

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A. NO: 709/90

199

T.A. NO: -----

DATE OF DECISION 30/3/92

Smt. Anusayabai Vithoba Salvi

Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners

Versus

Union of India

Respondent

Mr. V.M. Bendre for Mr. P.M. Pradhan

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

MD

6/3
(M.Y. PRIOLKAR)

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.709/90

Smt. Anusayabai Vithoba Salvi,
346, Sector-III, Plot No.27,
C.G.S. Quarters (Kang Nagar),
Antop Hill,
Bombay - 400 037.

.. Applicant

vs.

Union of India
through
Secretary,
Ministry of Finance,
Dept. of Economic Affairs,
New Delhi.

.. Respondent

Coram: Hon'ble Shri Justice U.C. Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y. Priolkar, Member(A)

Appearances:

1. Mr. M.A. Mahalle
Advocate for the
Applicant.
2. Mr. V.M. Bendre for
Mr. P.M. Pradhan
Counsel for the respon-
dents.

JUDGMENT:
(Per M.Y. Priolkar, Member(A))

Date: 30/3/92

The applicant who is stated to be an 86 years old widow claims family pension on the basis of the Government of India O.M. dated 18-6-1985 wherein family pension was granted to families of all Central Government employees who retired or died prior to 1-1-1964. Clarificatory orders were also issued by Government on 16-12-1985 and reiterated on 5-6-1986 that in view of the very old records regarding last pay drawn etc. not being available with the widow or the departments concerned the claimant could be asked to establish genuineness of the claim for family pension by production of a succession certificate from the Court, affidavit sworn before the Magistrate or affidavit of the claimant on a plain paper supported by any two documents which may be accepted to the head of the department/ pension sanctioning authority.

8

2. The applicant had approached this Tribunal earlier (O.A.766 of 1988) for similar relief and by its judgment and order dated 1-8-1989, the case was sent back to the respondents for taking a final decision, with the observation inter alia that "it is really for the head of the concerned department/pension sanctioning authority to personally examine the claim sympathetically and come to a decision regarding admissibility or otherwise of the family pension in the light of the Government of India instructions on the subject."

In pursuance of this judgment, a communication was sent to the applicant by the respondents on 1-11-1989 informing her that her claim for family pension was considered by them but it has been rejected on the ground that she has not been able to furnish any documentary proof regarding the service particulars of her late husband. It is also stated in this letter that Government instructions on the subject require that the claimant should produce any two documents acceptable to the department. But the applicant has furnished only one document, viz. the affidavit of Shri P.S.Dalvi, which again cannot be relied upon since he had claimed that he was working under the Controller of Currency between 1931 to 1939 and this cannot be correct since the office of the Controller of Currency was merged with the Reserve Bank of India on 1-4-1935.

3. The rejection order of the respondents dated 1-11-1989 is challenged in this application mainly on the ground that only an affidavit sworn before the Magistrate is enough to grant the applicant's claim but the applicant has filed two more affidavits, one of Shri P.S.Dalvi(now deceased) and the other of one Shri Balaram S.Salvi. It is also urged that the incorrect statement made in Shri Dalvi's affidavit that he was working under the Controller of Currency

9

between 1931 to 1939 when that office was in fact merged with Reserve Bank of India on 1-4-1935 was only a slip of the pen, and the discrepancy should, therefore, have been ignored.

4. From the copy of instructions dated 5-6-1986 of the Government of India annexed by the applicant at page 24 of the paper book (Annexure A-5) it is not clear whether the condition "supported by any two documents which may be acceptable to the Head of the Department/ Pension sanctioning authority" is applicable only in the case of the last option mentioned therein, that is, where only an affidavit of the claimant on plain paper is produced or even in the case of the other two options given, namely, where a succession certificate from a Court or affidavit sworn before a Magistrate is produced. The requirement of production of any of these documents is evidently with a view to determination by the head of the office of the genuineness of the claim for family pension. A succession certificate from a Court, for example, may no doubt give the claimant the right to the estate of the deceased but may not by itself establish the identity of the deceased as a Government servant borne on pensionable establishment. We find it difficult, therefore, to accept the contention of the learned counsel for the applicant that only an affidavit sworn before the Magistrate is enough to grant the applicant's claim and other documents are not necessary ~~at all~~ at all. On the other hand, we find considerable substance in the respondents' contention that the responsibility of the Head of the Department to show that the deceased employee was actually working with the Central Government has not been dispensed with by filing the ~~(31)~~ affidavits in question in this case. In fact in para 2(d) of the Government of India order dated 16-12-1985 prescribing the procedure for processing family pension


(10)

cases where no records are available, it is stated that it is the responsibility of the applicant to satisfy the Head of Office about the genuineness of the claim. Once the decision regarding the admissibility or otherwise of the claim has been reached bonafide by the competent authority and such decision is not shown to be arbitrary or discriminatory, there will be hardly any ground for this Tribunal to interfere in the matter. Since it is not the applicant's case that other claimants similarly placed have been granted family pension or that the rejection of her claim is malafide or based on extraneous considerations, it is not possible for us to substitute our judgment in place of that of the competent authority which has been vested with discretionary power.

5. In this Tribunal's earlier judgment dated 1-8-1989 referred to above, it has been observed that "the existing provisions for the grant of family pension are fairly liberal and any further liberalisation or relaxation in the rules may be at the risk of opening the floodgates for fraudulent claims". We are of the view that the admissibility of the claim has to be adjudged within the frame work of the existing instructions of the Government. As discussed above, the documents to be produced, whether one or more, should be such as to help the competent authority in determining the genuineness of the claim. Since in the competent authority's opinion, the affidavits produced in the present case are not sufficient for him to satisfy himself that the claim is genuine, reasons for which have also been explained by the respondents, in our view this is not a fit case for interference by the Tribunal. The learned counsel for the applicant argued that the decision for rejecting the claim has been taken at the level of an Under Secretary although in our earlier

judgment, we had specifically directed that the decision should be taken by a senior officer, preferably Joint Secretary in charge of currency. Though the rejection letter dated 1-11-1989 is signed by an Under Secretary, it is stated therein that it has the approval of the Joint Secretary(Currency & Coinage). There should be no justification, therefore, for any grievance that our difection in this regard has not been complied with. Now that the competent authority has taken a final decision on this claim in exercise of the discretionary powers vested in him, we see no ground for interference in this case.

6. On the basis of the foregoing discussion, we see no merit in this application which is, accordingly, dismissed. There is no order as to costs.



(M.Y. PRIOLKAR)
Member(A)



(U.C. SRIVASTAVA)
Vice-Chairman

MD