

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00471/2019

Thursday, this the 3rd day of December, 2020

CORAM:

Hon'ble Mr. P. Madhavan, Judicial Member
Hon'ble Mr. K.V. Eapen, Administrative Member

R. Krishnamoorthy, 14/164, Saroja, Olassa Compound,
 Society Road, Maradu PO, Ernakulam Dt.,
 Kochi – 682 304. **Applicant**

(By Advocate : Mr. K.K. Sathish)

V e r s u s

The Asst. Commissioner of Customs (Estt.),
 Office of the Commissioner of Customs,
 Custom House, Willington Island,
 Kochi-682 009. **Respondent**

(By Advocate : Mr. N. Anilkumar, SCGSC)

This application having been heard on 23.11.2020 through video conferencing, the Tribunal on 03.12.2020 delivered the following:

O R D E R

Hon'ble Mr. K.V. Eapen, Administrative Member –

This Original Application is filed by the applicant seeking the following reliefs:

“i. *Call for the records leading to the issue of Annex. A1 order and quash the same and direct the respondent to issue a sanction order for grant of family pension to the applicant being the dependent disabled sibling of deceased R. Venu Narayanan, retired Asst. Commissioner of Customs who died on 14.11.2017;*

ii. *Pass any such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.*

iii. *Award cost of and incidental to this application.”*

2. The applicant in this case is the dependent brother of deceased R. Venu Narayanan who retired from Customs as Assistant Commissioner. The said R. Venu Narayanan died after retirement on 14.11.2017. According to the applicant the said R. Venu Narayanan had not married and he was a bachelor. The applicant and one sister are the siblings of late R. Venu Narayanan. His sister got married and is living separately but he being handicapped person with 30% locomotor disability was completely dependent on R. Venu Narayanan for his livelihood. But the said late R. Venu Narayanan has not authorized the applicant for family pension when he retired. According to him since he being the dependent sibling of late R. Venu Narayanan he is entitled to get the family pension which is provided under Rule 54 Sub-Rule 10(B) of CCS (Pension) Rules, 1972 as there is no wife or children for the late R. Venu Narayanan. He had produced his disability certificate as Annexures A5 and A6. The respondents had not granted the family pension stating that the applicant was not dependent on the deceased R. Venu Narayanan and he is not entitled to get the family pension.

3. The respondents entered appearance and filed a detailed reply statement stating that the deceased R. Venu Narayanan had not shown the applicant as wholly dependent on the Government servant immediately before his retirement or death and hence they are unable to process the family pension. It was also contended that the applicant has not produced any conclusive evidence to the effect that he is wholly dependent on his

brother and so the respondents are bound by Form-3 given by late R. Venu Narayanan and hence the family pension cannot be granted.

4. We have heard both sides. On a perusal of pleadings and Annexure A2 legal heirship certificate it is seen that the applicant and his sister R. Hemavathi were siblings of late R. Venu Narayanan and said R. Venu Narayanan was not having any other legal heirs who can claim family pension. According to the applicant he is disabled by 30% as per the disability certificate issued to him at Annexures A5 and A6. As per Annexure A6 the applicant is suffering from Sprengels shoulder left side and he has 30% permanent locomotor disability and he is unable to earn his livelihood. His disability is categorized as mild.

5. One of the contentions raised by the respondents in the impugned order at Annexure A-1 is that while submitting the pension forms for processing the pension papers, Shri.R.Venu Narayanan, Assistant Commissioner of Customs, on 15.03.2016 had submitted the details of his family in Form 3. In the said Form 3 Shri.R.Venu Narayanan categorically stated that he has no dependents. In this regard an O.M of the Department of Pension & Pensioner's Welfare O.M.No.1/6/08-P&PW(E) dated 22.06.2010 on the subject - "*inclusion of names of the widowed or divorced or unmarried daughter/parents/dependent disabled siblings (ie. brothers and sisters) in the PPO – Procedure for – Regarding*", inter-alia, in Paragraph 3 mentions as follows :

"3.Similarly, in cases where the pensioner or his/her spouse has expired, the widowed or divorced or unmarried daughter/parents/dependent disabled sibling can themselves intimate such details to the pension sanctioning authority.

However, the family pension in such cases can be processed by the pension sanctioning authority even without such intimation/acknowledgment, if sufficient proof of entitlement is produced by the claimant and all other conditions for grant of family pension are fulfilled.”

Hence, in view of this O.M, it is not required for the pension sanctioning authority to go only by the fact that the employee Shri.R.Venu Narayanan had not included the name of the applicant in the PPO as a dependent or had stated that he has no dependents. The dependent disabled sibling on his own can intimate the details after the death of the pensioner.

6. The other contention raised by the respondents in their letter at Annexure A-4 in Paragraph 4 is that the certificate produced by the District Medical Board, Ernakulam had expired on 05.09.2016 and it was silent on the matter as to whether his handicap is of such a nature so as to prevent him or her from earning his or her livelihood as laid down by the CCS (Pension) Rules, 1972. In this connection, we note that the applicant produced the Medical Board Certificate at Annexure A-6 dated 07.09.2018 which indicated that he has 30% permanent locomotor disability and that this disability is of such a nature so as to prevent him from earning his livelihood. Annexure A-4 letter also mentioned that he has not submitted any documents as mandated by Explanation 6 of Rule 6 of CCS (Pension) Rules, 1972. On a perusal of the CCS (Pension) Rules, 1972 it is revealed that Rule 54 relating to family pension has under Sub-rule 6 (vi) in Explanation 6 as follows :

“ Disabled children shall be deemed to be dependent on the Government servant, if their income is less than minimum family pension admissible under Rule 2 of this Rule and dearness relief thereon.”

The respondents say that the applicant has not submitted any documents as mandated by this explanation. However, we find that it is for the pension sanctioning authority on examination of the application and through conduct of an appropriate investigation to arrive at a clear conclusion whether the disabled sibling was dependent on the Government servant or not and whether he should be given the family pension. Thus, a proper examination of the case through inquiry should be done immediately. Whatever documents which are required to be provided in this regard should be made clear to the applicant. In short, the fact that the employee or pensioner had not declared the applicant as a wholly dependent on him need not stand in the way of a due inquiry on the application made by the applicant by the pension sanctioning authority. It is for them to look into the issue and come to a conclusion after proper examination.

7. In the circumstances, we find some merit in the contentions put forward by the applicant in the case. We allow the O.A to the extent that the respondents are directed to specify the documents to be produced by the applicant in the light of the points made at the previous paragraphs and in the light of the Explanation 6 under Rule 54 (6)(vi) and Sub rule 10(B) of CCS (Pension) Rules, 1972. They shall pass appropriate orders after due inquiry and consideration within a period of three months from the date of receipt of a copy of this order. No order as to costs.

(K.V. EAPEN)
ADMINISTRATIVE MEMBER

(P. MADHAVAN)
JUDICIAL MEMBER

“SA”

Original Application No. 180/00471/2019**APPLICANT'S ANNEXURES**

Annexure A1 – True copy of the order No. S45/25/2018-Estt.Cus dated 14.5.2019 passed by the respondent along with Form-3 with regard to details of family submitted by R. Venu Narayanan dated 15.3.2016.

Annexure A2 – True copy of the legal heirship certificate issued by the Tahsildar, Kanayannur dated 17.4.2018.

Annexure A3 – True copy of the representation submitted by the applicant dated 30.7.2018.

Annexure A4 – True copy of the letter F. No. S45/25/2018 Estt. Cus dated 10.8.2018 issued by the respondent.

Annexure A5 – True copy of the disability certificate dated 6.9.2018 issued by the Kerala State Health Services, General Hospital, Ernakulam.

Annexure A6 – True copy of the medical board certificate dated 7.9.2018 issued by the Kerala State Health Services, General Hospital, Ernakulam.

Annexure A7 – True copy of the official memorandum No. 1/27/2011-P&PW(E) dated 1.7.2013 issued by the Govt. of India, Ministry of Personnel, PG &Pensions.

RESPONDENTS' ANNEXURES

Nil

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