

CENTRAL ADMINISTRATIVE TRIBUNAL

CUTTACK BENCH

OA No.201 of 2018

Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble , Member (A)

1. Smt. Sunita Sethi, aged about 42 years, wife of late
Prakash Kumar Sethi, At: Balichhak Sai, P.O./P.S.
Jatni, Dist; Khurda.

.....Applicant.

VERSUS

1. Union of India, represented through its Chief
General Manager, Telecom, BSNL Bhawan, Ashok
Nagar, Unit – II, Odisha Circle, Bhubaneswar - 9
2. Controller of Communication Accounts, Odisha
Circle, CPMG Building, 4th Floor, Bhubaneswar,
Dist: Khurda – 751001.

.....Respondents.

For the applicant : Mr. S. Behera, Advocate.

 Mr. A. Mishra, Advocate.

For the respondents: Mr. J. K. Nayak, Advocate.

Mr. H. K. Mohanty, Advocate.

Heard & reserved on :09.04.2021

Order on :16.06.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

2. The case of the applicant in brief as inter alia averred in the OA is that the respondents after her representation dated 04.07.2017 (Annexure A/7) denied her family pension vide letter dated 16.07.2018 (Annexure A/11) after the death of her husband on 31.10.2016 (Annexure A/3). She has filed this instant OA with the following prayers:

a) To direct the Respondents to sanction current family pension in favour of the applicant along with other retiral dues of her husband forthwith;

- b) And to quash the letter dated 16.07.2018 passed by the Respondent No. 1 under Annexure A/11:*
- c) And further be pleased to direct the Respondents to disburse the arrear family pension w.e.f. 01.11.2016 to January 2018 within a stipulated period.*
- d) And further be pleased to direct the respondents to pay the interest to the applicant for delayed payment of family pension and that should be recovered from the erring official who has delayed the matter.*
- e) Or pass any other order/orders as this Hon'ble Tribunal may think fit and proper.*
- f) And allow this Original Application with cost.*

3. Respondent No. 1 in their counter inter alia averred that as per the family declaration made by the deceased ex-employee vide Annexure R/1, R/2 & R/3 which have been entered in the service book there is no evidence in favour of the applicant available on record

as wife of the employee, hence she is not entitled to family pension as per Rule 53-54 of CCS (Pension) Rules, 1972 which was communicated to her vide reasoned order dated 16.07.2018 (Annexure R/4).

4. Respondent No. 2 in their counter inter alia submitted more or so the same points as taken by Respondent No. 1 in their counter.
5. In their rejoinder to the counter filed by Respondent No. 1 the applicant inter alia submitted that the applicant is 1st wife of deceased ex-employee and that he had converted to muslim and named himself as Md. Hussain as evident from nikha nama 13.10.1986 but the said fact was not intimated to the department. The applicant submitted that as per report of Mahila Commission (A/11) Prakash Kumar Sethi and Md. Hussain are one and same. The applicant further submitted that as per the legal heir certificate the applicant is 1st wife of Late Prakash Kumar Sethi and had paid holding tax (Annexure A/9 series) in the year 2006. The applicant submitted that after death of the deceased ex-employee the mother of the applicant was

getting family pension and since after death of Sebati Sethi no nominee name has been mentioned so as per Rule the applicant is entitled for family pension and arrear family pension.

6. In their additional counter both Respondent No. 1 & 2 that the deceased ex-employee has never intimated them about marriage to the applicant and about conversion to other religion. They submitted that no document has been filed to the effect of change of religion and the facts averred by the applicant at different stages are disputed question of facts and the Tribunal may not be competent forum to decide issue at hand.
7. In additional rejoinder the applicant reiterated more or less the same points taken earlier.
8. Learned counsel for the applicant relied on some citations including the following:
 - a) Mrs. K. Nagalakshmi vrs DRM and others reported in 1992(1) ATJ 321.
 - b) Chandrakanta vrs Monika reported in 2001(1) ATJ HC(P&J) 460.

c) Shamsur Nisa Begum vrs Union of India and others reported in 1992(2) ATJ 500

9. Heard learned counsel for both the sides and have carefully gone through their pleadings and materials on record.

10. It is ascertained from the record that the deceased employee, husband of the applicant throughout his service career have never informed his office about him changing religion and marrying the applicant. The deceased employee, after his marriage to Sebati Sethi, had submitted his family details in Form 1 on 08.08.1996, Form 2 on 25.04.1997 stating therein that Smt. Sebati Sethi as his wife and Pallavi Sethi as his daughter. On 08.08.1996 in Form 3 he has submitted his family details as Smt Sebati Sethi as wife, Kumari Pallavi Sethi as Daughter and Smt. Renubala Sethi as mother. The deceased employee thereafter submitted a revised family declaration on 07.10.2013 (Annexure R/2) wherein he had mentioned his name and his daughter name. The deceased employee retired from service on VRS w.e.f. 06.01.2015

and pension was sanctioned in his favour and he had died on 30.10.2016 leaving behind his married daughter Pallavi Sethi. At the time of taking VRS he had submitted documents as regards family particulars on 20.01.2015 (Annexure R/3 series) wherein he had mentioned name of his daughter Pallavi Sethi only.

11. It is ascertained from the deposition of the deceased employee at State Mahilla Commission that he had married the applicant and had converted to Islam. As per the legal heir certificate produced by competent authority the applicant and her sons have been shown to be the legal heirs of the deceased employee. But the fact remains that the deceased employee had never in his service career or after his retirement had intimated the respondents department about the said facts.

12. In Smt. Violet Issac and Ors Vs. Union Of India and Ors [(1991) 1 SCC 725], the Supreme Court held that no other person except those designated under the Rules are entitled to receive family pension. It further

held that the employee has no title nor any control over the family pension as he is not required to make any contribution. The Family Pension Scheme is in the nature of a welfare scheme. Therefore, it does not form part of the estate of the deceased employee enabling him to dispose of the same by testamentary disposition. Paragraph 4 of the said judgment reads as under :-

"4. ... 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."

13. In view of the above the action of the respondents in not granting the family pension in favour of the applicant in the absence of any nomination or declaration to that effect cannot be said to be illegal

and arbitrary. In the above circumstances the applicant is given opportunity to obtain succession certificate Indian Succession Act, 1925 from the competent court and to produce the same before respondent authority in support of her claim to get the pensionary benefit, so that the respondent department will proceed the claim as expeditiously as possible by passing a speaking and reasoned order to the applicant within from four months of production of succession certificate in question.

14. The OA is accordingly allowed with above observation but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(CSK)