

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
I. A. No.

131

199 2

DATE OF DECISION 24.8.92

Indira Devi

Applicant (s)

Mr. Pirappancode V.
Sreedharan Nair

Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s) 1 & 2
Secretary, Ministry of Defence, New Delhi and others

Mrs. K. B. Subhagamani, ACGSC

Advocate for the Respondent (s) 1 & 2

Mr. T. Devasia for R-3

CORAM:

The Hon'ble Mr. P. S. HABEEB MOHAMED, ADMINISTRATIVE MEMBER

The Hon'ble Mr. N. DHARMADAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *W*
4. To be circulated to all Benches of the Tribunal ? *W*

JUDGEMENT

MR. N. DHARMADAN, JUDICIAL MEMBER

Applicant is the married sister of one Shri B. Krishnan, who died on 10.12.90 in a train accident while working in the Rifle Factory, Ishapore. Her claim for family pension and gratuity was rejected by Annexure-A-II order dated 5.9.91 which reads as follows:

"As per existing Govt. Rules, married sisters are not eligible to have any family pension and death gratuity of the deceased Govt. employee. Hence, your claim for payment of death gratuity of your brother late B. Krishnan is not considered for sanction as you are married..."

2. In this application filed under section 19 of the Administrative Tribunals' Act, the applicant seeks to quash Annexure A-II and prays for a direction to disburse family pension and gratuity to the applicant.

3. Respondents have filed a reply and contended that a married sister of the deceased govt. employee would not come within the definition of 'family' under sub rule 6 of Rule 50 of CCS (Pension) Rule 1972.

4. We have heard learned counsel for both parties. The right of a married sister of the deceased govt. employee for getting the benefit of family pension and gratuity arises for consideration in this case. The deceased govt. employee has no right during his life time for nominating any person for getting the benefit of family pension because he has no title to the same till his death. The monetary benefit of family pension cannot form part of estate of the deceased govt. employee entitling him to make testamentary disposition. The Supreme Court in Smt. Violet Isaac and others vs. Union of India and others, (1991) 1 SCC 725 considered the scope of Rule 801 of Railway Family Pension Rules and held as follows:

" The dispute between the parties relates to gratuity, provident fund, family pension and other allowances, but this Court while issuing notice to the respondents confined the dispute only to family pension. We would therefore deal with the question of family pension only. Family Pension Rules, 1964 provide for the sanction of family pension to the survivors of a Railway employee. Rule 801 provides that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Railway servant who may have died while in service. Under the Rules son of the deceased is entitled to family pension until he attains the age of 25 years, an unmarried daughter is also entitled to family pension till she attains the age of 25 years or gets married, whichever is earlier. The Rules do not provide for payment of family pension to brother or any other family member or relation of the deceased Railway employee. The Family Pension Scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The Rules do not provide for any nomination with regard to family pension, instead the Rules designate the persons who are entitled to receive the family pension. Thus, no other person except those designated under the Rules are entitled to receive the 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.

5. In *Jodh Singh v. Union of India*, 1980 4 SCC 306, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed:

"Where a certain benefit is admissible on account of status and a status what is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition."

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.

5. Respondents have argued that the applicant in this case is not entitled to any family pension as claimed by her under the Rules and the application is liable to be dismissed. We are satisfied that applicant is not eligible for family pension.

6. The learned counsel for the applicant brought to our notice proviso to Rule 52 of CCS Pension Rules and submitted that the applicant may be permitted to raise the claim after complying with the proviso to Rule 52 of the CCS Pension Rules. The proviso reads as follows:

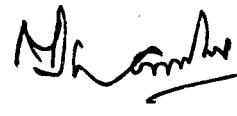
"Provided that the amount of death/retirement gratuity shall be payable to the person in whose favour a Succession Certificate in respect of the gratuity in question has been granted by a court of law."

This proviso was introduced by an amendment and the applicant seeks permission to take appropriate proceedings in accordance with law for getting a succession certificate for claiming the benefits.

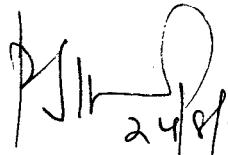
7. Having heard the parties and after perusing the records, as indicated above, we are satisfied that the applicant, under the rules, is not eligible for pension. But the question of eligibility of gratuity is not covered by the rules relied on by the respondents. On the other hand, there is indication in Rule 52 proviso that gratuity shall be payable to any heir of the deceased Govt. employee if such a person is certified by the competent court of law as lawful heir and legal representative eligible to get the gratuity due on behalf of the deceased Govt. employee. We are not at this stage examining the question further. In the light of the submission made by the learned counsel for the parties, we are of the view that the application can be closed reserving the right of the applicant to approach the appropriate authority for getting retirement gratuity after obtaining succession certificate from a court of law.

8. Accordingly, the application is closed.

9. There will be no order as to costs.


24.8.92

(N. Dharmadan)
Judicial Member


24/8/92

(P. S. Habeeb Mohamed)
Administrative Member

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