

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH

ALLAHABAD

DATED : ALLD. ON THIS 10th DAY OF JULY, 1998

CORAM : HON'BLE MR. S. L. JAIN, MEMBER (J)

ORIGINAL APPLICATION NO. 1471 OF 1994

Smt. Cicillia Elias W/o Sri Eliza
R/o Mohalla Humayunpur(North),
Near St.Teresa's School,
Gorakhpur(UP).

..... Applicant

C/ A :- Shri L.P.Tiwari, Advocate.

Versus

1. Union of India through Divisional Railway Manager(personnel),
N.E.Railway, Lucknow.
2. The General Manager,
N.E.Railway, Gorakhpur.

..... Respondents.

C / R :- Shri V K Goel, Advocate.

O R D E R (Reserved)

(By Hon'ble Mr. S.L.Jain, Member (J))

This is an application under section 19 of the Administrative Tribunals Act, 1985 for issue of a mandamus directing the respondents to pay the family pension to the applicant or to decide the representation dated 3.1.94.

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On 20.10.94 this Tribunal ordered to the following effect :-

" He is also agreed to exhaust the remedies available to the applicant in the department before pressing for this application. If even after availing the department remedies available to him, he is aggrieved, he may file supplementary affidavit for consideration by this Tribunal."

Thus, the last para of the prayer that to decide the representation application dated 3.1.94 has now become infructuous for the reasons that this Tribunal has passed the above referred order and even thereafter the respondents rejected the application for family pension vide order dated 24.4.95.

- 1) That there is no dispute between the parties in respect of the fact that the alleged Shri Eliza was a Driver, retired on 30.11.76 from the Loco-shed, N.E.Railway, Gorakhpur, who was drawing his pension through Post Master, Loco-shed Workshop Post Office, Gorakhpur. The said Eliza died on 2-7-1989, the applicant's request for Family Pension which was rejected by the respondents vide order dated 26.4.91.
- 2) That the applicant's case in brief is that the applicant's husband Late Shri Eliza had sent a letter on 31.5.89 to the Divisional Railway Manager(P), N E Railway, Lucknow alongwith certain papers duly attested and forwarded by A M E , Loco-shed, Gorakhpur on 20.6.89 for grant of Family Pension to the applicant - his wife together with a photograph. He had also sent the certificate dated 13.8.89 given by the Father John Vadakel CST, Priest, St. Joseph's Cathedral, Civil Lines, Gorakhpur to the effect that Smit Elias is the only married living wife of Shri Eliza ex-Driver, N.E.Railway, Loco-shed, N E Rly., Gorakhpur. After a reminder dated 20.3.91, her request for family pension was rejected. On 3.1.94 again a representation was

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sent which was not decided. The photograph of Smt. Elias was not earlier sent due to illness of Mr. Eliza which was sent later on.

3) That the respondents admitted the receipt of the application and representation dated 31.5.89, 20.3.91 and 3.1.94 and alleged that the signature of late Shri Eliza did not tally with the admitted signature of Eliza. They have further alleged that the age of the applicant as per certificate from the District Magistrate was mentioned 60 years while the age of elder son was mentioned as 46 years, thus the applicant gave birth at the age of 14 years. Taking into consideration this fact, non-submission of nomination papers, the application of the applicant was rejected. It is also alleged that the application is barred by time. Her representation dated 3.1.94 was made only to bring the case within the limitation. Hence, prayed for dismissal of the O.A.

4) First of all I proceed to take the question of limitation. As per Section 21(1) (a) of the Administrative Tribunals Act, after a final order, the application is to be filed within one year.

In the present case, the final order was passed on 26.4.91, application is filed on 22.9.94, hence the claim of the applicant is barred by time.

5) If there is a further representation dtd. 3.1.94 which does not save the limitation but as stated above vide order dtd. 20.10.94 the applicant was allowed to exhaust the remedies available to her in the department and after pursuing

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the remedies again her representation was rejected vide order dated 24.4.95, the applicant is now entitled to get her claim decided on merits for the reason that the Original Application was filed much earlier on 22.9.94 and it is in continuation of the said Original Application.

6) The learned counsel for the applicant has drawn my attention to annexure-4 and stated that the representation of the applicant was rejected on the ground that on the form of Family Pension, Nomination was not mentioned. He argued on the basis of 1991 (1 UPLBEC 338 Smt. Violet Ishaq & Others V/s Union of India & Others) there is nothing in Family Pension Rules 1964 for nomination of any person by deceased during his life time for payment of Family Pension. I agree with the question of law raised by the applicant's counsel and held that the rejection on the said ground is not warranted by law.

7) The respondent's counsel argued that as the signature of Late Shri Eliza did not tally with the admitted signature of Late Eliza, Hence, the applicant is not entitled to be called as the widow of Late Shri Eliza, thus there is a dispute regarding the status of the applicant. As there is rival claims between the parties in respect of the status of the applicant, the Tribunal is not empowered to decide the status that is to say whether the applicant is the widow of Late Shri Eliza, hence it is ordered that if the applicant desires, she is entitled to get her status declared by a Competent Civil Court.

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8) Learned counsel for the respondents alleged that there is improbability of a Girl at the age of 14 years to deliver a child. Hence on the said facts the applicant's application has rightly been rejected by the respondents. It may be a case of improbability but but it is not a case of impossibility and such ground cannot be a valid ground to reject the representation / petition.

9) The applicant's counsel urged that the said ground is not mentioned in the order itself and hence now the respondent is not able to take the said plea before this Tribunal. On the basis of record, I find that annexure A-3 should be read with annexure A-2 filed with the Original Application. In the said order, these grounds are mentioned but in the final order passed vide annexure-4, those grounds are not specifically mentioned. Further more in the Counter Affidavit, the said ground is taken and the said plea is raised, hence the respondents are entitled to argue on the said plea.

10) Respondent's counsel argued on the basis of facts available on the record on the basis of Rule 54(3) (a) (ii) C C S (Pension) Rules that the applicant retired on 30.11.76 and died on 2.7.89. If the age at the time of retirement is to be taken as 58 years, then at the time of death his age must be more than 65 years (about 71 years) and hence the widow, even if the applicant is to be admitted his Widow, without accepting it, is not entitled to family pension for the reason that the family pension is payable only for a period of seven years or till the deceased might have attained the age of 65 years, whichever is earlier.

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11) The applicant's counsel again urged that this is a new plea even not raised in the Counter Affidavit which cannot be raised during the course of argument. I agree with the learned counsel for the applicant that this is a new plea but this being a legal question based on the facts, as pleaded by the applicant and hence it is admitted to be raised.

12) On the allegation of the applicant, on 2.7.89 when Shri Eliza died, he must have attained certainly the age of 65 years or more and after receipt of pension for more than seven years, hence the applicant who seeks a mandamus for grant of family pension is not entitled for the said relief in view of Rule 54 (3) (a) (iii) C C S (Pension) Rules.

13) Before issue of a mandamus, this Tribunal is bound to take into consideration that whether a legal right subsists in favour of the applicant. As stated above, no legal right subsists in favour of the applicant as per Rule 54(3)(a)(ii) C C S (Pension) Rules but the respondent's counsel failed to take a note of Rule 54 (3) (a) (iii) (c) and 54 (6) C C S Pension rules which states that Family Pension is payable, though at a lower rate to the widow upto the date of death, or remarriage whichever is earlier. Hence, it is hereby held that in the favour of the applicant, if she is able to establish her status of widow of Mr. Eliza, a right of mandamus subsists in her favour and against the respondents.

14) Railway Service Pension Rules, 1993 which came into force on 03.12.1993 are not applicable in the present case for the reason that the Rules can be applied prospectively and not retroactively.

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and not with a retrospective effect.

15) In the result, the application deserves to be dismissed and is dismissed accordingly with no order as to costs - with a direction that the applicant, if so advised, may get her status declared by a Competent Civil Court and then she may claim the Family Pension.

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MEMBER (J)

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