

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.559/97

Wednesday this the 18th day of June, 1997.

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

Rosamma Joseph,
W/o Late Ouseph,
Mamalasseril House, TV Puram,
Vaikom, Kottayam District.

.... Applicant

(By Advocate Mr. A.M. Thomas)

Vs.

1. Union of India represented by the
Secretary to the Ministry of
Communications, New Delhi.

2. The Senior Superintendent
Railway Mail Service (R.M.S)
T.V.Division, Thiruvananthapuram.

3. The Assistant Chief Accounts Officer,
(Pension) Office of the Deputy Director
of Accounts (Postal) Kerala Circle,
Thiruvananthapuram.

.... Respondents

(By Advocate Mr.MHJ David J, ACGSC)

The application having been heard on 18.6.1997, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant was the judicially separated wife
of K. Ouseph who died on 29.6.92. Sri. Ouseph had volun-
tarily retired from service. As the applicant was
judicially separated from Shri Ouseph and had two
daughters, family pension was paid to the applicant
as a guardian of the children till both the daughters
attained the age of 25. Thereafter the applicant is
not being paid any family pension. The applicant claims

contd....

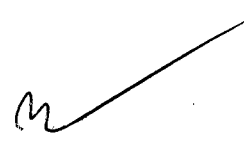


that after the attainment of the majority of the children the applicant is as per rules entitled to get family pension and therefore the action on the part of the respondents in denying her that is unlawful and arbitrary. With the above allegations the applicant has filed this application for a declaration that she is entitled for family pension as she is only a judicially seperated wife and for a direction to respondents to grant her family pension with arrears.

2. The respondents resist the claim of the applicant on the ground that she is not entitled to any family pension in accordance with the provisions contained in Rule 54 of the C.C.S (Pension) Rules.

3. We have perused the pleadings in this case and have heard Shri Thomas, counsel for the applicant and Shri MHJ David ACGSC appearing for the respondents. The learned counsel for the applicant argued that as the applicant ~~XXXX~~ was judicially seperated not on the ground of adultery but on the ground of desertion as is evidenced by the order of the Additional District Judge, Thiruvananthapuram in O.P(Divorce) 25/76/ ^(Annexure-A5) the contention of the respondents that the applicant is not entitled to family pension is untenable. The above argument is seen to have been advanced on the basis of the proviso to Sub Rule 11(A) of Rule 54 of the CCS (Pension) Rules. With a view to understand the controversy involved in this case, it will be useful to quote the Sub Rules 11(A) and 11(B) of Rule 54 of the CCS (Pension) Rules, which read as follows:

contd....



"(11-A) Where a female Government servant or male government servant dies leaving behind a judicially separated husband or widow and no child or children, the family pension in respect of the deceased shall be payable to the person surviving.

Provided that where in a case the judicial separation is granted on the ground of adultery and the death of the Government servant takes place during the period of such judicial separation, the family pension shall not be payable to the person surviving (if such person surviving was held guilty of committing adultery).

(11-B)(a) Where a female Government servant or male government servant dies leaving behind a judicially separated husband or widow with a child or children, the family pension payable in respect of deceased shall be payable to the surviving person provided he or she is the guardian of such child or children.

(b) Where the surviving person has ceased to be the guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children."

4. Under Sub Rule 11(A) the surviving spouse of the deceased Government servant will be eligible for family pension if the surviving spouse has no children. It is in respect of those who would otherwise be eligible for family pension under Sub Rule 11(A) of Rule 54 that it is provided that if the judicial separation was on the ground of adultery, family pension shall not be payable. It does not apply to the applicant, as she had two daughters. Sub Rule 11(B) governs the case of surviving spouse with children. Clause (a) of this Sub Rule provides that if the surviving spouse has children he or she would be entitled to receive the family pension provided he or she is a guardian of the children. Clause (b) provides that where the surviving spouse has ceased to be the guardian of the children, the family pension would be

contd....



payable to the person who is the actual guardian of such child or children. Learned counsel for the applicant argued that since the children have attained majority, the applicant who was the guardian of the children is still entitled to family pension. Such an argument is untenable and meaningless.

5. In the result, finding no merit in the application, the same is dismissed leaving the parties to bear their costs.

Dated the 18th day of June, 1997.


P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

ks.

LIST OF ANNEXURE

Annexure A-5: True copy of the order in O.P
(Divorce) No.25/76 dated 3rd
June 1976 passed by the I Addl.
District Judge, Trivandrum.
.....