

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 526 OF 2011

Friday....., this the 2nd of March, 2012

CORAM:

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

P.K. Prajosh, S/o. Late M.N. Padmavathy,
Mullathu House, Kalariparambu,
Ezuvathirthy, Ponnani (P.O),
Malappuram District – 679 577. - **Applicant**

(By Advocate Mr. S. Sreekumar)

Versus

1. Union of India represented by the Secretary,
Ministry of Defence, 101, South Block,
New Delhi – 110 001.
2. The Commanding Officer,
INS Venduruthy, Kochi – 682 004.
3. Pension Sanctioning Authority,
PCDA (Pension), Allahabad – 211 014.
4. The Principal Controller of
Defence Accounts (Pension),
Draupathi Ghat, Allahabad – 211 014.
5. The Joint Controller of
Defence Accounts (Navy),
Perumanoot, Kochi – 682 015. - **Respondents**

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

The application having been heard on 29.02.2012, the Tribunal
on 2-3-2012 delivered the following:

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant has filed this Original Application as he is aggrieved
by the denial of retiral benefits and pension as the legal heir of his mother
late M.N. Padmavathy.

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2. The applicant is the only son of late M.N. Padmavathy, who died in harness on 02.05.2008 while working as Safaiwala under Respondent No.2, the Commanding Officer, INS Venduruthy, Ministry of Defence, Kochi. At the time of her demise, she had a continuous period of 20 years and 28 days of service. She married one Shri P.V. Kumaran on 17.01.1991 and in the wedlock, the applicant was born. Pursuant to the marriage, she furnished the name of her husband as nominee for family pension and other pensionary benefits. However, Shri P.V. Kumaran, the father of the applicant deserted his mother even before he was born. Nothing is heard from his father for the last 17 years and therefore, he is presumed to be dead. His mother became a cancer patient. Anticipating death any time, she executed a will in favour of him for family pension, retiral benefits and her other movable and immovable properties. The applicant produced the last will and testament of his mother at Annexure A-1. His mother also changed the nomination, she has given to the 2nd respondent in favour of the applicant, vide Annexure A-2. By these process, the earlier nomination given in 1991 in favour of her husband is to be treated as cancelled by the respondents. In addition, his mother also got a signed affidavit dated 19.03.2008 before the Judicial First Class Magistrate – II, Ernakulam, wherein, it was noted that all her retiral benefits will pass on to her minor son, the applicant. In para 2 of the said affidavit, the fact that her husband has deserted her seven months after the marriage in 1991 itself was noted. The applicant averred that the 2nd respondent paid certain retiral benefits like Leave Encashment, GPF, bonus, 40% of the pay arrears consequent on implementation of VI th CPC, etc. vide Annexure A-5. The 2nd respondent instructed the applicant to execute an Indemnity Bond equal to the amount of family pension at the rate of Rs. 4,245/- per month and DCRG amounting to Rs. 1,90,180/- vide Annexure A-2. In pursuance of Annexure A-5 instructions, the applicant



submitted the Indemnity Bond to the respondents. Thereafter, the 2nd respondent forwarded all the papers necessary for processing the pension to the 3rd respondent. However, vide Annexure A-9, the respondent returned all the pension papers to the 2nd respondent stating that the spouse if alive will be first eligible claimant for the family pension. Therefore, the 3rd respondent directed R-2 to forward the claim of the spouse to process the papers afresh to grant the family pension to the spouse, if husband of the late M.N Padmavathy is alive.

3. The O.A was filed on 15.06.2011. The respondents took nine adjournments from June, 2011 onwards to get the reply statement filed by the 3rd respondent. This Tribunal has passed an Order on 27.01.2012 that the respondents are taking the matter lightly as borne out by the delay in filing the reply statement. Therefore, it was decided to dispose of the matter with available material on record. After this also, one more adjournment was given. When the case came up on 29.02.2012, the Senior Counsel is still requesting for further time. The pension was due from the month of March, 2008 onwards. The applicant, who is the legal heir is a minor and he has repeatedly represented the matter to the authorities stating that he needs money very badly to pursue his education. However, the 2nd respondent was stated to be unable to take any positive step in the matter as the 3rd respondent called for pension claim papers signed by the late employee's husband, whose whereabouts are not known.

4. The respondents produced the service book of late M.N. Padmavathy. A perusal of the records, shows that she did give the nomination in favour of Shri P.V. Kumaran, her husband in March, 1991 i.e. soon after her marriage to him in January, 1991. According to the applicant,

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his father deserted his mother a few months thereafter. Since, a period of 17 years have passed, by, the family took him to be dead. However, no information is forthcoming about any FIR being filed treating him as a missing person. Since, no benefit from the Government would have accrued by such an action perhaps late M.N. Padmaavathy might not have done it. However, in one of the service records, which is a divisional system for civilian staff, she has noted her marital status as 'widow'. The Accepting Officer has rounded off the entry and made a remark as "case is pending before Family Court for judicial separation". The applicant could not throw any light on this aspect as he might not have been aware of the Court proceedings. Perhaps, the case might not have been prosecuted to its completion, since late Padmaavathy's husband might not have presented himself before the Family Court. In my opinion, for the inability of the late M.N Padvathy to get an order of divorce, her only legal heir, the applicant cannot be penalized. She, as a Cancer patient, counting her last days had taken the precaution to change the nomination in favour of her son and to get her will registered in the office of the Sub-Registrar, Tripunithura. Moreover, as instructed by the 2nd respondent, the guardian of the applicant submitted the Indemnity Bond on 16.07.2010.

5. A perusal of the facts as narrated by the applicant shows that due care has not been exercised by both 2nd and 3rd respondent to process the pension case and effect the payment of family pension within 6 months as laid down in the CCS Pension Rules. The late employee, who was terminally ill was doing everything within her limited capacity to ensure that her minor son gets the pension and retiral benefits. She got a will executed bequeathing her property including the family pension and retiral benefits, in favour of her minor son. She submitted a fresh nomination, to the 2nd



respondent, showing her son as her sole nominee. This was duly accepted by the administration. If rules provide that spouse, if alive, is only eligible for family pension, it should have been pointed out to her. She should have been instructed to file a FIR about her missing husband and produce a police report to that effect. No such action was taken by the 2nd respondent. The fact that the nomination in favour of her son is registered by the second respondent shows acquiescence on his part. As a model employer, the 2nd respondent should have left standing instructions for the welfare and accounts branches to act in tandem, to extend help to the last grade, low paid and comparatively less educated employee, who encounters the twin problem of fighting Cancer and bureaucracy to ensure that her orphan son, gets adequate livelihood by way of family pension. Moreover, rules relating to payment of family pension in respect of missing government employees have been liberalised by Government of India. Now the family pension is payable, an year, after a serving Government employee is reported missing. If the respondents wanted to reject the pension claim on the ground that his father is only eligible that could have been done in March, 2008 and not in March, 2011. This is not the manner in which the employer ^{is} expected to act. There is inordinate delay and to that extent service deficiency on the part of R-2 and R-3. In fact, pension cases are consolidated for the quarterly pension statement which is to be reviewed at the level of Ministry. Therefore, it shocks one's conscience to note that the respondents did not even bother to file a reply statement in a pension case nine months after it was filed.

6. The undisputed fact remains that the guardian of the applicant was asked to produce the Indemnity Bond to enable the respondents to pay family pension to him. The late employee's spouse has not turned up to stake his claim for pension. In the process four years have passed by. Even if there is a remote chance of the spouse making a counter claim, the respondents will

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immediately stop the family pension payment to the applicant till the dispute which is between father and son is solved. Moreover, the son's eligibility for pension will cease, when he is 25 years old. Therefore, there is no way the respondent will be put to monetary loss. If and when the missing spouse turns up, he has to prove his credentials, to make a claim for family pension. Since a period of four years have lapsed since the retirement of the applicant's mother, the respondents are bound to act as per the late employee's nomination, in favour of her son, as the same has been accepted by Respondent No.2. It is seen from Annexure A-8 dated 10.12.2010 that R-2 has informed the applicant that PPO will be received from R-3 shortly. Moreover, R-2 has taken more than two years, to process the pension case and to forward the same to R-3 because R-2 has sought legal advice from the Ministry of Law and Justice (Annexure A-8). It is on such advice that an indemnity bond was demanded from the guardian of the applicant. It is strange that R-3 is under the impression that he is not bound by the legal advice given by the Department of Legal Affairs in its letter No. 283/10/GIR/Adv/Chn. dated 16.04.2010.

7. In view of the forgoing, the 3rd respondent is directed to issue the Pension Payment Order in favour of the applicant and sanction for DCRG and other retiral benefits within a time line of two months. If any further delay is caused, an interest of 9% will be payable, on the pension and retiral benefits from March, 2008 when it was due.

8 I desist from awarding a heavy cost on the respondents, hoping that pension payment will be made expeditiously.

(Dated 2nd March, 2012)


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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