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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.643 OF 2010

Cuttack this the ~~01st~~ day of April, 2011

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, JUDICIAL MEMBER  
AND  
HON'BLE SHRI A.K.PATNAIK, ADMINISTRATIVE MEMBER

- ...
1. Fakira Charan Jena, aged about 71 years, Son of late Mahi Jena, resident of Bankipala, PO-Sayedpur, PS-Binjharpur, District-Jajpur
  2. Kumuda Dei, aged about 60 years, Wife of Sri Fakira Charan Jena, at Bankipala, PO-Sayedpur, PS-Binjharpur, District-Jajpur

...Applicants

By the Advocates:M/s.S.S.Das, R.K.Sahoo, K.Ch.Mohapatra

-VERSUS-

1. Union of India represented by its Post Master General, Orissa Circle, Department of Posts, PMG Square, At/PO/PS-Bhubaneswar, District-Khurda
2. Superintendent of Post Offices, Cuttack Circle, North Division, At/PO/PS/District-Cuttack
3. Post Master, Head Post Office of Jajpur, At/PO/PS/District-Jajpur
4. Rajashree Jena, wife of late Brajakishore Jena, C/o.Raghunath Jena, At/PO-Arei, PS-Binjharpur, District-Jajpur

...Respondents

By the Advocates:Mr.U.B.Mohapatra,SSC, Mr.S.Mishra,ASC & Mr.T.Rath(R.4)

ORDER

**HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER:**

1. Applicant No.1 and applicant No.2 are parents of late Brajakishore Jena, who, while serving as Clerk at Jajpur under the Respondent-Department, passed away on 2.1.2010. Their grievance is that they are entitled to share of pension and death cum retirement gratuity accrued to the late son Brajakishore. This being the genesis of the grievance, applicant No.1 had earlier moved this Tribunal in O.A.No.340/2010 since no action was taken by the Respondent-Department on the representations preferred by him. In consideration of the facts and circumstances, this Tribunal, vide order

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dated 6.7.2010, disposed of the said O.A. at the stage of admission in the following terms:

“Having regard to the submissions made above, I am of the view that it would best service the purpose if Respondent No.2, to whom representations vide Annexure-A/16A to 18A have been addressed and are pending consideration is directed to consider those pending representations and pass a reasoned and speaking order within a period of thirty days from the date of receipt of copy of this order and communicate the decision taken thereon to the applicant within a week therefrom”.

2. In compliance with the above direction of this Tribunal, Respondent No.2, vide order dated 13.8.2010 (Annexure-A/4) issued the following order, the relevant portion of which is quoted hereunder:

“...As per Rule-54(6) of the CCS(Pension) Rules, the widow of the deceased official is the 1<sup>st</sup> person to receive the family pension upto her death or re-marriage whichever is earlier. In view of the departmental Rules, provisional family pension @ Rs.3500/-per month in favour of the widow of the deceased official has been sanctioned vide memo No.C2-44/09-10 dated 28.6.2010 and after process of the case the final family pension will be settled in her favour.

Regarding DCRG, as per Rule-51(1)(a) of CCS Pension Rules, the gratuity payable under Rule-50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of nomination under Rule-53. In the instant case the deceased official has nominated his wife Rajashree Jena to receive the full DCRG in the event of his death vide application dated 15.07.2002 enclosed as Annexure-1. Hence, after due process of the pension papers the amount of DCRG shall be paid to Rajashree jena.

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In view of the discussion made above, I am undone to distribute share of pension and death cum retirement gratuity among all legal heirs including the applicant and thus the request made in representations dated 20.1.2010, 29.1.2020, 22.1.2010 and 25.2.2010 are rejected”.

3. Aggrieved with the above order, applicant No.1 along with his spouse has moved this Tribunal in the present Original Application seeking the following relief:

- i) Late the Respondent Authorities be directed to release the death benefits entitlement of their deceased son as admissible in favour of the legal heirs proportionately with immediate effect.

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- ii) Let the Respondent Authorities be further directed to withhold any further release of payment and also take note of the amount if already released in favour of the Respondent No.4, in the meantime, while making apportionment of the existing entitlements including the claim under Insurance Policies with intimation to the concerned Insurance Companies.
- iii) Let any order(s)/direction(s) as deem fit and proper be issued in favour of the applicants to which they are entitled to under Law".

This matter came up on 2.11.2010 for admission. While directing notice on the question of admission, this Tribunal, as an interim measure, directed that if any amount is payable under Pension Rule or Leave Salary or commutation of pension which have still not been paid, the same shall not be paid for a period of 30 days from to-day or till the filing of counter whichever is earlier. This interim order is no force as of to-day.

4. Respondent-Department and Private Respondent No.4 have filed their counter reply separately. Since the stand taken by the Respondent-Department has been quoted above, we do not like to reiterate the same thing. However, Respondent No.4, while opposing the prayer of the applicants, inter alia, has submitted as under.

- i) The Original Application in its present form is neither maintainable in law nor in fact. In other words, the claim of the applicants, being for maintenance based on the plea of dependency and succession on account of being the legal heirs of the deceased employee under the Hindu Personal Law, the present Original Application is absolutely not maintainable under the Administrative Tribunals Act, 1985. The remedy for the so called grievance of the applicants can only be adjudged by the civil courts of the competent jurisdiction.
- ii) The service condition of a Government employee are codified and governed under the statutory provisions framed under Article 309 of the Constitution of India and therefore, it is not open to be challenged except with the consent of employee himself. Respondent No.4 is the legally married wife of the deceased employee. Therefore, questing of sharing any amount with the applicants who does not come within the definition of the family of the deceased employee, does not arise. According to Res.No.4, since there is no rule in the service jurisprudence to share the pension, pensionary including the death-cum-retirement gratuity in favour of legal heirs, the Department have rightly rejected the claim of the applicants, which should not be interfered with.

5. We have heard the learned counsel for the parties and perused the materials on record. In the rejoinder filed, the applicants have not precisely answered the points raised either by Respondent – Department or Respondent No.4 in their counters.

From the recital of above facts, the point to determined is whether the applicants are entitled to sharing pension and death cum retirement gratuity accrued to their deceased son Brajakishore with the widow, (Respondent No.4).

6. Be that as it may, the point in issue sought to be determined in the present Original Application is not amenable to the jurisdiction of the Tribunal in view of the fact that Tribunal is not the adjudicatory forum to decide the as to whether the applicants are entitled to sharing pension and death cum retirement gratuity accrued to their deceased son, with the widow, particularly when, there is no such rule or provision in the CCS(Pension) Rules governing on the subject thereby imposing a liability on the Respondent-Department. In view of this, we hold that the present Original Application is not maintainable and accordingly, the same is dismissed. No costs.

  
(C.R. MOHAPATRA)  
ADMINISTRATIVE MEMBER

  
(A.K. PATNAIK)  
JUDICIAL MEMBER

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