Delhi), Old  
Secretariat, Delhi - 110 006

2. The Commissioner of Police,  
Police Headquarters, I.P. Estate,  
New Delhi - 110 002

3. The Deputy Commissioner of Police,  
VII Bn., Delhi Armed Police,  
Malviya Nagar, New Delhi-110 017

- Respondents

(By Advocate : Shri Amresh Mathur)

Shri Hari Singh & Smt. Amrit Kaur  
(By Advocate: Shri P.K. Bhardwaj)

- Intervenor

J U D G M E N T

Hon'ble Mr. N. Sahu, Member (A) -

This application is made under Section 19 of the Administrative Tribunals Act, 1985 against the inaction of the respondents in not giving retiral benefits of the applicant's husband who died in harness in a road accident on 31.7.1996.

2. The applicant was married to late Shri Gurnam Singh S/o Shri Hari Singh employed as Constable in Delhi Armed Police on 18.4.1993. No child was born after the wedlock. The husband of the applicant had filed a Civil Suit No.102/94 for dissolution of the marriage on 2.2.1994 praying for a decree of divorce. She was granted by the Court a sum of Rs.600/- per month towards maintenance besides a sum of Rs.2,200/- as litigation expenses. With the death of Shri Gurnam Singh the suit for divorce, named as Civil Suit No.102/1994 became infructuous without any final order. She, therefore, claims to be a legally wedded wife of

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late Shri Gurnam Singh and now his widow. She, therefore, prays for compassionate appointment and retiral benefits including family pension for which she applied on 27.8.1996 to the Dy. Commissioner of Police, 7th Battalion, Malviya Nagar, New Delhi.

3. In the counter, filed by the respondents it is stated that as the applicant Smt. Manjit Kaur was living separately from the deceased and there was no child born, the late Constable Shri Gurnam Singh made a Will on 27.2.96 in favour of his parents for all immovable and movable property including service benefits he was entitled to at the time of his death. The relevant portion of the Will is extracted as below-

"Whereas, in view of the foregoing reasons, in case of my death the property entitled to me or having in my possession, the gratuity or any kind of fund from my service shall be the sole property of my aforesaid parents after my death and they have every right to claim the same and enjoy in accordance with their own wish."

The deceased has nominated his father Shri Hari Singh to receive the amount of GPF till he acquires a family and his mother Smt. Amrit Kaur as a legal heir to receive other Govt. dues in the event of his death and till the date of his death he had not nominated any other person. Since the mother Smt. Amrit Kaur is the nominee on record, she has also claimed for all pensionary benefits as well as other Govt. dues pertaining to the deceased. Based on these facts, both the parties were asked to produce a Succession Certificate from a competent court of law. The parents have petitioned for Succession Certificate to the Administrative Civil Judge, Tis Hazari, whereas the applicant had moved the CAT.

4. The stand taken by the respondents is that the applicant had already severed all her relationships with the

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family of the deceased prior to divorce proceedings. She was never made a nominee for any Govt. dues by the deceased. After his death the parents <sup>being</sup> legatees under the Will and nominees on record, no Government dues could be released to any other party. The applicant had also got a criminal case registered against the deceased as a result of which he remained under suspension for about 6 months and was facing a departmental enquiry.

5. In the rejoinder it is stated that as no decree of divorce was passed the marital status continued till the death of Shri Gurnam Singh. With regard to the Will it is submitted that it has no effect on retiral benefits. The benefits automatically flow to the wife by virtue of operation of law. It is submitted that family pension and connected benefits are not the property of the deceased Government servant and cannot be bequeathed by a Will. With regard to other movable and immovable property that will devolve on the concerned persons by virtue of their legal status. As the wife of the Government servant being the sole surviving member of the family, she would receive all the benefits and claims over property left behind by the deceased-husband. It is stated that after the marriage of the Government servant and as the wife is alive, all earlier nominations lapse.

6. The learned counsel for the applicant cited a decision of the Hon<sup>ble</sup> Supreme Court in the case of Smt. Violet Isaac and others Vs. Union of India and others, 1991 S.C. SLJ 126. The question before the Hon<sup>ble</sup> Supreme Court was whether family pension can be bequeathed by means of a will by the deceased during his lifetime. Their Lordships have held that the Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employees. There is no nomination under the Family Pension

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Rules. Only designated persons are entitled to receive the family pension. As the employee has no control over the family pension which operates by law after his death, this can not be the subject matter of a Will. Monetary benefits of family pension cannot form part of the estate of the deceased and, therefore, cannot be bequeathed by a Will. In State of Gujarat Vs. Sarti Devi, 1991 S.C. SLJ 213 it has been held that mother cannot be included as the member of a family and entitled to claim family pension.

7. The applicant is the legally wedded wife of the deceased. There is judicial separation. Judicial separation is not the same as dissolution of marriage. Under Section 10 of the Hindu Succession Act, 1955 the order of judicial separation can be rescinded if it is considered just and reasonable to do so. Thus, the marriage does not stand dissolved and it will subsist. Under Section 13 of the Hindu Marriage Act, 1955 the husband or wife may present a petition for divorce on the ground of a decree of judicial separation. This provision only clarifies the position that a decree for judicial separation does not in any way dissolve the marriage but that can be made a ground for dissolution of marriage in a suit for divorce. Thus, the applicant succeeds and she is entitled to family pension. The respondents are directed to compute the family pension due to her in accordance with law within a period of 3 months from the date of receipt of a copy of this judgment.

8. With regard to provident fund, leave encashment, unpaid salary and Police Benevolent Fund, the position is different. There was a nomination by the deceased-Government servant under the General Provident Fund Rules. This nomination was relevant when the subscriber had no family. The deceased-Govt. servant nominated his father Shri Hari Singh, who was 58 years of age. On acquiring a family this nomination is supposed to have become invalid. According to the learned counsel for the applicant the nomination in

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favour of Shri Hari Singh for GPF has become invalid after late Shri Gurnam Singh married the applicant and, therefore, the provident fund money should go to the wife. This nomination was dated 27.3.1991. In view of the decision of the Hon'ble Supreme Court in the case of Haryana State Electricity Board Vs. Surasti Devi, 1996(1) S.C. SLJ 215 the mother is certainly entitled to whatever claims the deceased would have been entitled like GPF, leave encashment etc.

7. With regard to gratuity it is stated that it shall be paid to the person or persons on whom the right to receive the death gratuity is conferred by the deceased Government servant by means of a nomination under Rule 53(f) of the Central Civil Services (Pension) Rules, 1972. If there is no nomination or if the nomination made does not subsist the death gratuity amount shall be paid to the following surviving members of the family in equal shares - wife, including judicially separated wife, sons and un-married daughters. It is only when there is no wife or son or un-married daughter then the death gratuity shall be payable in equal shares to certain specified persons which includes father and mother amongst others. This is mandated under Rules 51 and 51-A of CCS(Pension) Rules, 1972.

8. With regard to Provident Fund if the nomination made by the deceased Government-servant in accordance with G.P.F. Rules, 1960 in favour of a member or members of his family subsists then the amount standing to the credit will be paid to his nominee. If no such nomination in favour of a member or members of the family of the subscriber subsists then the amount to his credit will be paid to the members of his family in equal shares. For this purpose family means wife/husband, parents, children, minor brothers, unmarried sisters, deceased son's widow and children and where no member is alive a paternal grand parent. A wife judicially separated or ceased to be entitled to maintenance shall be

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deemed to be no longer a member of the family, unless the subscriber subsequently intimates otherwise. A female subscriber can express her desire to exclude her husband from her family. The above definition of the family and the rule regarding judicially separated wife is to be found under Rule 2(c) of the G.P.F. (CS) Rules, 1960. For the purpose of Rules 51, 52 and 53 of C.C.S. (Pension) Rules, 1972 family is also defined to include a judicially separated wife and father and mother.

9. In this case there is a clear nomination in favour of the mother as far as benefits under the Delhi Police Mutual Welfare Scheme, 1990. There is no ambiguity about this nomination as family includes mother. As far as the benefits under the Delhi Police Mutual Welfare Scheme, 1990 is concerned the benefits will exclusively go to the mother of the applicant Smt. Amrit Kaur.

10. With regard to General Provident Fund, the deceased-Govt. servant has nominated Shri Hari Singh but stated that on acquiring a family nomination shall become invalid. The question at issue is whether after the marriage with the estranged wife, who is the applicant in this case, this nomination had become invalid. Before this question is answered, we have to view the role of the Will in this regard. The initial nomination was dated 27.3.1991. The Will is dated 27.2.1996. The Will is later than the impugned nomination in respect of GPF. As far as GPF is concerned, the Will is also a form of nomination. It nominates the parents for all his property. Accretion to GPF is a part of the property of Gurnam Singh. The will can be read as a proper nomination for this purpose, even if we assume that the GPF nomination has become invalid after Shri Gurnam Singh married the applicant.

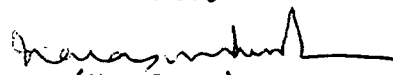
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In view of the Apex Court's decision in the case of Surasti Devi (supra) the parents are entitled to the GPF, which is part of the property of the deceased, in equal shares.

11. With regard to gratuity, I have not been shown any specific nomination under the C.C.S. (Pension) Rules, 1972. Here also there should be no difficulty in treating the parents as nominees of the deceased-Government servant as per the Will. In the case of Surasti Devi (supra) it is held that the mother is certainly entitled to whatever claims the deceased would have been entitled and this includes GPF and leave encashment. Thus, except family pension which is payable to the applicant in full and the Welfare fund benefit which is payable to the mother in full, all other benefits, namely, GPF, leave encashment, gratuity etc. shall be payable to the parents nominated by the Will. This is subject to one condition. It is quite likely that the validity of the Will can be challenged. The Will has to be probated and a succession certificate obtained. Subject to this, both the parents are entitled to all other benefits except family pension and welfare fund benefits in equal shares. The Original Application is accordingly disposed of.

The parties shall bear their own costs.

  
(N. Sahu)  
Member (A)