

(Reserved on 06.11.2020)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

Dated : This the **07th** day of **December** 2020

Present:

HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER-J

ORIGINAL APPLICATION NO. 330/00169/2012

Smt. Ram Devi @ Ram Pyari, wife of Late Bhaiya Lal, Resident of Village- Banguwa Khurd, Gram Panchayat – Udguwa, Tahsil – Talbehat, District - Lalitpur.

. . .Applicant

By Adv : Shri Rakesh Kumar Shukla

V E R S U S

1. Union of India through its General Manager, Central Railway, Mumbai.
2. Divisional Railway Manager (Personnel), Central Railway, Bhopal.

. . .Respondents

By Adv: Shri L.M. Singh

O R D E R

The present OA has been filed by Smt. Ram Devi @ Ram Pyari whereby seeking a direction to be given to the respondents, to grant her family pension and to pay her the arrears of family pension accrued so far. Prayer has also been made that the respondents be directed to ensure payment of family pension to the applicant in future, month to month in time.

2. Heard learned counsel for the parties and perused the record.

3. The facts of the case, in brief, are that the husband of the applicant Late Bhaiya Lal died during his service on 08.11.2000. He was a regular employee working on the post of Khalasi under the respondents. The first wife of Late Bhaiya Lal, Smt. Girija Bai pre-deceased Late Bhaiya Lal. After her death, Bhaiya Lal solemnized marriage with the applicant. From his first marriage, a son Roop Singh was born. Roop Singh, after the death of Bhaiya Lal, preferred an application for appointment on compassionate grounds and he was given appointment on a Group 'D' post. The applicant applied for grant of family pension annexing the proofs that she is the legally wedded wife of Late Bhaiya Lal. She was assured by the respondents that the matter for grant of family pension would be settled soon after the computation of qualifying service of the deceased employee and after completion of other formalities. However, when the applicant did not receive any response even after expiry of a considerable time, she sent a representation on 20.01.2011 (Annexure A-6) to the respondent No. 2 requesting him to grant her family pension, but her representation was not decided. After expiry of more than one year since preferring the representation, the applicant filed the instant OA in the year 2012 before this Tribunal.

4. The respondents have filed counter reply opposing the OA mainly on the ground that the applicant could have granted family pension only on production of succession certificate. It has been contended that the respondents had never disputed or rejected the claim of the applicant for family pension, but since there was a dispute between successors, a succession certificate issued by the

competent authority was mandatory. It has been contended that despite demand of succession certificate from the applicant, she did not submit the succession certificate, therefore, the family pension could not be granted to her.

5. In the rejoinder affidavit filed by the applicant, it has been submitted that when the respondent No. 2 himself has admitted in the counter reply that the applicant is the legally wedded wife of deceased then why the respondents were demanding the succession certificate. It is stated that the applicant is the legitimate wife of Late Bhaiya Lal as he had performed marriage with the applicant after the death of his first wife. Hence, there is no need of succession certificate. She had already submitted a copy of family register showing the status of the family members. Death certificate of first wife Smt. Girija Bai has also been filed by the applicant alongwith rejoinder as Annexure RA-1. Moreover, by means of a supplementary affidavit, the applicant has filed the succession certificate dated 08.03.2013 as Annexure SA-1.

6. In support of his contentions, the learned counsel for the applicant has quoted **Rule 75(8)(ii) of the Railway Services (Pension) Rules, 1993**, which provides that if a deceased railway servant or pensioner leaves behind a widow or widower, family pension shall become payable to the widow or widower, failing which, to the eligible child. Learned counsel has contended that the applicant, admittedly, being the widow of the deceased railway employee, is entitled to receive family pension. It has been contended that as per the settled proposition of law, receiving of

retiral dues or family pension is not a bounty but it is a right enshrined under Article 14 and 19 of the Constitution of India, therefore, the respondents are duty bound to consider the claim of the applicant for grant of family pension.

7. Learned counsel for the applicant has also placed reliance on a **judgment dated 09.07.2014 passed by Hon'ble High Court of Kerala in WA 556 of 2014 – Salma Beevi Vs. Administrative Officer, Cochin Port Trust, (Dock Labour Division) Cochin & Ors.**

8. I have given my thoughtful consideration to the rival contentions advanced by the learned counsel for the parties and have perused the aforesaid judgement cited by the learned counsel for the applicant.

9. In the aforesaid judgment, Hon'ble High Court of Kerala has relied upon a judgment of Hon'ble Apex Court rendered in the case of **Jodh Singh Vs. Union of India and another – 1980 (4) SCC 360**, para 9 and 10 of which reads as under: -

“9. Pension is a retirement benefit. It is admissible under the relevant rules on superannuation. It is payable on superannuation to the employee himself during his life time after retirement. Special family pension is not admissible to the employee but to the specified members of the employee's family and that too in the event of his death while in service or after his retirement as provided in the Regulations. It is in the nature of a compensation because the death was due to or hastened by either a wound, injury or disease which was

attributable to Air Force service or the aggravation by Air Force service of a wound, injury or disease which existed before or arose during Air Force service, etc. (see Rule 74). If death is not referable to any of the events mentioned in Rule 74, special family pension is not admissible. To compensate for death on account of hazards of service rendering dependents destitute that benefit of special family pension is conferred on certain persons having a certain status arising out of and directly attributable to relation with the deceased. Special family pension under rule 74 is admissible, amongst others, to widow of an officer. It is not that the deceased gets pension or earns special family pension. It is the untimely death of the deceased, the process of death having been hastened or accelerated by the hazards of service, that the widow who is rendered destitute is granted special family pension. Whether the widow qualifies for special family pension is to be determined by the sanctioning authority, the President in this case. The special family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow.

10. Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject-matter of testamentary disposition.”

10. The Hon’ble Kerala High Court, in para 20 of the aforesaid judgment has held as under: -

“20. Going by Rule 54 of the CCS (Pension) Rules, the Family Pension is designed to provide relief to the widow and children by way of compensation for the untimely death of the

deceased employee or pensioner. The rules do not provide for any nomination with regard to family pension, instead it designates the persons who are entitled to receive family pension. Thus, no other person except those designated under the rules is entitled to receive family pension. The rules confer monetary benefit on the widow and children of the deceased employee or pensioner, but the employee or the pensioner, as the case may be, has no title to it and it does not form part of his estate enabling him to dispose of the same by testamentary disposition. Family pension payable on the death of an employee or pensioner, who is governed by the CCS (Pension) Rules, to the widow and children of the deceased employee or pensioner is neither a debt nor a security of that deceased in respect of which succession certificate can be applied for under Section 372 of the Succession Act, 1925. Production of succession certificate cannot be insisted upon for receiving family pension as it is neither a debt nor a security of the deceased employee or pension." (Underline to lay emphasis).

11. Further, in the case of **Smt. Violet Issaac and others Vs. Union of India – 1991 (1) SCC 725**, Hon'ble Apex Court, while interpreting Rule 801 of the Railway Family Pension Rules, 1964, has held that, the family pension is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. Paragraph 4 of the judgment reads as Under: -

"4. The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules 1964 provide for the sanction of family pension to the survivors of a Railway Employee. Rule 801 provides that

family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension, to brother or any other family member or relation of the deceased Railway employee. 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 employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no- other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the 'wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The Family Pension Scheme is in the nature of a welfare scheme framed by the Railway Administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

12. Now, reverting to the facts of the instant OA, the facts reveal that the only objection raised by the respondents for denying family pension to the applicant (the widow of the deceased Bhaiya Lal) is absence of a succession certificate.

13. In view of the observations of Hon'ble High Court, Kerala and Hon'ble Apex Court in the judgments cited above and also in the light of relevant CCS (Pension) Rules, the aforesaid ground to deny family pension to the applicant is not tenable. The requirement of succession certificate in the present case is not mandatory because there is no dispute with regard to the fact that the applicant is the legally wedded wife of Late Bhaiya lal. More so, the applicant has filed the succession certificate as Annexure SA-1 with her supplementary affidavit.

14. The applicant had moved a representation for grant of family pension far back in the year 2011. However, the respondents failed to take any decision on her representation and did not grant her family pension only on the ground of absence of a succession certificate despite the fact that they were accepting her to be legitimate wife of Late Bhaiya lal. She had furnished the family details by means of family register, therefore, once an application was made by the applicant claiming family pension, the respondents should have considered such application with reference to the details of the family members, their date of birth and also the details whether any children was suffering from any disability or not, so as to ascertain that whether the pensioner was survived by any eligible child, in terms of Rule 54 (6) (ii) and whether she would be entitled to avail whole amount of family pension or not, but the respondents failed to perform their duty and kept mum on the whole issue for such a long time.

15. Considering all these facts and circumstances, the OA deserves to be allowed and is allowed. The respondent Nos. 1 and 2

are directed to consider the entitlement of the applicant to receive full family pension with effect from 09.11.2000 and to take appropriate decision as expeditiously as possible at any rate within a period of three months from the date of receipt of certified copy of this order.

16. In case, it is found that the applicant is entitled for full family pension, consequential monetary benefits alongwith interest at the rate of 5% shall be disbursed to her within two months from the date of such decision. The decision so taken shall be communicated to the applicant without any delay.

19. There shall be no order as to costs.

(Justice Vijay Lakshmi)
Member (J)

Anand...