

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.106/2001

Thursday this the 11th day of October, 2001

CORAM:

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE SHRI T.N.T.NAYAR, ADMINISTRATIVE MEMBER

1. Mariam Alias Mini,  
(Mentally retarded person)  
D/o.Late Varkey,  
Madavana, Vathakkad, Thuravoor,  
Angamaly, represented by guardian  
and next friend,  
M.V.Chakku.

(By Advocate Sri A.B.Jaleel)

vs.

1. Union of India, represented by Secretary,  
Dept. of Post, New Delhi.
2. The Senior Superintendent of Post Offices,  
Department of Posts, India, Aluva.
3. The Post Master, Angamaly Post Office,  
Angamaly.
4. Eliakutty, W/o.Thomas, Pazhappilly Veedu,  
Kanjirakutty, Edappal, Malappuram.
5. Mary,W/o. Devassykutty, Puthusseri,  
Pengalloor, Thodupuzha.
6. David,S/o.Varkey,  
Madavana,Vathakkad,Turavoor.

.. Respondents

(By Advocate K.R.Raj Kumar, ACGSC(R1-3)

The Application having been heard on 1.10.2001, the Tribunal  
on 11.10.2001 delivered the following:

ORDER

HON'BLE SHRI A.V.HARIDASAN, VICE CHAIRMAN:

This application has been filed by Mariam alias Mini  
aged 31 years, a mentally retarded woman and having a mental  
age of 4 years through her elder brother and next friend  
M.V.Chakku, for a direction to the respondents 1 to 2 to

disburse the family pension due to her from August 1995 onwards. The material allegations in the application are as follows.

2. Sri M.C.Varkey, the father of the applicant while working as a Postman under respondents 1 and 2 retired as an invalid pensioner and thereafter he died on 8.1.1994. Sri Varkey had during his lifetime nominated his wife Kochuthressia and on her death the applicant Mariam alias Mini to receive the family pension.Kochuthressia died on 8.10.95. Though the applicant became eligible to receive the family pension thereafter, it was not paid to her.The next friend of the applicant made a representation to the second respondent on 30.10.95 requesting disbursement of the family pension. He was asked to apply in the prescribed form producing a medical certificate in regard to the mental condition of the applicant which he did. However he was asked to produce a guardianship certificate issued by the competent Court. Though the applicant approached the Court of Additional District Judge, North Parur for appointing the next friend as a guardian under the Mental Health Act impleading all the other legal heirs of deceased Varkey who did not object to the grant of guardianship certificate, the application was rejected on the ground that Mariam alias Mini, not being an insane person, appointment of guardian under the Mental Health Act, was not called for. Therefore, even though the applicant through the next friend requested disbursement of the family pension, the respondents have not

✓

cared to disburse the same to her through the next friend and therefore this application has been filed for the reliefs as aforesaid. .

3. The respondents contend that according to the provisions of Rule 54(9) of CCS(Pension)Rules a guardianship certificate issued by a competent Court is absolutely necessary to disburse the family pension due to mentally unsound person, the respondents cannot disburse the family pension to the applicant, without the production of a guardianship certificate.

4. We have heard the learned counsel on either side and have perused the materials placed on record.

5. It is a very unfortunate case where a destitute mentally retarded person is being deprived of her only means of livelihood, namely, the family pension, on account of non-compliance of technical formalities. The contention of the respondents that a guardianship certificate is required for disbursement of family pension to a mentally retarded person is not correct, nor is it covered by rules. The express provision regarding payment of family pension in the case of a mentally retarded person is contained in clause (vi) of sub-rule (6) of Rule 54 of the CCS (Pension)Rules, which reads as follows:-

(vi) in the case of 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

*m*

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."

In this case, unfortunately in the case of Mariam alias Mini, the mentally retarded daughter of late Varkey, neither Varkey or his widow Kochuthressia during their lifetime nominated any person to receive the family pension payable to her. The Additional District Judge, North Parur in O.P.(Mental Health) 77/96 dismissed the application for appointment of Sri M.V.Chakku as guardian of Mariam alias Mini, though all the legal heirs of deceased Varkey had been impleaded on the ground that Mariam alias Mini was not an insane person requiring appointment of a guardian under the Mental Health Act. The facts of the case disclose an unfortunate situation that the mentally retarded applicant is not getting the family pension due to her which is the sole source of income for her sustenance. For an omission by her father and mother to nominate a person and in view of the fact that no guardian could be appointed, since she is merely a mentally retarded person and not an insane person, the competent authority in such a case should have exercised its discretion and granted the family pension due to Mariam alias Mini through the next friend who is taking care of her and safeguarding her interest, if necessary by taking an indemnity bond executed by him.

6. In the light of what is stated above, in the interest of justice, we dispose of this application directing the respondents to disburse the entire family pension due to Mariam alias Mini from August 1995 onwards

/

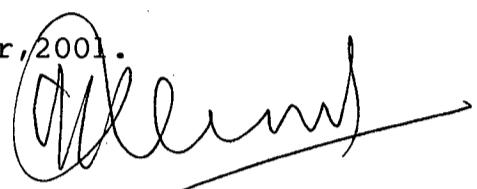
~

and to continue to pay the family pension due to her through her next friend Sri Chakku after getting an indemnity bond executed by him against any rival claims in future. The arrears of family pension due from August, 1995 shall be paid to the applicant within a period of six weeks from the date of receipt of a copy of this order. There is no order as to costs.

Dated the 11th day of October, 2001.



(T.N.T.NAYAR)  
ADMINISTRATIVE MEMBER



(A.V.HARIDASAN)  
VICE CHAIRMAN

/njj/

Applicant's Annexures:

1. Annexure A-1 True copy of the Medical Certificate issued by Dr.E.V.Retnamma, Civil Surgeon, P.H.Centre, Thuravoor dated 14.3.1996.
2. Annexure A-2 True copy of the application submitted before the 2nd respondent to the applicant dated 30.10.95.
3. Annexure A-3 True copy of the letter from 1st respondent to the applicant dated 1.7.99.
4. Annexure A-4 True copy of the O.P.(Mental Health) 77/96 in order dated 29.11.1999.

Respondent's Annexures:

1. Annexure R1 True copy of the letter dated 18.6.99 sent by the applicant.
2. Annexure R1(a) English translation of Annexure R1.
3. Annexure R2 True copy of the lawyer notice dated 16.6.1999 received by the respondent.
4. Annexure R3 True copy of the letter No.C/Pen/196 dated 01.07.99 issued by the respondent to Sri M.V.Chakku.