

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.487/2007

Friday, this the 15th day of February, 2008.

CORAM :

HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

Rosamma Rajendran
Kokkappillil House, Thoracad PO,
Chengannur, Alappuzha District,
Kerala State.

... Applicant

By Advocate Mr.P.Vinod Kumar

V/s

- 1 Union of India
represented by Secretary,
Ministry of Railways,
New Delhi
- 2 The Railway Board
represented by the General Manager,
Rail Bhavan, New Delhi
- 3 The Divisional Manager,
Northern Railway, New Delhi
- 4 The Under Secretary (Administration)
Railway Board, Rail Bhavan,
New Delhi

... Respondents

By Advocate Mr.Varghese John for
Mr.Thomas Mathew Nellimoottil

The application having been heard on 31.1.2008 the Tribunal delivered the following on 15.2.2008:

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

This is the second round of litigation by the applicant before this
Tribunal. Applicant is the widow of one Mr.C.A.Rajendran who retired from

Railway Service. Her grievance is that the respondents are not releasing the family pension to her.

2 Brief facts of the case are that Shri Rajendran retired from Railway service on medical invalidation on 25.6.1977 and he received pension till his death i.e. 2.2.1980. Since Shri Rajendran did not show the applicant's name as a beneficiary under the family pension scheme, after his death, the family pension was given to his daughter till 27.6.1980. Thereafter, the applicant preferred her claim for family pension on 17.9.1987. In the absence of nomination of her name for family pension by her late husband, the respondents asked her to produce the Succession Certificate, Marriage Certificate and Widowhood Certificate to consider her claim for payment of family pension. Accordingly, the applicant produced the succession certificate issued to her by the Munsiff's Court, Chengannur. However, as she failed to submit the Marriage Certificate and the Widowhood Certificate her case was not processed further. Then she approached this Tribunal vide OA No.613/2001 for a declaration that non-disbursement of the family pension to her is in violation of Article 14 and 21 of the Constitution of India and a direction to the 2nd respondent to immediately disburse the family pension due to her with 18% interest per annum. While disposing the said OA on 5.9.2002, though this Tribunal held that on the basis of the succession certificate issued to her, she was entitled for family pension, on the insistence of the respondents to produce the original marriage certificate as well as widowhood certificate, the applicant was directed to produce the same before the 2nd respondents within four weeks so that those documents could be taken as proof of marriage of the applicant with late Shri C.A.Rajendran and disburse the family pension with arrears to her from 1.7.1980. On the request of the Applicant made vide MA 1155/2002 in OA

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613/2001, she was granted further time up to 18.12.2002 to produce the requisite certificates. Thereafter, the applicant produced the Annexure R 2 certificate of marriage dated 7.8.1989 issued by Akila Kerala Cheramar Hindu Maha Sabha on 3.3.2003. However, the Respondents, vide Annexure R 3 letter dated 24.3.2003 informed the Applicant that due to non receipt of the desired documents in original within the stipulated period as per the direction of the Tribunal the family pension cannot be granted to her. She again submitted other two marriage certificates dated 6.9.2003 and 29.5.2007 (Annexure R-4 to R 4(2)). from the same authority and a certificate dated 29.5.2007 (Annexure R 5 (2)) showing that no divorce had taken place between the Applicant and late Shri Rajendran so far.

3 According to the respondents, Late Shri Rajendran did not include the name of the Applicant in the statement showing the details of family members for the purpose of Family Pension Scheme 1964 and it contained only the names of his daughter, Ms.Ramani Kutty and son, C.R.Baby. He also did not submit a joint photograph with his wife in the prescribed proforma duly attested by a Gazetted Officer for the purpose of Family Pension as required under the rules. They have also pointed out that after the death of Shri Rajendran, family pension was given to his daughter Ms.Ramani Kutty till she attained the age of 21 years i.e. till 27.6.1980 and she was also appointed as a Lower Division Clerk in the Ministry of Railway on compassionate grounds. The applicant submitted her claim for Family Pension only after a lapse of six years after the death of Shri Rajendran on 2.2.1980. They have also submitted that she did not furnish the succession certificate, the marriage certificate, certificate showing that divorce had not taken place between the Applicant and Shri Rajendran before his death, and a certificate to the effect that she has not re-

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married after 2.2.1980, within the stipulated period as laid down in the Order of this Tribunal in OA 613/2001 dated 9.5.2002 and within the extended period of two weeks by order in MA 1155/2002. On the contrary, she produced the Marriage Certificate dated 7.8.1989 issued by the Akila Kerala Cheramar Hindu Maha Sabha only on 3.3.2003 (Annexure R-2). Since she had failed to produce the other documents, she was again asked to submit them vide Annexure R-3 letter dated 24.3.2003. Thereafter, she again produced the Annexure A-4 Marriage Certificate dated 6.9.2003 from the Akila Kerala Cheramar Hindu Maha Sabha showing that she got married to Shri C.A.Rajendran on 8.9.1958. Since the date of the certificates were different. She was asked to produce the original marriage certificate from the Registrar of Marriage Office of the District concerned on the basis of certificate issued by Akila Kerala Cheramar Hindu Maha Sabha. Thereafter, she produced yet another marriage certificate from the Akila Kerala Cheramar Hindu Maha Sabha dated 29.5.2007 (Exhibit R-4(2)) and a Widow Certificate dated 6.9.2003 on 29.5.2007. According to the respondents, they have rejected her request for Family Pension on two grounds namely,

- "(a) the applicant failed to submit the desired documents within the stipulated period as fixed by this Hon'ble Tribunal.
- (b) Applicant has suppressed the material fact with regard to filing of MA 1155/2002 in the manner of seeking extension of time for submitting the desired documents."

4 I have heard Advocate Mr.Thomas Mathew Nellimoottil for the respondents. Since the Applicant's counsel was not present, I could not avail myself of his assistance in the matter but I have gone through the entire pleadings very carefully. Under Rule 54(14)(b)(i) of the CCS(Pension) Rules, "*wife in the case of a male Government servant or husband in the case of a female Government servant*" is the first claimant for family pension. Unlike

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DCRG, the Government servant on his initial appointment or during the service, need not make any nomination for receiving the family pension after his/her death. However under Rule 54(62) of CCS (Pension) Rules, the Government servant shall give declaration of his family in Form 3 to his Head of Office as soon as he enters government service and vide subrule 12(b) of rule 54 (ibid), *"the government servant shall communicate to the Head of Office any subsequent change in the size of the family, including the fact of marriage of his female child."* In this case the Applicant's husband for some reason or other, did not intimate the details of the family to the Head of Office as required above. On the other hand, he intimated the names of his daughter and son for the purpose of family pension. On the basis of the said intimation and without going into any further verification, the Respondents granted family pension to the daughter of the deceased government servant and paid to her till she attained the maximum age limit. It is not the case of the Respondent that the Applicant is not the wife of Late Shri Rajendran. On the contrary, on the directions of the Respondents, she has produced the succession certificate issued by the competent authority stating that she is the wife of the late Shri Rajendran. According to the marriage certificates produced by her, her marriage with the deceased government servant took place on 8.9.1958 but the said marriage wasn't registered with the Registrar of Marriages. Majority of the people never used to register their marriage in those days. Moreover, the marriage certificate is given by an authority based on the records available with the authority/institution which conducted the marriage. The date on the certificate is not necessarily the date of the marriage. The applicant had produced the Annexure R-2 certificate dated 7.8.1989, Annexure R-4 certificate dated 6.9.2003 and R-4(2) certificate dated 29.5.2007. In all these certificates, there is



no discrepancy regarding the parties of the marriage, namely, the applicant and late Shri C.A.Rajendran, the date and time of their marriage etc. It is also seen from these certificates that the applicant was a Christian and her husband was a Hindu. The marriage had taken place at the bridegroom's residence. Since it was an inter-caste marriage, probably there may have been some resistance to accept that marriage from the side of the bride's family. However, the fact remains that applicant was married to the late Shri C.A.Rajendran and two children were born to them in that wedlock. In such a situation, asking the applicant to produce any other original certificate of marriage or the certificate of registration of marriage at this belated stage is unnecessary and the applicant cannot fulfill such demands of the Respondents.

5 From the Succession Certificate produced by the applicant, it is more than clear that she is the wife of the late Shri C.A.Rajendran. The Respondents did not grant the family pension to the Applicant for the reasons that the deceased government servant had not included her name in the prescribed Form 3 submitted to the Head of the Department and she had not claimed it for six years after his death. In my considered view even if a government servant failed to furnish such information while he was in service, so long as the marriage subsisted between the parties, family pension cannot be denied to the surviving spouse. None the above considerations of the Respondent are, therefore, valid for them to deny her the family pension which is not their bounty but her valuable right. As held by the Apex Court in Deokinandan Prasad v. The State of Bihar and Ors AIR 1971 SC 1409 in D.S.Nakara V. Union of India AIR 1983 130 : (1983) ISCC 305, State of Punjab and Anr. v. Iqbal Singh AIR 1976 SC 667, D.S.Nakara v. Union of India AIR 1983 130 : (1983) ISCC 305 and reiterated in a number of subsequent cases,

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pension is the right of a government servant, if he is eligible for it under the rules.. It is a natural corollary of the aforesaid position of law that family pension is also equally an inherent right of the eligible dependents of the government servants. Again, in All India Reserve Bank Retired Officer's Association v. Union of India AIR 1992 SC 767: 1992 Supp (1) SCC 664, the Apex Court held as under:

"5 The concept of pension is now well known and has been clarified by this Court time and again. It is not a charity or bounty nor is it gratuitous payment solely dependent on the whim or sweet will of the employer. It is earned for rendering long service and is often described as deferred portion of compensation for past service. It is in fact in the nature of a social security plan to provide for the December of life of a superannuated employee. Such social security plans are consistent with the socio-economic requirements of the Constitution when the employer is a State within the meaning of Article 12 of the Constitution."

6 In the above circumstances, I am of the considered opinion that the denial of the family pension to the applicant by the respondents is absolutely unconstitutional, arbitrary and, therefore, unjustified. On the one side, we encourage inter-caste marriage but when the women, who are mostly at the receiving end, get into difficulties consequent to such marriages, no one comes to their rescue. It is therefore, all the more necessary that the respondents should have taken a very positive attitude in this case and granted the family pension to the applicant in her distress. I, therefore, allow this OA and direct the respondents to grant her the family pension from 2.2.1980 and pay the same on a monthly basis within two months from the date of receipt of this order. The arrears of family pension w.e.f. 2.2.1980 shall also be paid to her with interest at 9% till the date of payment. The details of the monthly family pension and

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arrears so payable to the Applicant shall be worked out and communicated to her along with the aforesaid payment. There shall be no orders as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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