

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 92 of 2011

Tuesday, this the *14th* day of February, 2012

CORAM:

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

Pachiammal, W/o. (late) Kandasamy V
Residing at : Chinnavadugampatti
(Via) Danishpet, Omalur Taluk
Salem District - 4

... Applicant

[By Advocate Mr. T.C. Govindaswamy]

v e r s u s

1. Union of India represented by
The General Manager
Southern Railway, Headquarters Office
Park Town P.O, Chennai - 3.

2 The Sr. Divisional Personnel Officer
Southern Railway, Palghat Division
Palghat - 4

3 The Sr. Divisional Finance Manager
Southern Railway, Palghat Division
Palghat - 4.

... Respondents

[By Advocate Mr. Thomas Mathew Nellimoottil]

This application having been heard on 24.01.12, the Tribunal on *14-02-12*
delivered the following :

ORDER

HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant's husband, a Senior Gangman, in the Palghat Division of Southern Railway had taken voluntary retirement on 25.10.1999. He was granted pension vide order dated 05.02.2000. Since 1989, the applicant with



the 6 children she had borne him, was residing away from him. Upon his demise on 16.09.2008, she had made efforts to get family pension which resulted in the Annexure A-1 impugned order dated 16.11.2010 informing her that since her husband had not nominated her as his wife for family pension at the time of his retirement, she was not sanctioned the family pension.

Aggrieved, she has filed this O.A for the following reliefs :


- (i) Call for the records leading to the issue of A1 and quash the same;
- (ii) Declare that the applicant is entitled to be granted family pension consequent upon the demise of the applicant's late husband Kandasamy.V (Retd. Sr. Gangman/ Danishpet) who passed away on 16.09.2008 and direct the respondents accordingly;
- (iii) Direct the respondents to grant family pension and other available benefits due consequent upon the demise of the applicant's late husband Kandasamy.V and direct further to grant the same with arrears thereof within a time frame as may be found just and proper by this Hon'ble Tribunal;
- (iv) Award costs and incidental to this application;
- (v) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case.

2. The applicant submitted that the family pension is granted not by virtue of nomination. The failure on the part of the applicant's late husband to nominate her name to receive family pension is no reason to deprive her of the right to receive family pension. Granting family pension to the youngest son who had not attained the age of 25 years as on the date of filing forms for family pension is no reason to deprive her of the right of family pension which is otherwise due to her consequent upon the demise of her husband. The applicant has not been remarried.



3. The respondents contested the O.A. In their reply statement, they submitted that though the deceased pensioner had mentioned the name of his wife in the form furnishing the particulars of family members, he had not submitted the joint photograph as required. As per his letter dated 01.12.1999, his pension papers were submitted without the photograph of his wife as she was not residing with him for the last ten years. Based on the above, family pension was sanctioned to Shri K. Raju, his son, as the second beneficiary. The applicant has to produce substantive documents subject to the satisfaction of the Family Court that her marriage with the deceased pensioner was subsisting and that she had not remarried till date. The applicant had not impleaded Shri K. Raju in the O.A, who is a necessary party. If she was aggrieved of the non inclusion of her name as beneficiary in the Pension Payment Order issued on 05.02.2000, she could have sought legal remedy before 06.02.2001. The O.A is time barred after the lapse of nearly 10 years. In terms of Rule 75 of the Railway Services (Pension) Rules, 1993, the family pension is to be sanctioned as per the nomination of the employee.


4. In the rejoinder statement filed by the applicant, it was submitted that the family pension is not the estate of the deceased, nor has the deceased a right to nominate one or the other to receive the same. In Annexure R-2, the applicant is also included as a member of the family. There is nothing to indicate that the late employee had nominated Shri K. Raju or that the late employee had not declared the applicant as his wife. No right has accrued to Shri K. Raju in preference to the applicant in the light of the letter dated 01.12.1999 (Annexure R-1) or the statement of particulars of family members



in Annexure R-2. The applicant's cause of action arose from the date the family pension fell due, which continued till it was refused by the impugned order. The respondents had a duty to call upon the employee to produce the joint photograph with his wife when he was alive.

5. We have heard Mr. T.C. Govindaswamy, learned counsel for the applicant and Mr. Thomas Mathew Nellimoottil, learned counsel for the respondents and perused the records.

6. The issue for adjudication in this O.A is whether the absence of nomination or living separately from the spouse for a long period of time or non submission of joint photo for sanctioning pension would disentitle the applicant who is a widow of the deceased pensioner from getting family pension under the Railway Services (Pension) Rules, 1993 or not. There is no nomination of Smt. Pachaiammal or Shri K. Raju in the form at Annexure R-2 for giving the particulars of family members for family pension. The wife of the deceased pensioner is shown as Smt. Pachaiammal and the son as Shri K. Raju and nothing more. As the wife was not residing with the deceased pensioner and the joint photograph of the wife and husband was not submitted, the respondents wrongly deduced that he had not included the applicant's name as his wife for family pension and that the name of the youngest son was shown for pensionary benefits and decided that as he had not nominated the applicant as his wife for family pension at the time of retirement, she was not eligible for family pension as per the impugned order. Not only that there is no provision for nomination in the concerned form, the question of nomination for receiving family pension does not arise at all. The family pension is not a



property of an employee for which nomination can be made. In 1991 SCC (L&S) 551, *Smt. Violet Issac and Others vs. Union of India and Others*, the Hon'ble Supreme Court held as under :

".....Thus no other person except those designated under the Rules are entitled to receive family pension. The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition."

(emphasis supplied)

Therefore, the absence of nomination in the form for family pension as submitted by the respondents is no valid ground for denying family pension to the applicant.

7. For the purpose of family pension, family in relation to a Railway servant includes even a judicially separated wife or husband. In the instant case, separation of the deceased pensioner and the applicant was not judicial. It was just at the will and pleasure of the couple. Therefore, it did not have the legal force of a judicial separation. There is nothing in the Railway Services (Pension) Rules, 1993 that justifies denial of family pension on the ground of residing separately. Whether the applicant and the deceased pensioner had a robust married life or not should not be a matter of concern for the respondents. In *Jog Singh vs. union of India*, the Apex Court held that the family pension is admissible on account of the status of a widow. Upon the



death of the husband, the wife, on account of her status as the widow of the deceased pensioner, is entitled to family pension. As per the definition of the family for the purpose of family pension, wife or husband, as the case may be, is the first claimant to receive the family pension. The respondents had no business to look beyond that especially when there was no rival claimant for the family pension. Mere fact of residing separately from the husband will not deprive the applicant of her right to get family pension.

8. The deceased pensioner had submitted the name of the applicant as his wife in the family composition certificate. This fact is admitted by the respondents. The letter dated 01.12.1999 from the deceased pensioner, which is flagged by the respondents to deny family pension, reads as under:

" Salem,
Date : 1.12.99

From:

V. Kandasamy
Sr. Gangaman
SM/PW/North/SA

To:

The Sr. Divisional Personnel Officer
Divisional Office,
Personnel Branch,
Palghat - 678 002.

Through - proper Channel

Sir,

Sub:- Submission of Pension Papers form
Ref:- Sr. DPO/PGT termination order No.
J/P/509/IX/V.K/Dt: 18.10.99

In reference to the above, my service were terminated with effect from 20.10.99, and I am herewith submitting the Pension papers, and I am submitting my self photograph only for the Pension, since my wife named K. Pachiammal, not residing with me last Ten years.

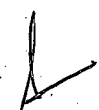
Kindly arrange the Pension to me.

Thanking you,

Yours faithfully,
Sd/-
(K. Kandasamy) "



The deceased pensioner submitted that he was submitting the self photograph only for the pension for the reason that his wife was not residing with him for the last 10 years. The deceased pensioner had declared that the applicant was his wife. That declaration entitled her to get the family pension even if no joint photograph is available. The letter above cannot provide any legal ground to the respondents not to grant family pension to the applicant. Because the applicant was not residing with the deceased pensioner for the last 10 years and presumably because he did not want to go to her to get a joint photograph, he could not submit the joint photograph. The letter conveys nothing more. He had not indicated that he does not want the applicant to get family pension. The respondents themselves assumed that. Even if he wanted, he could not have disentitled her from the family pension as per the provisions of the Railway Services (Pension) Rules, 1993. The joint photograph is an identification of the applicant. The joint photograph by itself does not make a man and woman, husband and wife. So also, the absence of joint photograph cannot make the applicant somebody other than his wife. The joint photograph does not determine nor does its absence take away the status of the applicant as his wife. When the deceased pensioner was alive, the respondents could have insisted on the production of joint photograph with his wife for granting retirement benefits. Therefore, I hold that the non-submission of joint photograph by the deceased pensioner at the relevant time does not nullify the claim of the applicant for family pension.

9. As the status of the applicant as wife of the deceased pensioner is not disputed, there is no merit in the argument that the applicant should prove her
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marital status before the Family Court. The applicant's grievance arose when she was denied family pension. Therefore, I hold that the O.A. is not time barred. If the respondents had any doubt as to her remarriage, they could have made a discreet enquiry and could have taken appropriate action.

10. As per the family composition certificate, the applicant is entitled to family pension in preference to Shri K. Raju. I declare that the applicant is entitled to family pension in terms of the Railway Services (Pension) Rules, 1993 from 17.09.2008, the day after the death of her husband. On the premise that her son Shri K. Raju, who received the family pension might have supported her, if the amount of family pension paid to him till he attained the age of 25 years is deducted from the amount of family pension payable to the applicant, it may not be improper.

12. The O.A. is allowed. The respondents are directed to pay family pension to the applicant from 17.09.2008 onwards after adjusting the amount already paid to her son till he attained the age of 25 years within 60 days from the date of receipt of a copy of this order.

13. No order as to costs.

(Dated, the 14th February, 2012)



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER