



OA No. 159 of 2008

Baikuntha Pradhan Applicant
Versus
UOI & Ors. Respondents

1. Order dated 01st September, 2009.

C O R A M
THE HON'BLE MR. C.R. MOHAPATRA, MEMBER (ADMN.)

Fact of the matter is that one Mohan Kumar Pradhan while working in the Railway as Helper Gr.I died prematurely on 06.09.2005 on a road accident. At the time of his death he was unmarried. After his death, the Applicant (Baikuntha Pradhan) claiming to be the elder brother of the deceased by filing legal heir certificate claimed release of the dues of the deceased in his favour. Alleging inaction of the Respondents in the matter of release of the dues, said Shri Baikuntha Pradhan approached this Tribunal in the present OA seeking direction to the Respondents to release leave salary, DCRG, Bonus and other service cum death benefits of his younger brother namely Late Mohan Kumar Pradhan in favour of the applicant being the solely legal heir cum successor on the basis of the legal heir certificate granted by the competent authority instead of succession certificate and for direction to the Respondents to pay

18% interest on the outstanding dues of Rs.1,45,000/- of the deceased.

2. On receipt of notice pursuant to the direction of this Tribunal dated 30.06.2008, Respondents filed their counter inter alia stating that the mother namely Basanta Kumar Pradhan, aged about 78 years was nominated by the deceased to be his nominee. Since the mother in whose favour nomination was given by the deceased is no more, and brother is not coming under the definition of family, as per Rule 73 of IRPM 1993 and provisions amalgamated in Estt.Srl.No.17/92, unless succession certificate is filed the legal dues of the deceased cannot be released in favour of the Applicant-brother of the deceased on the strength of the Legal heir certificate. Hence, the dues of the deceased have not been released till date.

3. Heard the parties at length and perused the documents placed on record. Learned Counsel for the Applicant relying on the Rules specifying the the force of legal heir certificate has submitted that insistence on submission of succession certificate is nothing but to delay the payment with ulterior motive. By placing reliance on the aforesaid Rules annexed to the counter



as Annexure-R/1 and R/2, Learned Counsel appearing for the Respondents contended that it is not correct to state that the Respondents are intentionally insisting for succession certificate. They are bound by the Rules. Production of succession certificate for release of dues has been intended and introduced by the legislation to avoid payment to fake person. Introduction of such provision cannot be said to be in any manner illegal. Since rule clearly prohibits release of dues without succession certificate and does not give power to do so on the basis of the legal heir certificate, asking production of succession certificate by the Respondents cannot be faulted. As the Applicant failed to produce the succession certificate in spite of duly noticed, the amount has rightly not been released in his favour. By stating so, Learned Counsel for the Respondents prayed for dismissal of this OA being devoid of any merit.

4. There can be no dispute on the proposition of law that judicial scrutiny on administrative decision is limited. Judicial interference in administrative decision can be made only with regard to the decision making process of the matter. Keeping in mind the above principle, it is to be seen whether insistence on



10
submission of succession certificate for release of the dues of the deceased was in accordance with Rules. For this purpose, it is necessary to extract the relevant provision of the Rules relied on by the Respondents. It runs as under:

“73. Lapse of death cum retirement gratuity- Where a railway servant dies while in service or after retirement without receiving the amount of gratuity and leave behind no family and- has made no nomination or;

a- the nomination made by him does not subsist the amount of death cum retirement gratuity payable in respect of such railway servant under rule 70 shall lapse to the Government.

Provided that the amount of death gratuity or retirement gratuity shall payable to the person in whose favour a succession certificate in respect of the gratuity has been granted by a court of law.”

Estt.Srl.No.17/92 dated 14/01/1992 speaks as under:

“Payment of death gratuity on the basis of Succession Certificate.

As per the extent orders, if a Railway servant dies while in service or after retirement without receiving the amount of gratuity and leaves behind no family and had also not made any nomination or the nomination made by him/her does not subsist, the

11

amount of gratuity payable in respect of such a Railway servant lapses to the Government.

2. Payment of gratuity is not confined to the members of the family only if does not have a family as defined in the provisions, he can made nomination in favour of a person or persons or even body of individual whether incorporated or not for payment of gratuity. Having regard to this the question whether gratuity which would otherwise lapse to the government can be paid to any person or persons has been under consideration of the Government and the President is pleased to decide that in such cases, retirement or death gratuity, as the case may be paid to the person in whose favour Succession Certificate has been granted by the Court of Law."

5. It is well settled principle of law that where the language used in a statute is clear and unambiguous; the question of taking recourse to any principle or interpretation would not arise. While interpreting provisions the court only interprets the law and can not legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it. This being the position of law and going through the Rules, I find no infirmity in the decision making process of not releasing the dues of the deceased in favour of his brother-

Applicant on the basis of legal heir certificate produced by him. As a result, this OA is dismissed being devoid of any merit. No costs.


(C.R.MOHAPATRA)
Member (Admn.)

