

RESERVED**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH**
ALLAHABADDated: this the 27th day of July, 2012**Original Application No. 521 of 2006****Hon'ble Ms. Jayati Chandra, Member – A**

Smt. Sudha Singh, W/o late Jaywant Singh, R/o Meral Babu Chauhan, 85B, Civil Lines, Bareilly. Presently residing at 17/D, Plot No. 02, Gola Guru Dwara, Raj Nagar, Jwalapur, near Railway Station, Hardiwar.

... Applicant

By Adv : Shri K.N. Rai and Sri A.N. Rai

V E R S U S

1. The General Manger, Railway Department, Rail Bhawan, Baroda House, New Delhi.
2. The Divisional Railway Manager, North Eastern Railway, Gorakhpur.
3. The Chief Manager, Workshop (Karmik), North Eastern Railway, Izzatnagar, Bareilly.
4. The Senior Account Officer (W) NER, Izzat Nagar, Bareilly.

... Respondents

By Adv: Shri K.P. Singh

(Reserved on 03.07.2012)

ORDER

The applicant has filed this OA under section 19 of the A.T. Act, 1985 seeking order or direction to quash the impugned order dated 03.06.2003 (Annexure No. 2) passed by the Chief Manager, Workshop, North Eastern Railway, Izzatnagar, Bareilly as also direction to the competent authority to restore payment of regular family pension alongwith 18% interest fro the period of delayed payment.

2. The facts of the case as averred are that the applicant Smt. Sudha Singh is the widow to late Jaywant Singh, who was posted on the post of Khalasi at Izzatnagar, Bareilly. Late Jayant Singh died on 23.03.2000

J. Chandra

(Annexure A-1). The applicant was issued family pension on 04.06.2001 and was paid Rs. 16,000/-. PPO No. NE/40905/231248 was issued in her favour and arrears of pension from 31.10.2001 to 13.12.2001 was paid to her on account No. 6100 held in Central Bank. Suddenly, family pension has been stopped and a recovery order was passed vide order No. E/PC/7003 dated 03.06.2003 passed by Mukhya Karkhana Prabandhak (Karmik), North Eastern Railway, Izzatnagar (Annexure A-2). The applicant filed representation against the stoppage of family pension, but she did not get any relief. This sudden stoppage of family pension is tantamount to a disciplinary action for which adequate notice or opportunity of being heard should have been given to her, but the respondents have not honoured the same. The applicant has also stated that there was a little delay which was inevitable in the face of various representation etc. given by her and her desire to await the outcome. The Hon'ble Supreme Court in the case of **S.K. Mastan Bee. V. General Manager, South Central Railway and others – 2003 (1) SCC 184** has held that, ***“as delay/latches when not fatal to a very old claim (Govt. of India) Article 21 Livelihood – Right to family – pension – pension Generally – Duty of employer to pay family pension creation in case without being demanded. In above facts and circumstances the Hon'ble Court may be pleased to ignore some delay in any filing this original application and accept the same in interest of substantive justice otherwise he applicant shall suffer irreparable loss and injury”***. As her repeated prayers were not heard, she has been forced to seek redressal to her claim. She has also averred that that if any excess amount has to be paid to her by the competent authority the same cannot be recovered. She has stated that there are judgments to this effect, but has not cited any specific case.

T. Chandra

3. The respondents have stated that initially family pension was issued to Smt. Sudha Singh. After than the applicant moved an application for compassionate appointment for which a detailed inquiry in her circumstances ^{was J.Ch} done. During the process of inquiry the fact coming to the light that the applicant had already re-married with one Shri Babu Ram Ravi during the life time of late Jayant Singh. They have filed photographs of marriage being solemnized in Hindu traditional manner (Annexure CA-1). They have also submitted the statement of Shri Babu Ram Ravi showing that he is the husband of the applicant and that the applicant had married him on 24.06.1995 and that they have two children and he was willing to produce three witnesses i.e. copy of voter list, birth certificates of their children etc. if given time. Further, the applicant was asked vide Annexure III of counter affidavit to explain the allegation of her re-marriage. This letter was received by the applicant on 28.11.2002. The legal notice was given to the applicant (Annexure CA-4). Finally she was asked to refund the amounts already received vide letter dated 03.06.2003 (Annexure CA-5) as she failed to reply to the notice given to her. This is in direct contravention of her averment that she was never given any notice of stopping of family pension and that her representations were not heeded.

4. In the rejoinder affidavit the applicant had stated that remarriage is not legally possible during the life time of her late husband Jayant Singh. Therefore, the averment of the respondents in stating that the applicant had remarried is erroneous. There has been no proof which has been offered by the respondents in support of the alleged remarriage.

5. I have heard Shri K.N. Rai, learned counsel for the applicant and Shri Rakesh Dixit brief holder of Shri K.P. Singh, learned counsel for the applicant and perused the entire facts of the case. Both the parties have

J. Chandra

24

accepted that the applicant was paid family pension vide PPO No. NE/40905/231248.

6. Copies of photographs submitted by the respondents certainly shows that a marriage is being solemnized but the documents have not been authenticated to establish the identity of the parties nor does it have indication as to the date on which it is being held. The statement of Shri Babu Ram Ravi is made on plain paper and no other proof such as copy of family register etc. is available. It is also noted that the applicant despite receiving a show cause notice from respondents did not give any reply. Rule Section 54 (G) (i) of the CCS (Pension) Rules says, family pension is granted to the widow or widower upto her/his death or remarriage whichever is earlier. Rule 54 (11-A) stated that the family pension is payable to a judicially separated wife/widow but it will not be paid if the judicial separation is on the ground of adultery. As the above rule is in the nature of certain rights being granted, it is clear that a divorced spouse is not eligible for the family pension. The real situation of married stated / separation / divorce has not been made clear.

correct I.Ch.

7. At the same time it is ^{correct I.Ch.} there that the family pension was issued to applicant by the respondents. It is nowhere proved that it was fraudulently obtained. The Hon'ble Apex Court in the case of ***Registrar, Cooperative Societies Haryana and others Vs. Israil Khan and others – (2010) 1 SCC 440*** has held that, ***"there is no principle that excess payment made to employees should not be recovered by employer – Recovery is permitted if excess payment is made as a result of recovery, where exercisable – Judicial discretion to deny when it was (a) not made on account of misrepresentation or fraud or, (b) by applying a wrong principle, the interpretation of which is subsequently found to be erroneous..."***

J. Chandra

8. Under these circumstances the O.A. is partly allowed. Recovery of the amount already paid is stayed. The respondents are directed to make a full-fledged enquiry within six months from the date of receipt of a certified copy of this order. The resumption of payment of regular family pension and / or recovery will be governed by the outcome of the enquiry. No cost.

/pc/

J. Chandra

Member (A)