

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

original Application No. 61 of 2004.

this the 5th day of February 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Smt. Bhagawati Devi, W/o late Sri Ram Lakhan Jagrup and
M/o Sunil Kumar, deceased, R/o Village Samaspur, Tehsil
Chayal, post Charwa, formerly District Kaushambi and
now Allahabad.

Applicant.

By Advocate : Sri U. Chatterji.

Versus.

1. Union of India through G.M., Central Railway, Mumbai
CST.
2. D.R.M., Central Railway, Bhusawal.
3. Smt. Suman Iata, W/o late Sri Sunil Kumar, Typist/
Clerk in the office of D.R.M., Central Railway,
Bhusawal.

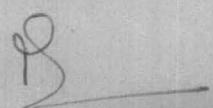
Respondents.

By Advocate : Sri K.P. Singh.

O R D E R

By this O.A., applicant has sought the following
relief(s):

- "(i) to issue a writ, order or direction in the nature of certiorari thereby quashing the impugned order dated 18.12.2003 (Annexure A-1) or any other order/action flowing from the aforesaid order.
- (ii) to issue a writ, order or direction in the nature of mandamus thereby commanding the respondent nos. 1 & 2 to pay half of the amount of ex-gratia benefits of late Sunil Kumar to the petitioner;
- (iii) to issue a writ, order or direction in the nature of mandamus thereby commanding the respondent nos. 1 & 2 to appoint the petitioner on compass-ionate ground in place of her deceased son - Sunil Kumar.
- (iv) -----.
- (v) -----."



2. This petition has been filed by the mother of late Sri Sunil Kumar, who died on 24.10.2002 leaving behind his mother, i.e. applicant & his widow - respondent no.3. It is claimed by the applicant that since the widow of the deceased employee and the applicant were both legal heirs falling in clause 1 under Section 8 of Hindu Succession Act, 1956, therefore, all the amounts are liable to be paid to both of them in equal share. She has further submitted that late Sri Sunil Kumar had nominated applicant as well as his brother Pradeep Kumar as nominees in the Provident Fund Account, therefore, she and her younger son were entitled to receive the P.F. amount. As far as other ex-gratia benefits are concerned, she would also be entitled for the same. In spite of her detailed representation dated 10.4.2003 (Annexure A-5) respondents vide their letter dated 15/17.9.2003 directed the applicant to send filled forms for claiming P.F. amount ^{only} left by the deceased Sunil Kumar. Applicant again gave a detailed letter to the respondents ^{them} explaining as to how she would be entitled to ex-gratia benefits, but vide letter dated 18.12.2003 applicant has been denied her legal rights to receive half of the amount of ex-gratia benefits of her late son Sunil Kumar as the same was to be paid to respondent no.3. She was further informed that she would only be entitled to receive the P.F. amount only. It is this letter which has been challenged by the applicant in the present O.A. on the ground that her son was given compassionate appointment after the death of her husband, therefore, she was totally dependent on her elder son - Sunil Kumar and after his death she is finding it extremely difficult to make her both ends meet. The younger son is also unemployed and they have no other source of income, therefore, on the death of Sri Sunil Kumar, she should be paid all ex-gratia benefits instead of giving the same to the respondent no.3.

3. Counsel for the applicant relied on 1984 AIR SC 346 judgment given by the Hon'ble Supreme Court in the case of

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Smt. Sarbati Devi & Another vs. Smt. Usha Devi wherein it was held as under :

" A mere nomination made ^{u/s} Section 39 does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorised to receive the amount on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them -----."

He further relied on Railway Board's letters dated 14.5.93 and 9.9.99 to demonstrate that even parents are also permitted to get family pension. Counsel for the applicant further relied on Railway Board's letter dated 20.12.91 to demonstrate that death/retirement gratuity is payable to the parents as well.

4. I have heard applicant's counsel and perused the pleadings as well.

5. It is not disputed by the applicant that the respondent no.3 is a legally wedded wife of the deceased employee of late Sunil Kumar, while the applicant is his mother. In this connection, it would be relevant to quote the contents of Railway Board's letter as relied upon by the applicant herself, which for ready reference reads as under :

"The family pension will be admissible only ^{to B} one person at a time to the following family members:
(a) wife in case of male Railway servant,
(b) husband in case of female Railway servant,
(c) minor sons,
(d) unmarried, widowed/divorce daughters, and
(e) parents.

If wife/husband is alive, the family pension shall be granted in favour of wife/husband, as the case may be, and the children shall not be eligible-----."

"Parents shall be eligible for family pension with effect from 1.1.98. Widow/Widower, son, daughter or widowed/divorced daughter will have prior claim to family pension. Wherever family pension admissible to parents, the mother will receive the pension first and after her death father will receive

(R.B.'s No.F(E)III/98/PNI/4 of 9.9.99.)"

6. perusal of the above letters clearly show that the first choice for giving family pension would be wife or husband respectively depending upon whether the Railway servant is a male or female. Infact Railway Board's letter dated

5.11.97 further clarified it by stating therein that definition of family pension shall also include the parents who were wholly dependent on the Railway servant when she/she was alive provided the deceased employee had left behind neither a widow nor a child, meaning thereby that first choice had to be widow or the children of the deceased employee and it is only in the case of widow and children were not available, parents could be given family pension provided that they were wholly dependent on the deceased employee.

In view of the above

7. In view of the above, since respondent no.3 i.e. widow of the deceased employee is very much alive, naturally she would have the first ^{right to} claim for receiving the family pension as per Railway Board's letters and applicant cannot claim family pension by ignoring the widow of the deceased employee.

8. Coming to the next letter of the Railway Board dated 20.12.91 on the question of death gratuity payable to the family. Once again the contents of the said letter need to be quoted/for ready reference reads as under:

"Death Gratuity/Retirement Gratuity payable to the family and family includes :

- (a) Wife or wives in the case of male employee.,
- (b) Husband in case of female employee,
- (c) Sons, Includes step and
- (d) Unmarried or widow daughters, adopted children
- (e) Father
- (f) Mother
- (g) Brother below the age of 18 years and unmarried or widow sisters (includes step brother and sister)
- (h) Married daughters,
- (i) Children of pre-deceased son.

Death/retirement gratuity in such cases may be paid in the following manner:

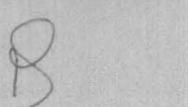
- (i) If there are one or more surviving members of the family as in terms (a) to (d) above may be paid to all such members other than any such member who is widow daughter, in equal shares.
- (ii) If there are no members of the family as indicated in (i) above, but there are one or more surviving widow daughters and one or more surviving members of family as indicated from (e) to (i), it should be paid to all such members in equal shares."

In this letter again though it is stated that gratuity is also payable to the mother, but first preference has to be given to the members mentioned at item no. (a) to (d)

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and sub-para (ii) makes it clear that the death gratuity would be payable to the persons indicated against column (e) to (i) only in the eventuality when there are no member in the family as indicated against column (a) to (d), meaning thereby that even here preference has to be given to the wife incase of a male employee, therefore, both the Railway Board's letters as referred to above by the applicant do not give any assistance to the applicant. On the contrary, these letters support the respondents' stand that in accordance with rules, ex-gratia payment except P.F. amount are payable to the widow. However, since applicant has been nominated alongwith her younger son in the PF account by the deceased, therefore, she would be entitled to get that amount only. Some what same position is existing in Rule 70(4) read with rule 71 of Railway Services (pension) Rules, 1993 also as there also, first right is that of the wife and it is only if wife, husband or unmarried daughters are not available, that gratuity is payable to the father and mother, therefore, in law the position is very clear. Since this is service matter, which is governed by specific set of rules and Railway Board's letters, judgment relied upon by the applicant's counsel can be of no help to him because that is a case where nomination for isurance were made, which were governed by different set of rules, Therefore, according to me, that judgment would not be applicable in the present set of facts.

9. In view of the above discussions, I do not find any merit in the O.A. The same is accordingly dismissed.
NO costs.


MEMBER (J)

GIRISH/-