

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 296 / 2008

Wednesday, this the 22nd day of April, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

1. A.Vijayalakshmi,
W/o late K.B.Shashankan,
Kadungothunjali,
Nedungottur, Shornur-679 121.
2. K.S.Ragi,
D/o late K.B.Shashankan,
Kadungothunjali,
Nedungottur, Shornur-679 121.

....Applicants

(By Advocate Mr TC Govindaswamy)

v.

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.
3. The Divisional Finance Manager,
Southern Railway,
Palghat Division, Palghat.
4. Smt R.Rani, Gangwoman,
Southern Railway,
Madukarai RS & PO,
Coimbatore District.
5. Kumari Sindhu,
W/o Smt R Rani,
Gangwoman,
Southern Railway,
Madukarai RS & PO,

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Coimbatore District.

....Respondents

(By Advocate Mr Thomas Mathew Nellimoottil for R.1 to 3)

(By Advocate Mrs Sreedevi Kylasnath (for R.4&5)


This application having been finally heard on 6.3.2009, the Tribunal on 22.4.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The 1st applicant herein is the second widow of late Shri K.B.Shashankan who died while in service on 25.9.1991 and the 2nd applicant is the daughter of the 1st applicant. The 4th respondent is the 1st wife of late Shri K.B.Shashankan and the 5th respondent is their daughter. The 4th respondent was the recipient of the family pension after the demise of Shri Shashankan. She also got the appointment as a Gangwoman with the Railways on compassionate grounds. When she got re-married on 20.8.1999, the official respondents stopped the payment of family pension to her and started paying to the 5th respondent till 13.6.2007 i.e. when the claim of the 2nd applicant for 50% of the family pension was allowed. The relief sought in this O.A is to declare that the 2nd applicant is entitled to grant 50% of family pension with effect from 20.8.1999 i.e. the date of re-marriage of the 4th respondent and also to direct the respondents to pay the 2nd applicant the arrears of 50% of family pension for the period from 20.8.1999 to 13.6.2007 with interest at 12% per annum.

2. The 1st and 2nd applicants had earlier filed O.A.40/2001 before this Tribunal, but it was dismissed mainly on the ground that the 4th respondent was not impleaded as a party in the array of respondents. Though the applicants have challenged the aforesaid order of this Tribunal before the High Court vide O.P.No.24729/2001, it was later withdrawn. Thereafter, they have filed



O.A.656/2005 impleading the 4th respondent and it was disposed of vide order dated 13.9.2006 and its operative part was as under:

"In the light of the facts and legal position set out above and keeping in view the spirit of the directions of the Hon'ble High Court referred to supra, I am of the view that the claims of the second and third applicants, the minor children of the first applicant have to be enquired into by the Railway Administration, after giving due notice and opportunity to all concerned. They may do so with reference to the records maintained and produced before them. Already the representation of the applicants is pending before them in Annexure A-1. They shall also consider the documents produced in this O.A by the applicants in support of their claim and the applicants shall be given an opportunity to produce further documents if necessary to substantiate their case. This exercise shall be done by the respondents at the level and a decision taken in this regard within six months from the date of receipt of this order. O.A is allowed accordingly."


3. On the basis of the aforesaid order, respondents have issued Annexure A-8 letter dated 13.6.2007 to the 1st applicant. The respondents have informed the applicants that Smt R.Rani(4th respondent herein) is the legally wedded wife of late Shri K.B.Shashankan and the 5th respondent is their daughter. There was no representation from the applicant after the death of Shri K.B.Shashankan granting any terminal benefits. Therefore, the 4th respondent was paid an amount on account of P.F and the family pension. But the entire gratuity amount was withheld and adjusted against the dues payable by late Shri K.B.Shashankan. They have also submitted that pursuant to the aforesaid orders of this Tribunal, the birth certificates of the children, report of the Village Officer, Shornur, letter from Panchayat President, Kondazhi Pachayat were examined and it was found that the applicant was the 2nd wife of late Shri K.B.Shashankan and they had 2 children. Accordingly, the 4th respondent who was the legally wedded wife of late Shri K.B.Shashankan was issued notice on 19.3.2007. After considering the entire facts of the case, the respondents came to the conclusion that the children of the applicant in the O.A are entitled for all dues at par with Sindhu (5th respondent herein), the daughter of the deceased employee in his 1st wife.



Accordingly, it was decided to pay 50% of the family pension to the 2nd applicant in this O.A with prospective effect. It was also held that their claim for a share in the other death benefits, P.F. etc. is not admissible at this point of time since the same has already been disbursed to the 4th respondent in 1991 itself.

4. The contention of the applicant is that the entitlement of 50% of the family pension payable to the 2nd applicant has already crystallised with effect from 20.8.1999 itself and there was no delay on her part in raising the claim as she had made the Annexure A-1 representation way back in September 1990 itself. Further, the applicants have submitted that the Railway Administration ought to have considered their claim in time instead of illegally denying them and supporting the cause of the 4th and 5th respondents. They submitted that if the Railway Administration had erroneously paid any amount to the 4th/5th respondents, it is for the Railway Administration to initiate appropriate steps in accordance with law to recover the same paid to them.


5. Learned counsel for the applicants Shri TC Govindaswamy has relied upon a judgment of this Tribunal in O.A.1280/2000 dated 17.4.2002 – K.K.Zaibunnisa v. Union of India & others. In that case the applicant was the 3rd widow of one K.P.Moidu who passed away on 26.2.1992 who made a representation on 15.8.1993 claiming her part of share in the family pension. But it was turned down on the ground that her name was never given by late K.P.Moidu. The applicant had thereafter, filed Original Suit No.45/94 before the Court of Subordinate Judge, Ottapalam for a declaration that she was entitled to the 1/3rd share of the family pension amount. The said suit was dismissed for want of jurisdiction and thereafter she filed O.A.57/1999 before this Tribunal which was disposed of by directing the Railway Administration to decide the issue after



giving reasonable opportunity for adducing evidence to all concerned. However, the Railway Administration rejected her claim and the applicant therein again filed O.A.1280/2000 for a declaration that she is entitled to be granted 1/3rd share of the family pension due on account of the death of late K.P.Moidu with effect from 27.2.1992 itself. This Tribunal held that the applicant therein was one of the three widows of Shri Moidu, and she was entitled to 1/3rd share of the family pension. Later on, the applicant therein filed a Contempt Petition No.58/2002 for alleged non-compliance of the order of the Tribunal in O.A.1280/2000. However, the said Contempt Petition was closed on 25.10.2002 on the submission of the respondents that the applicant was granted 1/3rd of the family pension with effect from 27.2.1992 itself.

6. Respondents 4 & 5 denied that there was no delay on the part of the applicants in claiming the family pension. They have also stated that it is not legally permissible for the Railway to recover the amount of terminal benefits paid to the 4th & 5th respondents.

7. Respondents 1 & 3 in their reply have submitted that they were duty bound to arrange the family pension as per the records available and accordingly family pension in full was granted to respondents 4 & 5 upto 12.6.2007. The applicants in this case have failed to approach competent court of law to restrain the official respondents from disbursing the 50% of family pension to the 4th respondent. Even though the employee died on 25.9.1991 and the 4th respondent got remarried on 20.8.1999, the applicant has preferred her claim and filed the O.A only on 9.9.2001. The right to receive family pension by the applicant was confirmed by this Tribunal only by its order dated 13.3.2006 in O.A.656/2005 (supra). It was, thereafter, that the enquiry was conducted and 50% of family



pension was sanctioned to the 1st applicant with effect 13.6.2007.

8. I have heard Shri TC Govindaswamy, counsel for the applicants, Shri Thomas Nellimoottil, counsel for respondents 1 to 3 and Smt Sreedevi Kylasnath counsel for respondents 4 & 5. The fact of the matter is that the Government employee Shri K.B.Shashankan died on 25.9.1991 and as per the family details available with the respondents, the applicants were not part of the family of late Shri K.B.Shashankan. Therefore, the respondent-Railways paid the Provident Fund amount available to late Shri Shashankan to his 1st wife. The family pension was also granted to her. The first applicant, who is the 2nd wife of late Shri Shashankan did not make any claim for the Provident Fund amount or for the family pension at the relevant time. It is only after the re-marriage of the 1st wife (5th respondent herein) on 20.8.1999, the first applicant made the Annexure A-1 representation in September, 1999 and got her claim for family pension established. Since the 1st wife of late Shri K.B.Shashankan and his children were part of the family details available with the respondents, naturally the respondent-Railways have paid the family pension to the 1st wife and on her re-marriage on 20.8.1999, to her daughter who are the 4th & 5th respondents respectively in this O.A. It was, of course, open to the respondent-Railways to make enquiries on the basis of the Annexure A-1 representation made by the first applicant in September 1999 and grant her family pension on their own but they did not do so. The applicant has also failed to approach this Tribunal in time for the redressal of her grievance. In fact, she approached this Tribunal only in the year 2001 by filing O.A.40/2001. As the same was dismissed, she approached the Hon'ble High Court of Kerala on 2.2.2001 and it was disposed of only on 26.5.2005. It was only thereafter she filed OA 656/2005 before this Tribunal which was disposed of on 13.9.2006 (Annexure A-6). The respondents have promptly processed her case



in terms of the directions contained in the aforesaid order and issued the Annexure A-8 order dated 13.6.2007 granting 50% of family pension to the 2nd applicant with prospective date. It is seen that upto that stage full family pension was granted to the 5th respondent as she was entitled for the same in accordance with the family details furnished to the respondents by late Shri Shashankan.

9. I also do not find that the O.A.1280/2000 dated 7.4.2002 (supra) relied upon by the learned counsel for the applicant is applicable in the present case as the facts and circumstances in both the cases are different. In the said case, the respondents have already paid family pension to one of the dependents of the deceased Government servant, Shri P Moidu from his date of death itself. The claim in this O.A is highly belated. The applicants should have staked their claim for family pension and other retiral dues at the time of the death of Shri Shashankan itself. However, they chose to remain quite and the 4th and 5th respondents enjoyed the benefits uninterruptedly for a number of years. The relief sought by the applicant would amount to recovery of the 50% of family pension already paid to one of the dependents of the Government servant. In my considered opinion, in the above facts and circumstances of this case, the claim of the applicant is not sustainable and therefore, it is rejected. The O.A is accordingly dismissed. There shall be no order as to costs.


GEORGE PARACKEN
JUDICIAL MEMBER