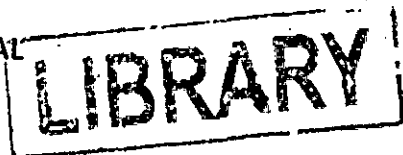


CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH



OA/350/103/2021

Date of Order: 04.08.2021



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sudeshna Das, daughter of late Debaprasad Das & late Rekha Das, aged about 31 years (date of birth- 01.12.1989), by profession unemployed, residing at c/o Ajit Chatterjee, Kusumba, Jorabattala, Gazipara, P.O. Narendrapur, P.S.- Sonarpur, District - 24 Parganas (S), Kolkata - 700 103.

.....Applicant

Vrs.

1. Union of India, through the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi - 110 001.
2. Chairperson, Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi - 110 001.
3. Principal Director General of Income Tax (Administration & TPS/HRD), Directorate of Income Tax, Mayur Bhawan, Connaught Place, New Delhi - 110001.
4. Principal Chief Commissioner of Income Tax, West Bengal & Sikkim, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata - 700 069..
5. Chief Commissioner of Income Tax-I (CCA), Kolkata, Pension Cell, Room No. 9, 1st Floor, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.
6. Income Tax Officer, Hqrs. (Admn.) - I, Kolkata, Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700069.

7. Zonal Accounts Officer, O/o Deputy Controller of Accounts, Zonal Accounts Office, Central Board of Direct Taxes, presently relocated at Bamboo Villa, (Annexe), 169, A.J.C. Bose Road, Kolkata – 700014.

.....Respondents



8. Smt. Rita Das (alias Smt. Rita/Mala Basak), statedly daughter of late Debaprasad Das, statedly by first wife, aged about 52 years (date of birth - 04.06.1968 as per record of the Department), residing at Shib Bari Road, Karimganj, Assam, Pin Code - 788 710.

.....Proforma Respondent

For the Applicant(s) : Mr. B.R.Das & Mr. K.K.Ghosh, Counsel

For the Respondent(s): Ms. P.Goswami, Counsel

ORDER (ORAL)

Bidisha Banerjee, Member (J):

This application has been preferred by the applicant to seek the following reliefs:

"I. Allow the petitioner Family Pension as an unmarried daughter of Government Servant in accordance with Rule 54 of the CCS (Pension) Rules, 1972 w.e.f. 03.06.2019 being date of death of her mother Rekha Das.

II. Widow pension for Rekha Das i.e. the mother of the petitioner w.e.f. 24.05.2006 to 03.06.2019 be sanctioned/allowed and be paid to the petitioner being the only legal heir and representative of late Rekha Das.

III. Consider the representations of the petitioner and her deceased mother for allowing them Family Pension in accordance with the CCS (Pension) Rules, 1972.

IV. Certify and transmit the entire records and papers pertaining to the applicant's case so that after the causes shown thereof conscionable justice may be

done unto the applicant by way of grant of reliefs as prayed for in (I) to (III), above.

V. Pass such other order/orders and/or direction/directions as deemed fit and proper.

VI. Costs."



2. The admitted facts that could be culled out from the pleadings are as under:

Late Debaprasad Das, who was an employee in the respondents' department working as UDC, retired on superannuation on 31.03.1987. It is found from the photocopy of PPO (Disburser's Portion) as collected from SBI, Ballygunge Branch vide Inspector's report dated 22.12.2006 that the name of the Govt. Servant is Deba Prasad Das, whereas one Smt. Rekha Das has claimed family pension as wife of Late Debaprasad Das. The said Smt. Rekha Das has submitted a death certificate which shows that Debaprasad Das has passed away on 24.05.2006.

Smt. Rekha Das has claimed that Debaprasad Das married her on 22.02.1989 and it was a post-retirement marriage that is registered under Hindu Marriage Act. Smt. Rekha Das applied for family pension vide her application dated 16.10.2006.

Smt. Rekha Das vide letter dated 02.12.2013 has also claimed that Sudeshna Das is her daughter with Debaprasad Das. Later on, a photocopy (without attestation) of certificate issued by West Bengal Board of Secondary Education has been submitted which shows that Sudeshna Das is the daughter of Debaprasad Das. Sudeshna Das also submitted attested

photocopies of Birth Certificate, Aadhar Card, Voter Identity Card, PAN Card, which confirms that her father is Debaprasad Das.

3. The applicant, Sudeshna Das, has claimed herself as the only unmarried daughter of late Debaprasad Das and, therefore, entitled to family pension.



4. Ld. Counsel for the respondents, on the other hand, would submit that as per Govt. of India Decision 16 of Rule 54 of CCS (Pension) Rules 1972 (Swamy's Pension Compilation 2018 edition) pensioner should intimate the office, the event of post retiral marriage or remarriage to the Head of the office where the pension papers were processed, but Debaprasad Das did not intimate about his post retiral marriage to his Head of Office.

Consequently, the case was sent to the CBDT, New Delhi for clarification and the Board vide letter dated 27.08.2012 was of the opinion that Smt. Rekha Das is indeed wife of Late Debaprasad Das, Ex UDC of IT Department and is entitled to get family pension, if found eligible.

Debaprasad Das had declared Smt. Rita Das as his daughter, and Form No.3 was duly attested by the Head of Office where Late Debaprasad Das was posted at the time of his retirement. So, the claim of the petitioner that she is the only child of Late Debaprasad Das and thus the only legal heir was not accepted by the respondents.

5. Respondents have averred that since the deceased has submitted a copy of FORM DA 1 from which it appears that Late Debaprasad Das during his life time, has filed the nomination form to the Bank Authority on 12.03.2001 declaring Smt. Rekha Das as the nominee but on inquiry at the

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said Bank at SBI, Ballygunge no such intimation regarding marriage or filing of nomination by late Debaprasad Das could be obtained.



On receipt of Pension claim of Smt. Rekha Das a departmental ITI was deputed to conduct an enquiry at SBI Ballygunge Branch. As per ITI report dated 22.12.2006, late Debaprasad Das had never submitted any declaration to the bank authority regarding his marriage.

As per Pension Rule 54 and Sub Rule 17(1): the pensioner shall intimate the office the event of post retiral marriage or remarriage to the Head of Office where the pension papers were processed.

The matter has been sent to CBDT New Delhi for guidance vide letter dated 28/01/2008. The CBDT, New Delhi, vide its reply dated 30.08.2011 opined that there are many shortcomings in the statement of Smt. Rekha Das, such as, the loss of PPO by her, age of Sri D. Das as 50 years 2 months on 22.02.1989 as shown in the marriage Register whereas he retired on 31.03.1987 on superannuation and also non-availability of any documentary evidence.

A letter dated 24.11.2011 was issued to Smt. Rekha Das informing the above facts as pointed out by the CBDT, New Delhi. The applicant did not reply to the queries made by the office. Thereafter, a reminder dated 09.04.2012 was sent to Smt. Rekha Das for early compliance.

On 30.04.2012 Smt. Rekha Das has submitted her clarification along with documents which established the fact that she is indeed the wife of the deceased employee, Debaprasad Das, UDC (Retired) and their marriage that had taken place on 22.02.1989, was a post retirement marriage.

The case was again sent to the CBDT, New Delhi, for clarification. The Board vide letter dated 27.08.2012 was of the opinion that Smt. Rekha Das is indeed wife of Late Debaprasad Das, Ex UDC of IT Department, and is entitled to get Family Pension, if found eligible.



In absence of pension file of Late Debaprasad Das, the office made contact with the ZAO, CBDT, Kolkata. It was found from the copy of Form No. 3 received from the ZAO, CBDT, Kolkata that Late Debaprasad Das had declared Smt. Rita Das as his daughter and Form No 3 was duly attested by the Head of Office where Late Das was posted at the time of his retirement.

In case of settlement of Family Pension where the pensioner left behind one widow and eligible child or children from another wife, who has expired, Para 7(a) and (b) of Rule 54 of CCS (Pension) Rules is applicable in such case, which stipulates as under:

"(7)(a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child.

(b) Where the deceased Government servants are pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of death of the Government servant or pensioner."

No information/whereabouts of the first wife of Late Debaprasad Das and the said daughter of Late Debaprasad Das, Smt. Rita Das; could be gathered from the addresses. That, the pension claim of Smt. Rekha Das cannot be processed by the office, until and unless the whereabouts of

Smt. Rita Das daughter of Late Debaprasad Das is produced before the pension sanctioning authority.



Respondents have further claimed that one Hiran Das, presumably the first wife of deceased Debaprasad Das, passed away on 11.09.1981. The respondents have claimed that as per CCS (Pension) Rules, 1972, family pension to unmarried/ widowed/divorced daughters in Category-II and dependent parents shall be payable only after the other eligible family members in Category-I cease to be eligible to receive family pension and there is no disabled child to receive the family pension. Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category. Accordingly, unless and until the whereabouts of first wife and daughter of Late Debaprasad Das (Smt. Rita Das) is available to this office, family pension (Cat-II) in respect of Ms. Sudeshna Das cannot be initiated.

7. Ld. Counsel for the applicant would vociferously contend that the fact of death of first wife on 11.09.1981 being admitted and the marriage with the second wife being admittedly after the retirement of the employee, i.e. after 31.03.1987, there is no reason for the respondents to disbelief Sudeshna Das as the daughter of the widow late Rekha Das as the employee's marriage with Rekha Das was after death of first wife and, hence, Rekha Das is the legally married wife and, therefore, Sudeshna Das is entitled to stake her claim for family pension as unmarried daughter, particularly, in view of the fact that the Rekha Das is the nominee in joint



account and there is no dispute about the fact that the Sudeshna Das is the daughter of Debaprasad Das and Rekha Das. Therefore, only because the Rita Das has not come forward to claim family pension, Sudeshna Das should not be deprived. As such, the deprivation is arbitrary and not in accordance with law.

8. The applicant has also claimed that the said Rita Das @ Mala Basak was married to one Jotish Kumar Basak and is receiving widow pension from the Govt. of Assam, which has not been disputed by the respondents.

9. We have heard the Ld. Counsels for the parties and perused the records.

10. A letter from Smt. Rekha Das, which the office of respondent No.6 received on 20.05.2019, reads as under:

"To
The Principal Chief & Commissioner of Income Tax,
West Bengal & Sikkim
P-7, Chowringhee Square,
Kolkata-700069

Attn: Income Tax Officer, HQRS (ADMN) of Kolkata

Sir,

Sub: Claim for drawing Family Pension

Ref: My letter dated 11th May, 2015 in reply to your letter dated 5th February, 2015

With reference to above (photocopy of both letters enclosed-Marked as Annexure-I and Annexure-II for your ready reference), kindly allow me the privilege to submit

- i) That my husband Debaprasad Das since deceased retired from service on superannuation as U.D.C. on 31.03.1987.
- ii) That during his service life, he lost his wife Hiran Das on 11.09.1981 (Photocopy of Death certificate enclosed-Marked as Annexure III).
- iii) That after his retirement/superannuation on 31.03.1987, he married me on 22.02.1987 (Photocopy



- of Marriage Registration Certificate enclosed- marked as Annexure-IV).
- iv) That my husband Debaprasad Das, died on 24.05.2006 (Photocopy of Death Certificate enclosed marked as Annexure-V).
 - v) That through our wedding I have a daughter Smt. Sudeshna Das (Photocopy of Madhyamik Pass Certificate enclosed as proof of date of birth and identity, marked as Annexure-VI).
 - vi) That through my deceased husband's first marriage he has a daughter, Smt. Rita Das, a fact I came to know for the first time from your office, while I preferred a claim for releasing the family pension in my favour.
 - vii) That, I have neither denied nor disputed the fact stated in the previous paragraph (i.e. vi), ever since I came to know about it.
 - viii) That in my husband's family declaration submitted in your office by my deceased husband my name as well as my daughter's name was not stated is something for which I am sure you will agree was not under my control and hence I should not be held responsible.
 - ix) That, last but not the least I do not deny/dispute the provisions relating to family pension laid down under Rule 54 of CCS (Pension) Rules.

Under such compulsion may I have the privilege to humbly submit that as per law in force presently I am entitled to 50% (Fifty percent) of the family pension (along with arrears) given the fact that my step-daughter Smt. Rita Das (through my deceased husband's first marriage) whose whereabouts are totally not known to me, ever since my marriage, may be either a spinster or a widow without income, a fact which is totally unknown to me.

An early settlement of long outstanding issue will be a great help to me, to tide over the financial crisis I am facing due to poor health.

Thanking you in anticipation

Yours faithfully,

LTI

Rekha Das"


Evidently, the widow Rekha Das had admitted the claim of the Rita Das, the daughter from the 1st wedlock of Debaprasad with Hiran Das, and has asked for only 50% of family pension as her share. Given the fact that the said Rita Das may be entitled to the balance 50% of family pension as


unmarried/divorced/widowed daughter (whatever applies) of deceased Debaprasad Das and Hiran Das, the present applicant, namely Sudeshna Das, daughter of Debaprasad Das and Rekha Das, cannot at present claim full family pension unless Rita Das is adjudged ineligible for family pension.



11. After hearing the detailed arguments of the respective parties and after going through the pleadings thereof and the records, we would dispose of this O.A. with a direction to the respondents to grant 50% of the family pension to the applicant, along with her mother's share with arrears that would have legitimately accrued to her mother Rekha Das, within 2 months from the date of receipt of a copy of this order. For the balance 50%, the applicant is directed to obtain a declaration from the competent Court of Law that she is the only legal claimant of family pension, which declaration whenever produced, shall be acted upon by the respondents to release her share along with arrears of herself and her mother, within 2 months thereafter.

12. With the aforesaid directions, the O.A. stands disposed of. No order as to costs.


(Dr. Nandita Chatterjee)
Member (A)


(Bidisha Banerjee)
Member (J)