

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH
~~XXXXXX~~O.A. No. 100 OF 1990
~~XXXXXX~~

DATE OF DECISION 19-9-1990

SMT. JHAMEKUMARI

Petitioner

MR. R.S. PANDYA

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent(s)

MR. J.D. AJMERA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. N.R. CHANDRAN, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

(1) (2)

Central Administrative Tribunal
Ahemedabad Bench

present

The Hon'ble Shri M.M. Singh, Administrative Member
and

The Hon'ble Shri N.R. Chandran, Judicial Member

Original Application No. 100/90

Smt. Jhamekumari

: Applicant

vs.

1. Union of India,
rep. by Secretary,
Ministry of Defence
New Delhi.

2. Commandant,
E.M.E. School,
Fatehgunj,
Sama Road,
Baroda

: Respondents

R.S. Pandya

: Counsel for the applicant

J.D. Ajmera

: Counsel for the respondents

ORDER: Pronounced by the Hon'ble Shri N.R. Chandran,
Judicial Administrative Member.

(19)

(6)

This application has been filed by one Smt. Jhamkekumar, w/o late Jeet Bahadur, for claiming the full family pension and other benefits, due to her consequent on the death of her husband, shri Jeet Bahadur, who was working as Cook in the E.M.E. School, Baroda. The said Jeet Bahadur died on 30.8.1981. While in employment, the said Jeet Bahadur nominated one Smt. Surch Devi, as next of kin on 18.11.74. Since the said Surch Devi did not make any claim and her whereabouts were not known, the applicant had claimed the full family pension and other benefits, as the widow of Shri Jeet Bahadur. ~~The applicant was directed to~~ The applicant was directed to produce the Succession Certificate and she produced the same issued by the competent Court. On 13.1.90, the second respondent passed an order that full payment of pension/gratuity cannot be sanctioned to the applicant and 50% of the family pension/gratuity payable to Smt. Surch Devi would lapse to the Government.

M2

The applicant is now challenging the same and prays for full payment of pension/gratuity to her.

The learned counsel for the applicant since submits that the whereabouts of the Smt. Surch Devi is not known, the applicant alone is the only widow of the deceased government servant and therefore therefore and she would be entitled to the full family pension/
gratuity.

The learned counsel for the respondents relied on Rule 54(7) of the Central Civil Services (Pension) Rules, 1972 (herein after called as Rules) and submitted that if family pension is payable to widow, when m more than one it shall be paid to the widows in equal shares and in certain contingencies the share of one widow would lapse. In other words, the learned counsel for the respondents contention is that one widow is not entitled to share of the other widow. Therefore, he submitted that the applicant is entitled only N to 50% family pension and gratuity being the second wife and she would not be entitled to the other 50% Therefore he prayed for dismissal of the application.

MP

(a)

We have heard the rival contentions and perused the rule 54 (7) of the Rules, which reads as follows:

54.7. (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:

provided that if the widow is not survived by any child, her share of the family pension shall cease to be payable.

(b) Where the deceased Government servant or 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 the death of the Government servant or pensioner.

54.
Counsel for the respondents relied upon Rule 7(a) (ii) of the Rules, which says that family pension payable to the widow in certain contingencies would cease to be payable. He also relied upon Rule 7(a) (i),

MP

(a)

-5-

which clearly states that family pension shall be payable to widows if there are more than one in equal shares. Before considering the scope of Rule 54(7) of the Rules, it is necessary to note the facts of the case. The deceased Jeet Bhadur's First Wife left him and her whereabouts were not known for over seven years. This fact is admitted by the respondent. The applicant also moved the ~~COMPETENT~~ ^m contempt court and obtained a succession certificate as the widow of the deceased Jeet Bahadur.

On these facts we will have to consider the objection of the learned counsel for the respondents, who submits that, if there are more than one widow, the family pension should be shared equally and he would urge that on a proper construction of the rule, one widow would not be entitled to get the share of the other widow. We have considered his objection. We are of the view that Rule 54 [7] ^m (a) (1) deal with a contingency when both widows

MQ

are alive on the date of death of the government servant and similarly Rule 54 .7 (b) comes into play when on the date of death of the government servant ~~on the date~~ when the son or pre-deceased son was alive, the respondents have not discharged burden that the first widow is alive or was alive on the date of death of the government servant as required under Sec. 108 of the Indian Evidence Act. The respondents could not prove whether the first widow left any issue who could claim the family pension due to the widowed mother. As a matter of fact, there was no claim either from the first widow or by any person claiming to be her son. Hence in this case, we have to conclude that the applicant is the only widow who could claim family pension. The Rule 54 (7) (a) (ii) which says that the family pension would cease to be payable on the death of the widow, on a proper construction would govern a situation where the family pension had been paid and the effect of the death of the widow to widow on the family pension already granted.

M.D.

The Rule 54 .7 (a) (ii) cannot be read in isolation.

The Rule 54 7 (a) (i) states that if there are more than one widow, it shall be paid in equal shares.

Therefore 54 (7) (a) (ii) will have to be understood to deal with a situation that occurs after the death of the said widow who had been paid a share in terms of Rule 54 (7) (a) (i) of the rules. In view of this, the contention of the respondents that there are more than one widow, and the surviving widow/only one equal share and the other share shall lapse to the government is not sustainable.

As stated already the applicant is the only widow in this case who is claiming the share and the other widow whose whereabouts were not known for several years, had not made any claim, nor was any claim made by anyone purporting to be son of the first widow.

In view of this, the respondents have erred in restricting the claim of the applicant only to 50% of family pension/gratuity and therefore, the claim of the applicant has

merit.

A.P.L.

merit. Therefore, we direct the respondents to release 50% of family pension/gratuity which remains unpaid. In any event, to safeguard the interests of the Government, we also direct the applicant to execute in favour of the 2nd respondent an indemnity bond, indemnifying the Government against any claim to be made in this regard in future by anyone and the indemnity bond should be executed to the value of the amount actually received. The order is to be implemented within a period of 60 days from the date of receipt of a copy of this order.

The O.A. is allowed as above.

N.R.Chandran

(N.R.CHANDRAN)
JUDICIAL MEMBER

M.M.Singh
1968/69

(M.M. SINGH)
ADMINISTRATIVE MEMBER

Index: Yes**