

O.A.NO.537/2003

By Advocate Mr Thomas Mathew Nellimoottil

O R D E R

HON'BLE MR H.P.DAS, ADMINISTRATIVE MEMBER

The applicant A.Kunhilakshmi Amma, mother of the deceased Railway servant Muraleedharan is aggrieved by A-3 and A-8 orders by which the respondents refused to grant her the benefit of family pension consequent upon the remarriage of the widow of Muraleedharan. It is her case that since 'family' for the purpose of grant of family pension includes 'parents', the widow of her son had remarried and Muraleedharan had no children, she should be entitled to family pension. The respondents while testifying to the fact that she is indeed the only surviving member of the family after the remarriage of Muraleedharan's widow, refuse to grant her the benefit solely on the ground that the rules do not provide for it.

2. Heard. The applicant's son Muraleedharan died on 24.4.96 of Leukemia. Wholly dependent parents were included in the definition of 'family' for the purpose of family pension by the Railway Board's letter No.F(E) III/97/PNI/22 dated 5.11.97. Thus there was no scope prior to 1997 for including the parents in the family composition. Muraleedharan had no opportunity for making a formal application for pension, and therefore no presumption can be made that parents were excluded by choice.

3. A reading of the Family Pension Scheme for Railway Servants 1964 would show that, the scheme, as per the then existing rules recognised only the widow and the children as

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beneficiaries of Family Pension. Consequent upon inclusion of dependant parents in the definition of family, the corresponding provision in regard to the rights of beneficiaries should have been suitably amended to incorporate the newly created rights of dependant parents.

4. There is yet another omission as to the passing of rights in the event of the remarriage of the widow receiving family pension. While 'family pension' would cease, no passing of rights to eligible children has been contemplated in the scheme, while a passing of rights is contemplated in the case of the widow's death. This could not be the intention of the Government as in the context of cessation of family pension, death and remarriage are not distinguished from each other. In other words, the eligible children would be left to themselves in either event. So, when they are entitled to family pension on mother's death, why should they not be entitled to family pension on the mother's remarriage? Extending the same analogy a little further, why should not the parents be entitled to the benefit, after their induction in the definition of family, on the widow's remarriage, if there are no children and if they satisfy the eligibility condition?

5. The ground on which the respondents have relied, does not reflect the consequences of remarriage of the widow. We hold RBE 160/2000 (A-12) inconsistent with the enlargement of the definition of 'family' to the extent it does not clarify the aspect of passing of right to the surviving dependant

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parents in the event of the remarriage of widow and non-existence of children. In the present case, the Railway servant had left behind his widow and no children. The widow continued to draw family pension and looked after the parents of the deceased until her remarriage. After her remarriage, the parents of the deceased stood deprived of that support. They would not have remained so deprived had the scheme reflected the implication of inclusion of 'parents' in the definition of family as a basis for determination of the continuing right to family pension. It is not disputed that if the deceased has left behind a widow, she alone would be entitled to family pension. But when she ceases to be a beneficiary (due to death or remarriage), the right must pass to eligible children, and if there are no children then to the parents. Not providing for this eventuality is a lacunae in the rules, which we must address in the interest of justice. Clarification contained in Department of Pension OM No. 45/51/97 dated 21.7.1999 would amplify the lacunae further:

(i) In terms of the OM dated 5th March, 1998 parents who were wholly dependent on the deceased Government Servant when he/she was alive will also be entitled to family pension with effect from 1st January, 1998 subject to the fulfillment of the other conditions prescribed in this regard. Doubts have been raised whether parents of Government servants who died prior to 1st January, 1998 will also be entitled to family Pensions, It is clarified that family pension will be admissible in these cases subject to the followings:

(a) the Parents were wholly dependent on the Government servant when he/she was alive

(b) the Government Servant has not left behind a widow/widower, eligible son or daughter or a widowed/divorced daughter who will have a prior claim to family pension in the order indicated.

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(c) all other prescribed conditions are fulfilled.

The family pension will, however be payable only with effect from 1st January, 1998. It will be the responsibility of the pension sanctioning authorities concerned to satisfy themselves, based on a scrutiny of the service records and other relevant documents that the parents were in fact wholly dependent on the deceased Government servant then he/she was alive and that he/she has not left behind any of the specified beneficiaries who have prior claim of the family pension.

(d) The family pension wherever admissible to parents the mother will receive the pension first and after her death the father will receives the family pension.

6. It would be seen from the above that while wholly dependent parents would be entitled to family Pension from 1.1.1998 it is not specified as to what would happen when the widow childless diess or remarries. For dependent children the right would of course pass to them, but it is not specified as to what would happen when a widow remarries.

7. In D.S.Nakara v. Union of India (AIR 1983 SC 130), the Apex Court laid down a wholly new way of looking at pension entitlement. As per this decision, pension payable to employees of the Government is not a charity or bounty dependent on the sweet will of the employer, but is a deferred portion of compensation for past service of the employee. That being so, how could his dependant parents be deprived of a right to enjoy the security of his well-earned deferred compensation, when his widow has remarried abandoning the aged parents and when he has no children to lay claim to the family pension? Inconsistent or incomplete rules would not absolve the respondents of the moral obligation of giving to the family of the deceased what the deceased has left behind in their hands for passing on to the surviving and eligible members. In the

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present case, his parents are the only eligible members surviving. But due to a lacunae in defining the scope of their right, they stand deprived. As the applicant's claim though sanctified by natural justice, has failed to negotiate this void of inconsistency created by the respondents by default, we consider it our duty to restore to the applicant her right in the interest of the very same natural justice that led to the scheme and to the subsequent inclusion of 'parents' in the definition of 'family'.

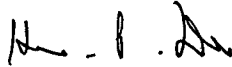
8. In the result, we set aside A-3 and A-8 as being repugnant to the scheme of Family Pension and evasive inasmuch as the request of the applicant being grant of family pension to her on the ground of the ineligibility of the widow and absence of children as beneficiaries, the A-3 and A-8 orders related to the status of family at the time of the death of the employee. We declare that the surviving eligible members of the family of the deceased would be entitled to the benefit of family pension in the order of priority (widow-children-parents) and that it would not be in order to deprive the eligible parents of the right to family pension merely on the ground that the scheme does not reflect the eventuality of a widow having ceased to draw family pension consequent on her remarriage and the deceased having left behind no children. We direct that appropriate steps be taken by the respondents to grant the applicant the benefit of family pension as per entitlement so declared, within a period of three months from the date of issue of this order and financial benefits including arrears be paid within a month

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thereafter. We also direct that a copy of the order be forwarded to the first and second respondents to take appropriate measures for bringing the provisions of the Family Pension Scheme in line with their decision to include 'parents' in the definition of family'.

9. No order as to costs.

Dated, the 3rd March, 2005.



H.P.DAS
ADMINISTRATIVE MEMBER



K.V.SACHIDANANDAN
JUDICIAL MEMBER

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