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Central Administrative Tribunal

Ernakulam Bench

Dated Wednesday the 3rd January 1990.

Present:

Hon'ble Shri N.V. Krishnan, Administrative Member
and

Hon'ble Shri N. Dharmadan, Judicial Member

ORIGINAL APPLICATION No. 422/89

Ammukutty Amma the applicant

V.

The Union of India represented
by the Secretary, Ministry of
Defence, New Delhi 1st respondent

The Controller of Defence
Accounts, Allahabad. 2nd respondent

The Head Quarters Chief
Engineer Eastern Command,
Fort William,
Calcutta-21 3rd respondent

The Garrison Engineer,
859, Engineer Works Section
C/ 99 APO 4th respondent

Rajamma P.R., Sasinivas,
Padinjattinkara P.O.,
Kadaplamattom,
Alai, Kottayam 5th respondent

M/s. Joseph A Vadakal Counsels appeared
George, K. Varghese, for the applicant
M.A. George & PA Joy
Advocates

Mr. K. Karthikeya Panickar..... Counsel appeared for
ACGSC the respondents 1-4

Mr. C.P. Sudhakara prasad..... Counsel for R-5.

Shri N. Dharmadan, Judicial Member

The applicant, who is the mother of late P.R.K. Nair who died as a civilian employee in the Military Engineering Service filed this application under Section 19 of the Administrative Tribunals Act 1985 challenging Annexure-IV an order passed on a claim for family pension/Death-cum-retirement gratuity due to her late son. She also seeks for a declaration that she is the only heir and dependant coming within the definition of 'family' as defined in the rule 21, 22 of All India Service (Death-cum-retirement Benefits) Rules 1958 and is entitled to receive the family pension and DCRG due to him after his death. But after the filing of the Counter affidavit the applicant filed M.P. 609 of 1989 for amending the application by substituting the provisions in Rules 50 and 55 of the Central Civil Service(Pension) Rules 1972 instead of Rules 21 and 22 of All India Service(Death-cum-Retirement Benefits Rules 1958 wherever they are mentioned. We are allowing this application as it was not opposed by any of the respondents.

2. The brief facts of the case are as follows: The applicant's son late P.R.K. Nair

while working as Mazdoor (MES 234177) under the Garrison Engineer 859 Engineering Works Section, 99 APO died in harness on 28.1.1989. At the time of his death he was unmarried and though he nominated the fifth respondent, his married sister, to receive the benefits from the department, she is not eligible to be nominated according to law. Accordingly, she filed Annexure-A.1 before the 4th respondent claiming the benefits, but it was turned down by Annexure-2 letter dated 16.2.1989 stating that the employee had nominated his married sister as person entitled to receive death-cum retirement gratuity. But the applicant filed another representation -Annexure-3- before the second respondent which was also not favourably disposed of. Annexure-4 was issued to the applicant stating that 5th respondent is the only legal heir to claim the family pension/death-cum-retirement gratuity amount due to the deceased as per document held in the office.

3. Both the fifth respondent and respondents 1 to 4 have filed separate counter affidavits in this case denying the claim made by the applicant for receiving the terminal ^{benefits} due to the deceased P.R.K.

Nair. We have also heard the matter and it is an

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admitted fact that the name of the 5th respondent given and she was had been / nominated by the deceased employee before his death for receiving the terminal benefits.

4. The question to be considered in this case as to whether the nomination is valid for the purpose of receiving ^{benefits} / under CCS (Pension) Rules 1972 which apply to this case. Death-cum-retirement gratuity amount due to a government servant who dies while in service after completion of qualifying service, shall be paid to his nominee. Provisions are dealing with the nomination / contained in rule 53 of the CCS(Pension) Rules which read as follows:

" 53. Nominations

(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or 2, as may be as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under rule 50.

Provided that if at the time of making the nomination-

- (i) the Government servant has a family, the nomination shall not be in favour of any person or person other than the member of his family; or
- (ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not."

Under this sub-rule a Government servant having 'family' can only nominate a person from the 'family' and the 'family' is defined for this purpose this rule in Sub-rule 60 of rule 50. It reads as follows:

"50 Death-cum-retirement gratuity

(6) For the purpose of this rule and Rules 51 and 52 and 53, 'family', in relation to a Government servant, means-

- (i) wife or wives including judicially separated wife or wives in the case of a male Government servant,
- (ii) husband, including judicially separated husband in the case of a female Government servant,
- (iii) sons including step sons and adopted sons,
- (iv) unmarried daughters including step daughters and adopted daughters
- (v) widowed daughters including step daughters and adopted daughters.
- (vi) father } including adoptive parents in the
- (vii) mother } case of individuals whose personsl
- law permits adoption,
- (viii) brothers below the age of eighteen years including step brothers,
- (ix) unmarried sisters and widowed sisters including step sisters
- (x) married daughters and
- (xi) children of a pre-deceased son."

5. Sister of a Government servant is not included in the definition of 'family' under rule 50.

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Sub-rule 6 of the rules. This is clear from the provisions and all the counsels appearing in the case have agreed that Annexure-IV cannot be sustained. So, the fifth respondent is not entitled to be nominated as a person eligible to receive DCRG from the respondent 1 to 4 by virtue of nomination already made by late P.R.K. Nair. Nomination is thus invalid. Nevertheless, the respondents are not entitled to retain the Terminal benefits payable to late P.R.K. Nair and they are bound to disburse the same to the rightful claimants under law as per their admission in para 5 of the counter affidavit.

6. In the result we quash Annexure-IV and allow the Original Application. We think a further direction is also necessarily to be issued to the respondents in the interest of justice considering the facts and circumstances of the case. Accordingly, we direct the second respondent to disburse the death-cum-retirement gratuity to the applicant in terms of the admission of the respondents 1 to 4 in para 4 of the counter affidavit. With regard to other terminal benefit payable to the legal heirs of late

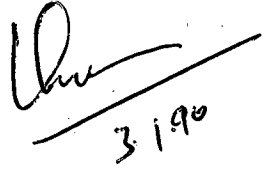
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P.R.K. Nair namely family pension, the respondents have contended that neither the applicant nor the respondent-5 is entitled to receive the same. It is pointed out that the family pension is paid in accordance with Rule 54 of the CCS (Pension) Rules 1972 to the family of a deceased government servant when the condition mentioned there in are satisfied. For the purpose of Rule 54, the expression "family" has been defined in sub-rule 14(b) and the categories of persons included therein do not include either the mother or sister of a deceased government servant. We feel that in the light of the above provision the applicant may not be entitled to receive any family pension due to the death of P.R.K. Nair, but we are not expressing a final opinion on the issue. In case the applicant makes a representation to the respondents 1 to 4 for the grant of family pension in relaxation of the provisions of the aforesaid Rules, the respondents may consider the same and take such decision as they consider appropriate in accordance with law.

7. The application is disposed of
with the above directions. There will be no
order as to costs.



(N. DHARMADAN)
Judicial Member



(N.V. KRISHNAN)
Administrative Member

3.1.1990

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CENTRAL ADMINISTRATIVE TRIBUNAL

Ernakulam Bench

Dated Thursday the 15th day of February 1990

Present:

Hon'ble Shri N.V. Krishnan, Administrative Member

and

Hon'ble Shri N. Dharmadan, Judicial Member

REVIEW APPLICATION : 14/90

in

ORIGINAL APPLICATION : 422/89

Rajamma

...Review applicant/Respondent-5 in
OA

V.

Ammukutty Amma
Perumprayil House,
Raj villa,

Aymanam P.O. Kottayam-15 ..1st respondent/applicant in OA

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

..2nd respondent/1st respondent in
OA

The Controller of Defence
Accounts, Allahabad

...3rd respondent/2nd respondent in
OA

The Head Quarters Chief
Engineer, Eastern Command,
Fort William, Calcutta-21

...4th respondent/3rd respondent in
OA

The Garrison Engineer,
859, Engineer Works
Section C/O.99 APO

..5th respondent/4th respondent in
OA

M/s. C.P. Sudhakara Prasad Babu Mathew and P Joseph, Advocates
appeared for the applicant in the Review application.

Mr. Joseph A Vadakkal, Advocate appeared for the 1st respondent/applicant in OA.

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Mr. K. Karthikeya Panickar, ACGSC for the respondents 2 to 5 in the Review Application.

JUDGMENT

Per Shri N. Dharmadan, Judicial Member

Heard the counsel on both sides.

2. The first ground raised by the applicant herein is that the last sentence in the first paragraph of the judgment is a mistake because the M.P. had been allowed by the Tribunal earlier. The Misce. Petition No.609/89 was filed after the filing of the counter affidavit of the 5th respondent and it was not opposed by the 5th respondent on 28.9.89 when it came up for orders and the Tribunal passed an order allowing the same. ^{last} In the/sentence of the first para of our judgment we only adverted to the acceptance of the above M.P. and not the D.A. itself. So, there is no error apparent on the face of the records warranting interference on this ground.

3. The next ground raised by the applicant in the M.P. is that she is entitled to family pension and that the learned counsel appearing on behalf of the 5th respondent did not agree at the time of

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hearing that Annexure-IV order cannot be sustained.

It is true that the 5th respondent's counsel did not say in so many words that he is agreeing but when the matter was argued, the submission made by the learned counsel appearing for the applicant which was also endorsed by the ACGSC in the light of the Rule 53 read with Rule 50(6) of the CCS(Pension) Rules, was not opposed by the learned counsel appearing for the first respondent. So far as the legal position as to the validity or otherwise of Annexure IV, the decision rendered by us still holds good and is not challenged by the review applicant. Even though the respondent-5 had filed a counter affidavit stating that Annexure IV is unassailable, at the time of arguments she could not sustain his contention in the counter affidavit.

4. The statement made by us in para 6 of the judgment that 'the respondents have contended that neither the applicant nor the respondent-5 is entitled to receive the same' (family pension) can only refer to the contentions of the respondents 1 to 4, in the context in which it is made.

5. The further ground raised by the petitioner is that because of the observations in

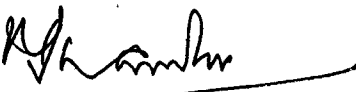
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the judgment, she is prevented from claiming the family pension even though she had been nominated by the deceased employee. According to her she is entitled to get the family pension due from the department. We had not made any observations in the judgment so as to prevent her from claiming any benefits legally due to her.

6. Under the above circumstance, we make it clear that notwithstanding the observations in the judgment, the review applicant (5th respondent in OA) can also file applications claiming family pension due to P.R.K. Nair along with the applicant in the Original Application. If the review applicant files an application, that will also be considered and disposed of by the respondents 1 to 4 in accordance with law.

7. There are no errors apparent on the face of the records in our judgment in this case. In the result, we dismiss the review application with the *clarifications* clarifications.


(N. Dharmadan)
Judicial Member


(N.V. Krishnan)
Administrative Member

15th February 1990