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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.**

Original Application no. 68/2004.

Date of decision: 05.04.2005.

Hon'ble Mr. J K Kaushik, Judicial Member.

1. Smt. Poonam D/o late Shri Laxmi Narayan Sharma, aged about 27 years, r/o Dadhimati Nagar, Badasiya, Distt. Jodhpur.
2. Smt. Suman, d/o late Laxmi Narayan Sharma, aged about 24 years, r/o Village Basani, Tehsil Merta, Distt. Nagaur.

(Both are legal heir of late Shri Laxmi Narayan, s/o late Shri Shanker Lal, who was posted as Office superintendent Gr. II in the Office of Deputy Controller of Store at Jodhpur and retired on 30.11.93 and has been died on 31.10.97.)

: Applicants.

Rep. By Mr. K S Gill, Counsel for the applicant.

VERSUS

1. The union of India through the General Manager, North West Railway, Jaipur.
2. The Divisional Railway Manager, North West Railway, jodhpur Division, Jodhpur.
3. The Senior Divisional Personnel Officer, North West Railway, Jodhpur.
4. The Deputy Controller of Store, North West Railway, Jodhpur.

: Respondents.

Rep. By Mr. Kamal Dave: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Smt. Poonam and Smt. Suman have filed this joint application wherein they have questioned the validity of the order dated 21.01.2004 (Annex A/9) and have, inter alia, sought for quashing the same in addition to seeking a direction to the respondents to grant

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them the family pension to the applicant No. 1 & 2 from 27.10.96 to 04.12.98 and to the applicant No. 2 from 05.12.98 to 22.06.2003, respectively, along with interest at the rate of 12% per annum.

2. With the consent of learned counsel for both the parties the arguments were heard for final disposal of this case at the stage of admission keeping in view, the pleading being complete, and the matter being of urgent nature. I have carefully perused the pleadings and records of this case.

The abridged material facts, which are considered necessary for resolving the controversy in question, are that the applicants are the daughters of late Shri Laxmi Narayan Sharma. Shri Laxminarayan Sharma was last employed on the post of Office superintendent Gr. II in the office of the respondent No.4 and was allowed to retire voluntarily on 30.11.93. He was granted due pension and other retiral benefits. The said Shri Laxmi Narayan had expired on 26.10.96 leaving behind his five children i.e. two sons and 3 daughters. His wife pre-deceased him. At the time of death of Shri Laxmi Narayan, both the applicants were unmarried as well as did not attain the age of 25 years. The matter was taken up for the release of family pension with the competent authorities. Certain technical objections were raised and additional particulars were called as well as furnished. All other objections were fully met. Even then, the family pension was not released and hence a Civil Suit was filed seeking relief



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before a Civil Court. The civil suit was decreed in favour of the applicants vide judgement dated 05.08.2003 (Annex. A/5), whereby both the applicants were held to be the daughters of the said deceased government servant. Intimation about the judgment was given to the respondents. An appeal was also filed before the Court Additional District Judge praying therein that family pension benefits be directed to be paid, but the appeal came to be rejected vide order dated 08.12.2003 on the ground that such benefits cannot be granted by a Civil Court. Thereafter, the matter was moved again with the concerned authorities which came to be rejected vide order dated 21.01.2004 (Annex. A/1).



4. The respondents have contested the case and they have filed a detailed reply to the O.A. It has been averred that the deceased Railway Servant Shri Laxmi Narayan Sharma retired from Railway service on 30.11.93 and he was granted due retiral benefits. It has been further averred that as per the official records available with the respondents, the deceased Railway servant had never got recorded the names of his five children and he only got recorded the names three children in the records in order to get the benefits of scheme of promotion of small family. It is also stated that married daughters and employed sons and unemployed son above 25 years of age are not entitled to get family pension. Therefore, the respondents have only denied the rights in respect of family pension and as per the official records no one was entitled for the grant of family pension and family pension cannot be granted to ineligible persons. The Appeal Court

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has rejected the appeal regarding the entitlement of the applicants for family pension. The grounds raised in OA have been generally refuted.

5. Both the learned counsel have reiterated the facts and grounds raised in their respective pleadings. The learned counsel for the applicants has submitted that the Appellate Court has only said that it was not within their jurisdiction to grant the relief relating to the family pension and the declaration relating to the effect that the applicants are the daughters of late Shri Laxmi Narayan Sharma has been affirmed. He has also submitted that they being the legal heirs of the deceased railway servant and they are entitled to the family pension as per the rules in vogue, upto attaining the age of 25 years or the date of marriage whichever is earlier.

6. Per contra, the learned counsel for the respondents opposed the contentions raised on behalf of the applicants. He has submitted that the conduct of the deceased railway servant indicates the state of affairs in as much as he did not consider it expedient even to include the name of the applicants as family members in the official records. He has submitted that the deceased railway servant did so deliberately for the reason to get the promotional benefits in his service career meant for small family. He, further, contended that no fault can be fastened with the action of the respondents at least until the date of declaration that the applicants are the daughters of late Shri Laxmi Narayan

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Sharma and thus payment of interest can on no account be said to be justified upto the date of judgment dated 05.08.2003.

7.

I have considered the rival submissions put forth on behalf of both the parties. At the very threshold, there can be no dispute that both the applicants are the daughters of late Shri Laxmi Narayan Sharma in view of the positive declaration in their favour by the Learned Civil Court. The daughters have been included as family members under the definition of "family" meant for Family Pension Scheme for railway servants 1964. Rule 75 (19) (b) is relevant and contents thereof are excerpted as under:

"(b) "family" in relation to railway servant means-

- (i) Wife in the case of male railway servant or husband in the case of a female railway servant;
- (ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;
- (iii) son who has not attained the age of twenty five years and **Unmarried daughter who has not attained the age of twenty five years**, including such son and daughter born after retirement or adopted legally before retirement but shall not include a son or daughter adopted after retirement; (emphasis mine)

A bare perusal of the aforesaid reveals that daughter is entitled to family pension upto attaining the age of 25 years or till the date of marriage whichever is earlier. Since both the applicants are unmarried at the time of death of the retired railway servant, they would be entitled to family pension as per rules in force, till their date of marriage or till they attained the age of 25 years as the case may be. It hardly needs to be mentioned that none of the other children of late Shri Laxmi Narayan Sharma (i.e. other than the applicant No. 1 and 2 here), was eligible to receive the family pension since they did not fulfill the eligibility conditions and there is no dispute on this.



There is specific provision which regulates the payments of family pension in cases where there are more than one claimant.

8. As regards the contention of the learned counsel for the respondents that the deceased railway servant did not disclose the names of all the children in order to take advantage of the small family promotion schemes, I am not impressed with it; rather I find from the records that except making a bald averment no other material is forthcoming and I also never came across that there is any such scheme, Thus, in my view, this contention is meant only to be rejected which is otherwise also of no significance since the children of a deceased railway servant cannot be made to suffer for any indifferent behaviour of the father.

9. In the premises, I find that there is ample force in this O.A and the same succeeds and stands allowed in part. The impugned order dated 21.01.2004(Annex. A/9) stands quashed. The respondents are directed to release the family pension to the applicants upto the dates of attaining the age of 25 years or till the date of their marriage whichever is earlier, immediately and in any case not later than three months from the date of communication of this order. Interest at the rate of 8% per annum shall be payable on the amount of arrears only for the period from 05.08.2003 and till the date of actual payment. No costs.

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(J K Kaushik)
Judicial Member.

Captain

Jubindev S. S. S.

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First and extremest
part II and III destroyed
in my presence on 09-1-14
under the supervision of
Section Officer (1) as per
order dated 18-1-2003

~~Section Officer (Record)~~

G. J. M.