



CENTRAL ADMINISTRATIVE TRIBUNAL

CHANDIGARH BENCH

O.A. No. 060/253/2020

(Order reserved on 11.02.2021)

Chandigarh, this the 19th day of February, 2021

HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)

Miss Komal D/o Late Sewa Ram aged 23 years, Mohalla Christian, Sunder Nagar, Dangu Road, Pathankot – 145 001 (Punjab).

.....Applicant

By Advocate: Mr. Manohar Lal

Versus

1. Union of India through Chairman, Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi – 110 001.
2. Chief Commissioner of Income Tax, Central Revenue Building, 1st Floor, Maqbool Road, Amritsar – 143 001.
3. Assistant Commissioner of Income Tax, DDO, Range-VI, Pathankot – 145 001 (Punjab).

.....Respondents

By Advocate: Mr. K.K. Thakur

ORDER

AJANTA DAYALAN, Member (A):

1. The present OA has been filed by the applicant Miss Komal seeking quashing of order dated 27.08.2019 (Annexure A-1) rejecting her claim for family pension on death of her mother Smt. Salima. She has also sought sanction of family pension to



her w.e.f. 02.04.2014 with all consequential benefits along with interest @ 12% for delayed payment.

2. The applicant states that she is 23 year old and belongs to Scheduled Caste community. Her date of birth is 20.06.1996 (Annexure A-3) She is unemployed and unmarried. Her father Sewa Ram was working as Safaiwala in MES Pathankot and her mother Salima was working as Chowkidar in Income Tax Department also at Pathankot.

3. The applicant further states that her father died on 06.10.2009 (Annexure A-6) while still in service. Her mother was sanctioned family pension after her father's death. However, her mother also died on 01.04.2014 (Annexure A-7).

4. After her father's death, her mother was in receipt of family pension. Subsequent to her mother's death, her father's family pension was transferred to her w.e.f. 02.04.2014 vide PPO dated 24.01.2017 (being the first category claimant) (Annexure A-8).

5. The applicant further contends that when her mother joined service on 06.03.1992, her parents had only two children as she was not yet born. As such, the service record of her mother only indicates two children – son Rakesh Kumar and daughter Gita Devi. The name of the applicant was not included.

6. The applicant states that she has been pursuing the matter for her appointment on compassionate grounds. However, she was informed that she could get one additional family pension on death of her mother. Accordingly, she applied for family pension on the death of her mother on 21.08.2018.



However, the respondents vide letter dated 26.10.2018 (Annexure A-10) rejected her claim as her name did not appear in the list of family members in the service record of her mother Salima. She was also asked to produce documents supporting her claim as legal heir to Salima within fifteen days.

7. Thereafter, the applicant on 14.11.2018 submitted copies of birth certificate, 10th class certificate and PAN card to the respondents. The respondents vide letter dated 06.12.2018 (Annexure A-11), refused to entertain the same on the ground that as per service record of deceased Salima, there is no proof of her being a legal heir of Salima. Through application dated 06.12.2018 (Annexure A-11/A), the applicant reiterated the submission of required documents. However, through letter dated 06.02.2019 (Annexure A-12), the respondents reiterated their stand and also stated that retiral benefits of deceased Salima had already been paid to the two nominees of the deceased as per service record.

8. Thereafter, the applicant made representation dated 28.05.2019 (Annexure A-13) that she is not claiming other retiral benefits, but is only asking for family pension to which she is entitled. The respondents vide letter dated 27.08.2019 (Annexure A-1) have advised her to withdraw the application failing which the respondent department reserves the right to take legal action as her name does not appear in the list of nominees in the service record of the deceased.

9. The case of the applicant is that the parents of the applicant were illiterate, downtrodden and ignorant of law. At



the time of her mother's joining the service, she was not born and as such, her name could not be included in the service book. Her parents did not know the requirement of adding the new born's name in the service book or in the list of nominees. However, the respondent department also failed to ask the employee to revise the list of her nominees. But, for this fault of the parents, the family members of the deceased cannot be made to suffer.

10. The applicant has further pleaded that she was born on 20.06.1996 after joining of her mother in the department. The department could verify the records to see that mother took some kind of leave. But her claim for family pension needs to be allowed in view of her being the daughter of the deceased Government servant and her being first category claimant for family pension. She is unmarried, unemployed and is less than 25 years of age and hence, she is entitled to grant of family pension. Requisite documents have been submitted by her to the respondent department and they may verify their own record and grant her family pension which is due to her.

11. The respondents have contested the claim of the applicant. They have stated that the birth certificate furnished by the applicant indicates that the applicant is daughter of deceased Salima and Sewa Ram. In order to verify the genuineness of the above certificate, verification was made by the respondents office and it was learnt that this certificate has been issued on the request of a person named Kishan Pal and is not corroborated or supported by any documentary evidence or



birth details of the applicant. Mere intimation by a person without any supporting document for issuance of birth certificate cannot be relied upon in the eyes of law.

12. In addition, the respondents have stated that further verification was made from the service book of the deceased Salima and it was found that Salima has not registered or intimated about the birth of the applicant to the respondent department. Moreover, at the time of intimation of family members for the purpose of retirement benefits, Salima had intimated only two children – Rakesh Kumar and Gita Devi and these were duly entered in the service book of Salima.

13. The respondents have also stated that even the medical claim of the applicant was rejected since it was not covered under the rules.

14. The respondents have further stated that as name of the applicant was not entered in the service book of the applicant's mother, the monetary benefits have already been disbursed at 50% each to the two nominees - Rakesh Kumar and Gita Devi. Further, the applicant was asked to produce documentary evidence in support of her claim of being legal heir of late Salima within fifteen days. However, no such document supporting her legal heirship was produced by her.

15. The respondents have also averred that it is hard to believe that late Salima did not know that she was required to enter new born's name in the list of nominees as she had already mentioned two nominees Rakesh Kumar and Gita Devi in her service book.



16. The respondents have further averred that to verify the claim of the applicant, leave account of Salima was verified. It was found that the deceased Salima had not availed any kind of earned leave, medical leave or maternity leave during the relevant period. According to the respondents, it is impossible that a female employee had not availed any kind of leave during the birth of her child. They have further averred that during field verification made by the Head Office, it was revealed that applicant is a daughter of Mukhtiar Masih and Smt. Kunti. As such, the respondents have doubted the genuineness of the birth certificate of the applicant.

17. In view of all above, respondents have stated that OA has no merit and the applicant does not deserve any relief.

18. The applicant has also filed rejoinder where she has basically reiterated her submissions made in the OA.

19. I have heard the counsel of the opposing sides and have also gone through the pleadings. I have given my thoughtful consideration to the entire matter.

20. Basic facts of the case are not disputed. It is also not disputed that the applicant is already in receipt of family pension on account of his father's service and consequent to the death of her mother on 01.04.2014. In support of this, the applicant has produced copy of PPO dated 24.01.2017 (Annexure A-8).

21. Besides, the basic entitlement to family pension due to mother's service, the question that arises is whether the applicant can be in receipt of two family pensions – one on



account of father's service and another on account of her mother's service. No deliberation on this issue has been made in the OA. However, I have gone through Sub-Rule 11 of Rule 54 of CCS (Pension) Rules, 1972 which reads as follows:-

“(11) In case both wife and husband are Government servants and are governed by the provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving husband or wife and in the event of the death of the husband or wife, the surviving child or children shall be granted the two family pensions in respect of the deceased parents, subject to the limits specified below, namely:-

(a) (i) if the surviving child or children is or are eligible to draw two family pensions at the rate mentioned in sub-rule (3), the amount of both the family pensions shall be limited to forty-five thousand rupees per mensem;

(ii) if one of the family pensions ceases to be payable at the rate mentioned in sub-rule (3), and in lieu thereof the family pension at the rate mentioned in sub-rule (2) becomes payable, the amount of both the pensions shall also be limited to forty-five thousand rupees per mensem;

(b) if both the family pensions are payable at the rates mentioned in sub-rule (2), the amount of two family pensions shall be limited to twenty-seven thousand rupees per mensem.”

Thus, it is observed that if both the parents are in service, the eligible child will be entitled for two family pensions on the death of both mother and father but subject to the monetary limits given in this Rule.

22. Coming to the question of entitlement to family pension due to her mother's service, it is observed that the service record of Salima does not include the name of the applicant. According to the applicant, this is because she was born in 1996 whereas her mother had joined service in 1992. According to the applicant, as her parents were illiterate, downtrodden and were ignorant of law, they did not enter her name in the service book. However, I observe that even father



of the applicant was in service and died only in 2009 – that is more than fifteen years after the birth of the applicant. It is, therefore, not easy to accept that during whole of this period, they did not think of entering her name as part of the family. The respondents have further stated categorically that during the period mentioned by the applicant, her mother never took any kind of leave including maternity leave. It, therefore, becomes even more difficult to accept that a female Government servant will not avail any kind of leave for the birth of her third child.

23. During arguments, I repeatedly asked the applicant's counsel to produce any record or documentary evidence to show that the applicant was part of the family during period of service of her parents. These documents could include medical expenses claimed from the Government or education allowance etc. claimed for her studies etc. However, the applicant's counsel was not able to produce any such record.

24. Besides, the field verification of the respondent department throws genuine doubt on the birth certificate of the applicant. In fact, the respondents have categorically stated that in the field verification made by their office, applicant was said to be the daughter of Mukhtiar Masih and Smt. Kunti. This doubt is further substantiated by the acts of applicant's own mother who failed to enter her name in the service record even when she was serving in the Government. This is even more difficult to accept as names of two other children are duly entered in the service book of Salima.



25. Thus, I observe that except the birth certificate produced by the applicant, there is no record or documentary evidence whatsoever to prove that the applicant is the daughter of Salima. This is despite the fact that father of the applicant expired in 2009 - that is after more than fifteen years of her birth and the mother expired in 2014 - that is, after over 20 years after her birth. Regarding the birth certificate, the respondent department has raised genuine doubt especially in view of field verification whereby she is stated not to be the daughter of Salima and Sewa Ram but of Mukhtiar Masih and Smt. Kunti. Also, it is verified that the mother has not taken any leave during the period in question. Besides, the names of the other two children are clearly mentioned as the nominees for receiving her retiral benefits @ 50% each - thus having no room for any entitlement for the third child.

26. In view of the above observations, especially in view of complete absence of any documentary proof in the service record of applicant's mother about her being a member of the family, and the evidence to the contrary as discussed above, I am of clear view that entitlement of the applicant for family pension is not established.

27. Yet the applicant is already in receipt of family pension in respect of his father's service. If she is not the daughter of Sewa Ram and Salima, she cannot be in receipt of that family pension. The basis on which her father's department held her entitled for family member needs to be verified. That department was MES which is not impleaded as party in the



present case. As such, this basis cannot be verified by us in this OA.

28. In face of the above, I revert the case back to the respondents to further pursue the case with the department where the father of the applicant was working and obtain the basis on which the applicant has been sanctioned family pension there. This will include the proof that Sewa Ram and Salima were legally married and that the applicant is their daughter. In the process, they may also seek clarification about the doubts that they have about genuineness of the birth certificate etc. and seek evidence to establish genuineness or otherwise of the applicant's claim that she is the daughter of Sewa Ram and Salima. In the light of full facts – including the new facts brought to their notice by the MES, Pathankot and the discussion above, the respondent department is directed to reconsider the claim of the applicant for family pension. The respondents shall pass a reasoned and speaking order in this regard within a period of three months from the date of receipt of a certified copy of this order. The order so passed shall be communicated to the applicant.

29. The OA is disposed of in the above terms.

30. There shall be no order as to costs.

(Ajanta Dayalan)
Member (A)

Place: Chandigarh
Dated: February 19th, 2021
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