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CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA NO. 04/2004

New Delhi, this the 22nd day of July, 2004

Hon'ble Sh. Sarweshwar Jha, Member (A)

OA No. 04/2004

Mrs. Roshan Tiwari
W/o late Pradeep Kumar Tiwari
R/o C-61/A, Rama Park
Uttam Nagar
New Delhi - 110059

....Applicant

(By Advocate Shri Sandeep Arya)

V E R S U S

The Deputy Director (Administration)
Maulana Azad Medical College
Bahadur Shah Zafar Marg
New Delhi

....Respondent

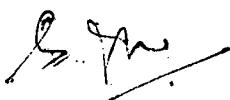
(By Advocate Shri Ram Kawar)

O R D E R (ORAL)

Heard.

2. The applicant has filed this Original Application with prayer that the respondents be directed to pay pensionary benefits, like, gratuity, leave encashmennt, CGEIS, family pension, provident fund etc. to her forthwith and further that interest @ 18% per annum also be paid to her on delayed payment of the said benefits till the date of payment.

3. The applicant's husband, who had initially joined the service of the respondents as a Dental Mechanic on 27-1-1998, died in harness on 18-5-2002. The applicant is the legally wedded wife of the deceased, as claimed by her. Necessary affidavit to this effect has also been sworn by her on 28-9-2002, a copy of which is placed at Annexure-D. She has also submitted a copy of the birth certificate of Kumari Tanya (daughter of the applicant and the deceased Pradeep



Kumar), a copy of the Ration Card (Annexure-B), a copy of Survival Member Certificate (Annexure-C) in support of her submission that she is the wife of the deceased Pradeep Kumar and that she is the genuine claimant of the admissible post-death benefits. In support of her prayer she has also referred to the nomination made by the deceased employee in favour of the applicant in regard to GPF, a copy of which is placed at Annexure-G. Reference has also been made to the fact that she was directed by the respondents vide their letter dated the 28th November, 2002 (Annexure-F) to fill the prescribed proforma for appointment on compassionate grounds and that the same was filled by her vide the proforma placed at pages 15 and 16 of the OA, in which the name of the deceased employee has been mentioned as the late husband of the applicant and this fact has been accepted by the respondents who have verified the same on page 18 of the OA. The applicant has also referred to certain decisions of the Hon'ble Apex Court, enumerated in paragraph 1.2 of her application and has contended that her case is covered by the law laid down by the Hon'ble Apex Court in the said judgements.

4. From the counter reply of the respondents it is, however, observed that, while they have admitted broadly the facts as submitted by the applicant, they have not released the said benefits to the applicant mainly for the reason that the fact that the deceased Pradeep Kumar was the husband of the applicant has been disputed by Shri Gautam Prasad Tiwari, brother of the deceased, in the Civil Court. Specifically, nomination exercised by the deceased employee for GPF in favour of the applicant has been admitted by the respondents. They have also admitted the fact that the applicant's name had been mentioned by the deceased employee in the nomination and

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attestation form, which constitute part of the Service Record. The fact that the applicant is the legally wedded wife of the deceased employee and which has been the subject matter of the civil suit as filed by one Shri Pradeep Tiwari, brother of the deceased employee in the Learned Court of the Sr. Civil Judge and that it is still pending decision have also been mentioned by the respondents as impediment to the release of the pensionary benefits to the applicant. It transpires from what they have mentioned in paragraph 4.12 of their counter reply that the respondents had asked the applicant to file the pension papers, but in the meantime the brother of the deceased employee approached the Learned Sr. Civil Judge for Succession Certificate for all the benefits of the deceased alleging that the deceased was never married. Accordingly, they have kept the release of the benefits of the deceased in abeyance till the outcome of the said case for the following reasons:

(i) That there is no nomination in the Service Record for release of the death benefits, as there is nomination only for GPF; and (ii) that the matter itself pertains to succession in the Civil Court, and, accordingly, without any outcome in the said case, releasing of benefits to the applicant may cause difficulty in recovering the benefits if made to the applicant.

5. On closer examination of the facts of the matter as submitted by both the sides it is observed that while the question of succession certificate has been taken up in the Learned Court of the Sr. Civil Judge and on which decision is still awaited, there is no stay order on the subject. The entire question of release of pensionary/retirement benefits etc. to the applicant, therefore, hinges on whether the

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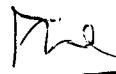
applicant is the legally wedded wife of the deceased. The balance of convenience in this regard is in favour of the applicant as there are a number of documents which she has enclosed in support of the fact that the deceased was her husband and also that she has cited relevant decisions of the Hon'ble Supreme Court under which, she claims, her case is duly covered. It is also observed that in the GPF nomination form she figures as the wife of the deceased. She also figures as wife of the deceased in the other relevant records available with the respondents, namely, nomination and attestation form which are part of service record. The other documents submitted by the applicant in support of being the legally wedded wife of the deceased can also not be disputed unless these are proved otherwise with sufficient evidence and documentary proof, which has not been done by the respondents or any other party concerned. The mere fact that a civil suit has been filed by the brother of the deceased seeking succession certificate in his favour is not enough to prevent the respondents from releasing the relevant benefits to the applicant when it has been established by her and which has been admitted by the respondents that she is the legally wedded wife of the deceased. It has also to be borne in mind that the Learned Sr. Civil Judge has not passed any stay order in the civil suit. Accordingly, the respondents are at liberty to proceed in the matter according to rules and the documents available with them and also furnished by the applicant. Any action taken by them will, however, be without any prejudice to the outcome of the civil suit as filed in the Learned Court of the Sr. Civil Judge.

6. Under these circumstances and keeping in view the submissions made by the 1d. counsel for the parties and also the fact that the case of the applicant is covered under the

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decisions of the Hon'ble Supreme Court as referred to by her in paragraph 1.2 of the OA and also subsequently, I am inclined to allow this OA with direction to the respondents that they release the retirement benefits to the applicant who is the legally wedded wife of the deceased as per the records available on the subject, which will be without any prejudice to the outcome of the civil suit for succession certificate as filed by the brother of the deceased in the Learned Court of the Sr. Civil Judge. Ordered accordingly. The respondents are also directed to comply with the said orders within a period of two months from the date of receipt of a copy of this order. No order as to costs.


(Sarweshwar Jha)
Administrative Member
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