

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 26th day of February 1997.

Original Application no. 773 of 1994.

Hon'ble Mr. S. Dayal, Administrative Member.

Smt. Munni Devi, Widow of late Sri Mathura Prasad,
R/o 129-C, Chakia, Allahabad.

... Applicant.

C/A Sri P. Kant

Versus

1. Union of India, through Chief of the Air Staff, Air Head Quarter Vayu Bhawan, New Delhi.
2. Air Officer Commanding-in-Chief, H.Q. Central Air Commanding, I.A.F. Bamrauli, Allahabad-12.
3. Wing Commander, Officer Commanding, H.Q. C.A.C(U), Air Force, Bamrauli, Allahabad.

... Respondents.

C/R Sri Ashok Mohiley

ORDER

Hon'ble Mr. S. Dayal, Member-A.

This is an application under section 119 of the Administrative Tribunals Act, 1985.

2. The applicant seeks the following reliefs by making this application:-
 - i. Setting aside of order dated 09.03.94 and
 - ii. Direction to release the pension of late

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Mathura Prasad in favour of the applicant.

3. The facts in brief are that Sri Mathura Prasad, Civilian Gazetted Officer in the office of the Wing Commander, Officer Commanding H.Q., C.A.C (V) Air force, Bamrauli, Allahabad, died on 09.06.92 while in service. The applicant moved application dated 24.06.92 addressed to the officer mentioned above for release of family pension. The applicant had to file an application under section 19 of the Administrative Tribunals Act and OA no. 206/94 ended in a direction to the respondents to take a decision on application dated 24.06.92. The respondents gave a reply on 09.03.94 that the applicant cannot be granted pension till the High Court decides the first appeal FAFO no. 988 of 1993 pending against the order in succession case 261 of 1992. It has been stated in counter affidavit that order dated 04.09.93 in succession case no. 261 of 1992 filed by the applicant was stayed by a bench of the High Court and a stay order is continuing. Subsequently, a stay vacation application was filed by the applicant in this case and the stay vacation application was heard by a bench of the High Court on 08.11.94 and the stay was continued till further orders. A Division Bench of the High Court passed an order dated 01.03.95 holding that the appeal should be presented before an appropriate court and returned the memorandum of appeal. It appears from Supplementary affidavit filed by the respondents pursuant to the orders of this court dated 29.08.96 that Miscellaneous Case no. 80 of 1995 was filed by Deepak Kumar and others against Smt. Munni Devi in which restoration of order dated 15.05.96 in favour of Sri Deepak Kumar or setting aside of ex-parte order

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dated 31.05.96, which appears to have been in favour of the applicant in the present case, was prayed for. This case is stated to be pending in the Suupplimentary affidavit filed by the respondents on 13.09.96 and dates were being fixed for hearing of Misc. case at that time. The applicant has also filed affidavit on 10.09.96. The introgatory has been annexed to this Suppl. affidavit which shows that an appeal was filed by Sri Deepak Kumar and others in the court of Additional District Judge, Allahabad on 28.03.95 and it was dismissed on 20.09.95. The restoration was made on 20.10.95. The restoration application was dismissed on 31.05.96. Thereafter, another restoration application appears to have been made. It is also clear that no stay is operating in this case now.

4. The applicant has claimed family pension in the OA before me to which the sons of the deceased official Sri Deepak Kumar and others are not entitled. Facts narrated also shows that the succession certificate dated 18.09.93 was granted in favour of the applicant in this case which the applicant had produced before the respondents. The respondents for one reason or other have been resisting accceeding to the request of the applicant and in doing so are going against the succession certificate given in favour of the applicant by the Civil Judge. This act of the respondents does not appear to be bonafide and appears to be partisam. They would only have ^{been} justified in withholding the pension of the applicant on the ground that her entitlement is under challenge ^{and stay operates against grant of succession cert.} So long as the ^{fact} stay order granted by the High Court or by the District Judge was in operation, withholding of pension etc was in order. This does not appears to be the case now. In the

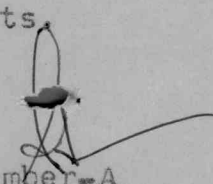
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circumstances the respondents should honour the legal order and grant pension to the applicant and start making payment of the monthly pension of arrears and interest of 12% per annum thereon within a period of two months from now. The cost of this application shall be paid by the respondents, the respondents are duty bound to honour the succession certificate and accede to the request of the applicant, if she is otherwise entitled to pension at the earliest instead of resisting compliance of the succession certificate. The action of the respondents is not consistent with rule ~~and~~^{of} law ^{and} is out side the jurisdiction vested in the respondents.

5. Under the circumstances the respondents are directed to consider the case for pension of the applicant on the basis of succession certificate and to decide the case within the period of two months from the date of this order. The compliance of this order, ^{as far as the payment of amount is concerned} would only be deferred if the stay of competent court operates against the succession certificate. The respondents shall seek extension of the period of compliance in such a case.

6. There shall be no order as to costs.


Member-A

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