

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application NO. 199/2005

Dated the 5<sup>th</sup> February, 2008

**C O R A M**

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN**

1. Rosamma Varghese,  
Plappuzha House,  
Karuvatta North,  
Alappuzha.
2. Sam Varghese (Minor),  
represented by next friend his mother  
Rosamma Varghese,  
Plappuzha House,  
Karuvatta North,  
Alappuzha.

By Advocate : Mr. P Rejinarak  
-Vs-

.. Applicants

1. The Union of India,  
represented by the General Manager,  
Southern Railway, Chennai.
2. The Divisional Railway Manger,  
Southern Railway,  
Thiruvannthapuram.
3. Smt. Ruby James Johnny,  
D/o Johnny, Nazareth,  
Thechethe Chittara,  
Vattappara.P.O.
4. Varkey Varghese,  
Plappuzha House,  
Karuvatta North,  
Alappuzha.

...Respondents

By Advocate: Ms. Anjali for Mrs Sumathi Dandapani Sr.  
Ms. PK Nandini.

This application having been heard on 15<sup>th</sup> January, 2008, the Tribunal delivered the following -

ORDER

The applicants are the mother and minor brother of the deceased Santhosh Varghese, who was employed as Diesel Assistant under the Southern Railway. This application is filed for grant of gratuity, provident Fund and other benefits of the deceased Santhosh Varghese to them, claiming to be the legal heirs.


2] Sri Santhosh Varghese died in a train accident at Tirunelveli on 8.10.2003 while he was working on 727 Quilon Madurai Train. At the time of death he had completed more than 6 years of service. After the death of Santhosh Varghese the 1<sup>st</sup> applicant submitted a representation before the Authorities for getting compensation, PF and other benefits such as gratuity etc. Except the compensation under WCA no other benefits were given to the applicant. The applicants have further stated that the wife of the deceased left the parents of the deceased. Annexure-A1 order dated 12.7.2004 of the Deputy Labour Commissioner has been produced to show that the applicants have been declared as dependent of late Santhosh Varghese. Following are the specific reliefs sought for in this application:

"i) The applicants are the Dependents and legal heirs of the deceased and entitled for compensation, gratuity, PF and other benefits.

✓

- ii) As per the Notification No.12 dated 23.3.2004 in the Kerala Gazette applicants have been identified as legal heirs of the deceased Mr Santhosh Varghese;
- iii) The PF amount should equally be disbursed to the Dependents as per the PF Rules;
- iv) The respondents ought to have taken necessary steps to apportion and disburse the PF gratuity, CGHS and other benefits to the applicants;
- v) The delay in disbursing the benefits to the applicants is not justifiable and illegal;
- vi) The 4<sup>th</sup> Respondent is not in a position to travel for signing the Vakalath. Therefore, he is made as a respondent in this application. He has absolutely no conflicting interest with the applicants."

3] Respondents have filed a reply statement stating that the respondent No.3, who is the wife of the deceased was the first person to receive the terminal benefits of the deceased male. As per Rule 18(7) of the Railway Service (Pension) Rules, 1993 the death gratuity shall be paid to the family in the following order of preference:

- "(1) Wife or wives including judicially separate wife or wives in the case of a male servant;
  - (2) Husband including judicially separated husband in the case of a female servant;
  - (3) Sons including step sons and adopted sons;
  - (4) Unmarried daughters including step-daughters and adopted daughters;
- 

- (5) Widowed daughters including step daughters and adopted daughters;
- (6) Father } including adopted parents in the case of
- (7) Mother } individuals whose personal law permits adoption.
- (8) Brothers below the age of eighteen years including step brothers;
- (9) unmarried sisters and widowed sisters including step sisters;
- (10) Married daughters; and
- (11) Children of pre-deceased son".

4] Thus it is seen that the wife becomes the first eligible person for claiming death gratuity. As per Rule 75(8)(i) the Family Pension shall not be payable to more than one member of the family at the same time, except as provided in clause (d) of sub-rule (6) and clause (i) of sub-rule (7). In accordance with the above rule, the respondents submit that all the terminal benefits of the deceased employee, like Family Pension, Death Gratuity, Provident Fund, Enhancement of leave, Group Insurance and Social Security Scheme have been paid to the 3<sup>rd</sup> respondent, i.e. the widow of the deceased during 2003. The applicants have not approached the respondents at any point of time before making the payment to the 3<sup>rd</sup> respondent and the present OA has been filed only after 2 years is, therefore, devoid of merit and liable to be dismissed.

No rejoinder has been filed.

5] I have heard learned counsel for both the parties. Learned counsel for the applicant has submitted that the applicants are not claiming family pension and their claim is restricted to gratuity and other benefits. In this connection, attention is drawn to Rule 71 of the Pension Rules by the counsel. Rule 71 provides

that the the gratuity payable under Rule 70 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by making a nomination under Rule 74. Rule 74 says that a railway servant shall, on his initial confirmation in a service or post, make a nomination in Form 4 or Form 5, as the case may be appropriate in the circumstances of the case, confer on one or more persons the right to receive the death-cum-retirement gratuity payable under Rule 70. This contention now raised by the applicant regarding payment of gratuity to nominees has not been adverted to in the present original application and they had only claimed a share of Provident Fund and leave surrender and gratuity share etc., therefore, the respondents in their reply have not adverted to this position. No proof has been produced to show that the applicants were nominated by the deceased employee.

6] The Rule position as stated by the 1<sup>st</sup> respondent is clear that except the wife of the deceased, no one can claim the benefit of family pension and other entitlement like leave, PF, group insurance etc. In view of the Rule position stated above, I do not find any merit in the contention of the applicants that because they are declared as dependent under the Workman Compensation Act they are entitled to get the retirement benefits of the deceased over the claim of the wife of deceased as that declaration is for a different purpose. So far as gratuity is concerned there is nothing on record to show that there existed any nomination in favour of the applicants in accordance with the

Rule 74 of the Pension Rules. The applicants have also do not seem to have approached the respondents with such a contention that they are the nominees of the deceased employee in respect of the gratuity. Even in terms of Rule 71(b)(i), the applicants who are in the categories mentioned at (vii) and (ix) of Rule 70(4), have no overriding claim over the wife of the deceased to whom the benefits have been paid. It is also seen that the applicants did not approach the respondents before disbursement of the benefits to the wife of the deceased claiming a share of the benefits. In view of the above, I do not find any merit in the application.

The OA is dismissed. No costs.

  
(SATHI NAIR)  
VICE CHAIRMAN

STN