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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

**ORIGINAL APPLICATION NO. 128 of 2007
JODHPUR : THIS IS THE 17TH DAY OF NOVEMBER, 2008.**

CORAM :

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

- 1- Smt. Jaitoon aged about 49 years, W/o Late Shri Mangi Lal alias Mangu Khan, deceased Driver in the office of the Central Ground Water Board Division 15, Kolkata, by caste Musalman, resident of 29, Band Line, Raika-bagh, Post Office – High Court, Jodhpur – 342 006.
- 2- Shajid Khan S/o Late Shri Mangi Lal alias Mangu Khan, aged about 34 years, by caste Musalman, resident of 29, Band Line, Raika-bagh, Post Office High Court, Jodhpur – 342 006.
- 3- Shabnam W/o Shri Sikandar Khan D/o Late Shri Mangi Lal alias Mangu Khan aged about 36 years, by caste Musalman Resident of Dhobi Talai, Gali No. 9, Bikaner.
- 4- Nazneen D/o Late Shri Mangi Lal alias Mangu Khan W/o Shri Md. Rafiq, aged about 30 years, by caste Musalman, Resident of 29, Band Line, Rai-ka-bagh, Post Office High Court, Jodhpur – 342006.

.....Applicants.

Mr. Manoj Bhandri, Advocate, for applicants.

Versus



- 1-Union of India through the Secretary, Government of India, Ministry of Water Resources, Shram Shakti Bhawan, New Delhi.
- 2-The Director (Administration), Central Ground Water Board, National Highway IV, Faridabad.
- 3-The Executive Engineer, Central Ground Water Board, Division 15, Kolkata 5/1, K.C. Road, Crossipore Near Gun & Shell Factory, Kolkata – 700 002.
- 4-Smt. Bismilla alias Bisoodi Widow of Shri Mangi Lal Alias Mangu Kha aged about 50 years.
- 5-Mohd. Rafique S/o Shri Mangi Lal alias Mangu Kha aged about 26 years.

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6-Miss Shamim Daughter of Shri Mangi Lal alias Mangu Kha, aged about 24 years.

7-Suhel Khan S/o Shri Mangi Lal alias Mangu Kha, aged about 22 years.

Respondents No. 4 to 7 all resident of Kalu Khan Ki Haweli, Rasala Road, Jodhpur, Shri Mangilal deceased Driver in the office of Central Ground Water Board, Division 15, Kolkata.

.....Respondents.

Mr. Mahendra Godara, Advocate, proxy counsel for Mr. Vineet Mathur, for the official respondents.

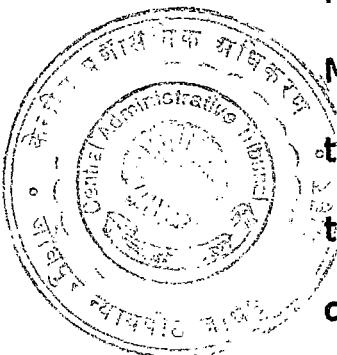
None for the private respondents 4 to 7.

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ORDER (ORAL)

(PER GEORGE PARACKEN, MEMBER (J))

This O.A. has been filed by the applicants seeking directions to the respondents to modify the Office Order dated 23.2.2007 (Annex.A-2) and the letter dated 11.5.2007 (Annex.A-1). The respondents, vide the aforesaid Office Order, accorded sanction of family pension in equal shares to the first applicant Smt. Jaitoon and to the fourth respondent Smt. Bismilla, wives of late Mangi Lal, Driver, CGWB, Div. XV, Kolkata, under Rule 54 (7) (a-1) of the CCS Pension Rule. By the said order, the respondents have also ordered to release the other terminal benefits to the persons concerned as per the nomination available with them in the office record submitted by the deceased Government servant Late Sh. Mangi Lal. By the Annex. A-1 letter, the respondents have paid the CGEGIS in equal shares to Sh. Md. Rafiq and Miss Shamim, the children of the second wife (Smt. Bismilla alias Bisoodi) of the deceased Government servant and the DCRG in equal shares to Sh. Rafiq, son of the deceased Government servant in his second wife and to Smt. Jaitoon, his first wife.



2- The facts of this case are not necessary to be narrated here in details as the first applicant Smt. Jaitoon, was already a party in OA No. 163/2002 filed by Smt. Bismilla, who is also the fourth respondent in this case. While disposing the said O.A., this Tribunal, vide its order dated 18.4.2006, held as under :-

"15. In view of above discussion, this O.A. deserves to be allowed. Accordingly, I allow the O.A. with the following directions :

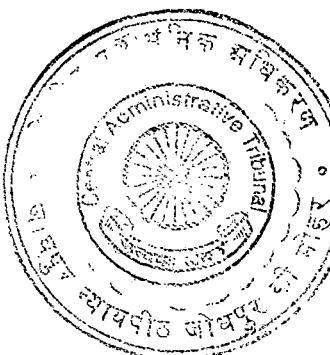
The respondents shall consider the representation of the applicant, conduct an enquiry keeping in view of the observations made herein above.

After conducting the due enquiry as per rules the respondent shall pass the order as per rules and judicial pronouncement, on the subject.

The order shall be passed within two months from the date of receipt of copy of order and family pension will be disbursed accordingly."

It was in terms of the aforesaid directions that the respondents have issued the impugned Annex.A/2 Office Order dated 23.2.2007 and the Annex.A/1 letter dated 11.5.2007.

3- The contention of the counsel for the applicant is that once the Court/Tribunal has ordered that pension is to be shared equally by the surviving wives, other retiral benefits also shall be equally shared among the eligible dependants of the deceased Government servant irrespective of the nominations already made by the deceased Government servant. In this regard, he has relied upon the judgement of ***Smt. Sukhi Bai & Ors. Vs. Union of India & Ors.*** reported in 2004 (2) CDR 651 (Raj). The Hon'ble Rajasthan High Court in Para 15 of the said judgement, held as under :-



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"It is not stated that the gratuity was not paid immediately on the death of person when it was payable to the heirs recognized by the department at that time on the basis of available material with them. The rights of the present applicant to any share on the gratuity, in our opinion, is also a claim to the estate left by Bhuralal and it must be directed against the persons to whom gratuity has been paid. Therefore, no direction in that regard is needed. However, if the gratuity has not been paid, then it may be disbursed directly in accordance with law as stated in Rameshwari's case amongst the children of Bhuralal from both marriages in the same proposition in which pension has become payable to them. If this was disbursed it is matter between the respective claimants claiming share in the gratuity amount and they can have recourse to civil remedy but not by way of invoking extraordinary jurisdiction by making application before the Central Administrative Tribunal or this court for deciding the claim to heirship."

He has also cited the judgement of **Smt. Sarbati Devi and Anr.** **Vs. Smt. Usha Devi** reported in AIR 1984 SC 346 wherein, Hon'ble the Supreme Court in Para 12 of its above judgement held as under :-

"12.... We approve the views expressed by the other High Courts on the meaning of Section 39 of the Act and hold that a mere nomination made under Section 39 of the Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under the life insurance policy on the death of the assured. The nomination only indicates the hand which is authorized to receive the amount, on the payment of which the insurer gets a valid discharge of its liability under the policy. The amount, however, can be claimed by the heirs of the assured in accordance with the law of succession governing them".

4- The learned counsel for the respondents has submitted that as per the nomination given by the deceased Government servant, family pension was payable to Sh.Md. Rafiq and Ms. Shamim, who were his children in his second wife. However, since payment of family pension is regulated under Rule 54 of the Family Pension Rules and Rule 54 (7) (a) (i) thereof provides that where family pension is payable to more widows than one, the same be paid to the widows in the equal shares. Accordingly,



the family pension was granted in equal shares to both the applicant and Smt. Bismilla. They have further stated that as per the records maintained in the respondent-department, Late Sh. Mangi Lal had nominated his second wife Smt. Jaitoon and her son Mohd. Rafiq for the purpose of DCRG in the prescribed form 'A' under Rule 53 and based on the said nomination, 50% of the DCRG was given to his first wife Smt. Jaitoon and the remaining 50% to his son Sh. Mohd. Rafiq. However, the entire amount of GPF was paid to Sh. Mohd. Rafiq as he was the only nominee of the deceased government servant for this purpose. As regards the amount of CGEGIS was concerned, it was paid to Md. Rafiq and Ms. Shamim in equal shares on the basis of the nomination of the deceased government servant. So far as the leave encashment dues were concerned, since there was no prescribed procedure for nomination, the amount on that account was given to the eldest wife of the deceased i.e. the applicant.

5- We have heard Shri Manoj Bhandari learned counsel for the applicant and Shri Mahendra Godara, learned counsel for the official respondents. We have also perused the various documents on record. In our considered view, the judgement of Hon'ble Rajasthan High Court in Sakhi Bhai and Ors. (supra) as well as the judgement of Hon'ble the supreme Court in Smt. Sarbati Devi and Anr. (supra), cited by the applicant's counsel Mr. Bhandari, have no relevance in this matter. The facts in those case are different. The respondents have made various



payments to the eligible dependants of the deceased government servant strictly in accordance with the provisions contained in Family Pension Rules as well as the nomination(s) made by the deceased government servant. While a government servant cannot make a nomination against the rules, the nominations validly made by the deceased government servant has to be respected. We, therefore, do not find any merit in this O.A. Accordingly, this O.A. is dismissed with no order as to costs.


Tarsem Lal
(Tarsem Lal)
Member (A)


(George Paracken)
Member (J)

Part II and III destroyed
in my presence on 19/1/2014
under the supervision of
section officer () as per
order dated 19/1/2014

Section officer (Record)

PLC
27/10/15

27/10/15