

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.579/07

Monday this the 7th day of April 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

J.Radhamony,
W/o.late P.R.V.Nair,
Residing at TC No.19/11660 (2),
Poojappura P.O., Tamalam, Trivandrum.
Now residing at 'Janaki', TC No.42/935 (2),
ANRA 30, Asha Nagar, Enikkal,
Vallakkadavu P.O., Trivandrum.

...Applicant

(By Advocate Mr.R.S.Kalkura)

Versus

1. Union of India represented by the Secretary,
Council of Scientific and Industrial Research,
Central Secretariat, New Delhi.
2. The Director,
Regional Research Laboratory,
Industrial Estate P.O., Trivandrum.
3. Anilkumar K.V.,
Residing at Kochupurackal House,
Padamkury, Edathura – 689 573.

...Respondents

(By Advocate Mr.T.P.M.Ibrahim Khan,SCGSC [R1-2])

This application having been heard on 7th April 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is the second wife of late Shri.P.R.V.Nair, Ex-Technical Assistant Grade-II (3), who was working with the 2nd respondent, namely, RRL, Trivandrum. She, in this O.A., has sought a declaration that she is the sole legal heir of late Shri.P.R.V.Nair entitled to claim the entire family pension consequent upon his death.

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2. The brief facts are that Shri.P.R.V.Nair died on 29.1.1994 leaving behind his two wives and the 3rd respondent, namely, Shri.Anilkumar.K.V., a handicapped son born out of the 1st marriage. The respondents have sanctioned 50% of the family pension to the 1st wife and balance 50% to the applicant. After the death of the 1st wife, the Department granted 50% of the family pension to the 3rd respondent, being a permanently disabled/handicapped person, in terms of Rule 54 (7) of Family Pension, 1964 which reads as under :-

(7) (a) (i) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

3. Because of the fact that the physical disability of the 3rd respondent was of serious nature which prevented him from earning his livelihood as certified by Medical Officer in Charge, Community Health Centre, Edathua, he was granted life time pension in terms of Rule 54 (6) of Family Pension, 1964 which reads as under :-

(6) The period for which family pension is payable shall be as follows :-

1. in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

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2. in the case of a son, until he attains the age of twenty five years; and
3. in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier:

Provided that if the son or daughter of a Government servant is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

1. If such son or daughter is one among two or more children of the Government servant, the family pension shall be initially payable to the minor children in the order set out in Clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of twenty five and thereafter the family pension shall be resumed in favour of the son or daughter suffering from disorder or disability of mind including mentally retarded or who is physically crippled or disabled and shall be payable to him/her for life;
2. if there are more than one such children suffering from disorder or disability of mind including mentally retarded or who are physically crippled or disabled, the family pension shall be paid in the order of their birth and the younger of them will get the family pension only after the elder next above him/her ceases to be eligible:
Provided that where the family pension is payable to such twin children it shall be paid in the manner set out in Clause (d) of sub-rule (7) of this rule;
3. the family pension shall be paid to such son or daughter through the guardian as if he or she were a minor except in the case of the physically crippled son/daughter who has attained the age of majority;
4. before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a medical officer not below the rank of a Civil Surgeon setting out, as far as possible, the exact mental or physical condition of the child;
5. the person receiving the family pension as guardian of such son or daughter or such son or daughter not receiving the family pension through a guardian shall produce every three years a certificate from a medical officer not below the rank of a Civil Surgeon to the effect that he or she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

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6. In the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the Government servant or the pensioner, as the case may be, and in case no such nomination has been furnished to the Head of Office by such Government servant or pensioner during his lifetime, to the person nominated by the spouse of such Government servant or family pensioner, as the case may be, later on.

4. The 50% of the family pension payable to the applicant could not be paid to her because she has not been submitting the non re-marriage certificate which is a pre-condition for grant of family pension as per rule referred to above. Instead, the applicant has filed a suit (OS No.705/1997) before the Munsiff Court, Trivandrum which was dismissed on the ground that jurisdiction of the Court was barred by Section 28 of the Central Administrative Tribunal Act, 1986. Thereafter, the applicant filed an appeal before the District Judge and the same was also dismissed. Lastly, she approached this Tribunal by filing O.A.744/06 which was disposed of by order dated 21.3.2007 with a direction to the applicant to make a detailed representation to the respondents. The applicant submitted the representation to the 2nd respondent. After considering the aforesaid representation she was granted 50% family pension and the same was released to her when she submitted the non re-marriage certificate on 28.12.2007.

5. I have heard Shri.Ajay for the applicant and Smt.Jisha for the respondents. In the above facts and circumstances of the case, I do not find any merit in the present O.A. The claim of the applicant to declare her as the sole legal heir of late Shri.P.R.V.Nair entitled to claim the entire family pension consequent upon his death is absolutely

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unfounded. Respondents have correctly apportioned the family pension between the applicant and the 3rd respondent in accordance with the relevant rules. The O.A is, therefore, dismissed. There shall be no order as to costs.

(Dated this the 7th day of April 2008)


GEORGE PARACKEN
JUDICIAL MEMBER

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