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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1884 of 2000

New Delhi, this the 2nd day of August, 2001

HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

1. Smt. Suksham Lata
W/o Sh.G.D. Midha
R/o C-56 (WZ 1350-A), Sudershan Park,
New Delhi-110 015.
2. Sh.G.D. Midha
R/o C-56 (WZ 1350-A), Sudershan Park,
New Delhi-110 015. -APPLICANTS

(By Advocate: Shri K.K. Patel)

Versus

1. Union of India through:
Secretary,
Ministry of Power,
Central Electricity Authority,
Nirman Bhavan,
R.K. Puram,
New Delhi.
2. The Under Secretary (Admn.),
Ministry of Power,
Central Electricity Authority,
Seva Bhavan, R.K.Puram,
New Delhi.
3. Smt. Manjeet Kaur,
R/o RZ-83A, Vishnu Garden,
New Delhi-110 018. -RESPONDENTS

(By Advocate: Shri P.P. Rehlan, proxy counsel for
Sh.J.B. Mudgil, Counsel for respondent
Nos.1 and 2.

Shri B.S. Oberoi, counsel for respondent
No.3)

O R D E R

By Hon'ble Mr.Kuldip Singh, Member(Judl)

The applicants are the parents of late Shri Manish Kumar who was working as Personal Assistant to Director (EDP) with the respondents. These applicants have filed this OA seeking a direction to the respondents to pay to the applicants all the benefits such as gratuity, leave encashment etc. payable after the death

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of the employee according to the shares allotted under the statutory instructions of the Government of India.

2. Facts in brief are that the applicant was earlier married to one Ms. Nidhi. The marriage came to be dissolved by the order dated 12.3.99 passed by the Additional District and Sessions Judge, Delhi. Subsequently the deceased married another lady, i.e., respondent No.3 and it appears that the retiral benefits such as DCRG, GPF, Leave Encashment has not been released by the department to anyone of them. The applicants claim that they understand that the deceased employee after his first marriage in his service book had given the following names with regard to his retiral-cum- death benefits:-

(1) General Provident Fund in the name of first wife.

(2) Gratuity in the name of his mother; and

(3) Other dues like leave encashment etc. for which no nomination has been filed and if filed that is not within the knowledge of the applicants.

3. The applicants also admit that the deceased employee got remarried to respondent No.3 on 10.2.2000, i.e. only 6 days before his death and after the death of the applicants son, respondent No.3 left the matrimonial house along with all her belongings to live with her parents. The applicants made efforts to persuade

respondent No.3 to remain with them but their efforts yielded no result and they understand that the respondent No.3 wants to re-marry so in these circumstances the applicants claim that all the retirement-cum-death benefits should be given to them in accordance with law.

4. The respondents are contesting the OA. The department has pleaded that after the dissolution of his first marriage the deceased employee had re-married and employee had never informed the department about the second marriage as he could not join duty after marriage and expired while on leave for 10 days from 9.2.2000 and employee could not fill a revised nomination after his second marriage. However, respondent No.3 informed the office about the death of applicant's husband and she made a claim that being wife of the employee she is entitled to claim various amounts such as gratuity, GPF, insurance, leave encashment etc. The respondents also pleaded that the family of the deceased Government servant is entitled to the payments such as leave encashment, family pension, death-cum-gratuity, group insurance, GPF etc. Respondents claim that with regard to DCRG Rule 53 of the CCS (Pension) Rules, 1972 states that in those cases where there is no nomination the gratuity is payable to the members of the family in the manner prescribed under the Rule 51 of the CCS (Pension) Rules, 1972.

5. As regards GPF is concerned it is pleaded that the contingencies on the happening of which becomes invalid was mentioned as insanity, divorce or separation. Since the employee has divorced the first wife the

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nomination made in the name of his first wife has become invalid. According to Rule 5 of the Provident Fund Act, 1925 an absolute right to receive the PF money of a subscriber is conferred on the nominee but the nomination should be a valid one and if there is no nomination in favour of any particular member or member of the subscriber then according to rule 33(b) the amount of the GPF is to be disbursed equally and in the instant case since the nomination has become invalid so the balance of the GPF is to be disbursed among the members in equal shares. The same rule apply to group insurance and in case of family pension and leave encashment, no nomination is required as per rules but in this case the same is payable to his wife who is respondent No.3 so the official respondents states that they have no objection to disburse the amount to respondent No.3 in accordance with the rules.

6. However, private respondent, i.e., respondent No.3 has filed her own counter-affidavit and stated that the entire estate of deceased who dies intestate is to devolve in accordance with Rule 8 of the Hindu Succession Act and if a male dies intestate shall devolve firstly upon the legal heirs in class I of the schedule, which includes mother and wife but does not include father. The application filed by father of the deceased claiming share in estate, as one of the applicants is not maintainable. The respondent No.3 has also stated that the applicants have no right to claim the same as the same are to be paid to her.

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7. She further claims that she being a lawfully wedded wife of the deceased is fully dependent on him totally and she is the only person who has suffered the most and as such is entitled to claim of the all the retiral dues.

8. I have heard the learned counsel for the parties and gone through the records of the case.

9. Shri B.S. Oberoi appearing for the private respondent referred to a judgment of the Calcutta Bench of the Tribunal in OA No. 1164/1997, i.e., Smt. Gopa Mazumdar Vs. Union of India & Others, wherein dealing with different funds such as Family Pension, PF, Gratuity and Group Insurance, the Calcutta Bench has held as under:-

(i) Family Pension-Succession Certificate-Nomination-Estate-No nomination for family pension by deceased-His wife Gopa had filed suit for separation and was granted alimony, in the meanwhile he died and suit got abated-Gopa wants family pension, also the mother of deceased wants family pension-Respondents asked them to bring succession certificate-Family pension is not an Estate and cannot pass by inheritance, it is a welfare measure for the family which does not include mother-The marital status was still intact-Held Gopa shall be given family pension without any nomination or a succession certificate.

(ii) Provident Fund-Nomination-No nomination left for provident fund-Wife and mother both claim-Nomination does not confer any right to provident fund and it is to be given to designated person, in this case the wife-Held she will get it without any succession certificate.

(iii) Gratuity-Inheritance-Nomination-Gratuity claimed by wife and mother both-Railway Service (Pension) Rules, 1993-Rules 70, 71, 74 provide who will get it-Gratuity is not an Estate-Held wife shall be paid gratuity without succession certificate.

(iv) Group Insurance-Nomination-Late employee has nominated his mother for GIS, the wife also claims this money-Wife already filed a separation suit and was given alimony which shows she was living separate-Held GIS money will be paid to nominee mother".

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10. I think that in this case also the nomination submitted by the deceased to his officer at an earlier stage have become invalid because the nomination for death-cum-retirement gratuity which in favour of the mother of the deceased goes to show that this has been submitted when the applicant had no family and with regard to the nomination of GPF is concerned, it was in the name of his first wife who had been divorced so that nomination has also become invalid. Similarly Annexure A-3 which is another nomination in favour of mother of the applicant with regard to the benefits of the Group Insurance Scheme, has also become invalid because it was filed when the applicant had no family so all these nominations have become invalid as such it is to be taken as if no nomination exists on record as on date.

11. So now coming to the grant of family pension the judgment cited by the respondent No.3 show that the family pension is not an estate and cannot pass by inheritance, it is a welfare measure for the family which does not include mother. The marital status was still intact so the wife is only entitled to be paid the pension without any nomination or a succession certificate so on the same analogy it is held that the respondent No.3, who is the wife of the deceased in this case is entitled to family pension without any nomination or succession certificate.

12. As regards PF is concerned, there is no nomination and the GPF was also allowed to be given to the wife without any succession certificate. In the absence of any nomination it was held that the wife is

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held to be the designated person under the PF rules and in the absence of nomination she has absolute right to receive PF dues from the authorities.

13. As regards gratuity is concerned, the Calcutta Bench has also held that the gratuity is not an estate and is not covered by the Hindu Succession Act, 1955 and since gratuity is also payable under welfare scheme, so it is also payable to the widow and she is not required to produce any succession certificate for the purpose of receipt of gratuity from the respondents, as admissible to her, on account of death of her husband.

14. With regard to gratuity the learned counsel for the applicants submitted that the case before the Calcutta Bench was with regard to a Railway employee and was not of a Government employee. However, I find that the rules with regard to pension of the Central Government and that of the Railway employees are on parimateria so applying this analogy it is the widow, respondent No.3, who is to be paid gratuity without a succession certificate.

15. As regards insurance is concerned, it has been held in Shri Vishin N. Khanchandani & Another Vs. Vidya Lachmandas, JT 2000(9) SC 321 by the Hon'ble Supreme Court as under:-

".....On the death of the policy holder, the amount payable under the policy became part of his estate which was governed by the law of succession applicable to him".

16. In this case since there is no nomination so

the amount of insurance becomes a part of the estate of the deceased and the same shall be disbursed as per the law of succession applicable to the deceased.

17. With the above observation and applying the law as laid down by the Calcutta Bench, the OA is partly allowed. As far leave encashment, DCRG, etc. is concerned the same is to be paid to respondent No.3. but as regards group insurance is concerned, the same shall be disbursed equally among the legal heirs in accordance with law of succession applicable to the deceased. The above directions may be complied within a period of 3 months from the date of receipt of a copy of this order. No costs.

/Rakesh


(KULDIP SINGH)
MEMBER(JUDL)