

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 05.06.2003

OA No.124/2002

Smt. Suchitra Phogat (Choudhary) Widow of late Shri Kamal Singh Phogat, aged 41 years, r/o Plot No.38, Pratap Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Defence Secretary, Ministry of Defence, Signals Mahanideshalaya/Sigs 4(c), General Staff Shakh, Thal Sena Mukhyalaya, Dte General of Signals Sigs 4(c), General Staff Branch, Army Headquarters, DHQ PO, New Delhi.
2. Whosoever, Col. Adm. Commandant for Station Cdr. H.Q. 61 (Indeep) Sub Area Station Cell C/o 56 APO.

.. Respondents

Smt. Sharda Pathak, counsel for the applicant.

Mr.S.K.Agarwal, proxy counsel for Mr. Sanjay Pareek, counsel for the respondents.

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R (ORAL)

Per Hon'ble Mr. M.L.Chauhan

The applicant is widow of late Shri Kamal Singh Phogat who was appointed as CSBO with the respondents on 15th January, 1972 and died on 26.4.2000. The grievance of the applicant in this OA is that despite the assurance given by respondent No.2 vide letter dated 17th May, 2000 (Ann.A4), family pension and payment of other dues as admissible under rules has not been paid to the applicant so far. Further the case of the applicant is that she has

repeatedly pursued the matter with the authorities but no action was taken on her request as such she was compelled to file the present OA thereby praying for the following reliefs:-

"that the respondent department may be directed that the order dated 17.5.2000 (Annexure-4) may be complied in which it was said by the department-respondent that action will be taken on application dated 10.5.2000 upto the extent that the case of the applicant will be considered for grant of family pension and payments of other dues as per existing rules in consultation with audit authorities, earliest possible, within one month, because the family of the applicant is suffering from great hardships due to suffering of a serious disease of her late husband like throat cancer, for long time, there is no earning member in the family of the applicant and the penal interest @ 18% may be granted on dues and compensation of Rs. 2,50,000 may also be granted on account of mental agony and hardships due to non payment/delayed payment by the respondents."

2. Notice of this application was given to the respondents. The respondent No.2 has filed reply dated 23.4.02 to the OA on 26.4.02 in which the respondent No.2 has taken certain preliminary objections. One of the objections taken by the respondent No.2 is that the case relates to the Ministry of Defence whereas the applicant has impleaded Ministry of Home Affairs as respondent No.1. The second objection taken by the respondent No.2 is that the applicant has not prayed for quashing the order dated

17.5.2000 (Ann.A4) as such the prayer of the applicant is defective and the present OA is not maintainable. At the outset it may be submitted that this submission made by the respondent No.2 requires outright rejection as the case of the applicant is that inspite of the assurance given vide letter dated 17.5.2000 (Ann.A4), no pensionary benefits has been paid to her. In fact, she is praying for enforcing the assurance given by the respondent No.2 vide the aforesaid letter. As such the prayer of the applicant cannot be said to be ^{defective &} rejected. On merit, it was submitted that the husband of the applicant was appointed as CSBO on 15th January, 1972 and worked in Military Exchange till June, 1990. He became irregular in his service and most of the time he remained absent from duty till his death on 26.4.2000. The reasons for not finalising the pensionary benefits of the applicant as given by respondent No.2 in the reply are that - (a) the pay of the deceased employee could not be fixed under RPE 1997 effective from 1st January, 1996 because he has not signed the option which is pre-requisite requirement for pay fixation, (b) the service record of the applicant is not updated as a result of prolonged absence from duty of late Shri Kamal Singh.

3. After the aforesaid reply filed by respondent No.2, the applicant has filed amended application thereby impleading Union of India through Defence Secretary, Ministry of Defence as respondent No.1 instead of the Secretary, Ministry of Home Affairs. Notice of the amended application was given to the respondents. Reply to the amendment application has been filed on behalf of the respondents whereby reiterating the stand taken in the earlier reply filed by respondent No.2 except that in Para

5 of the reply it is stated that the respondents have calculated the pension of the applicant's husband and all the necessary papers has been sent to the PCDA, Allahabad. The PCDA is the competent authority to issue the PFO and it has not been arrayed as a party respondent. The husband of the applicant remained absent from duty without granting of leave for 9 years 3 months and 26 days. Therefore, it is very difficult to calculate the pension of a person who was absent from duty wilfully.

4. I have heard the learned counsel for the applicant and also Shri S.K. Agarwal, proxy counsel appearing on behalf of Shri Sanjay Pareek, counsel for the respondents and gone through the material placed on record.

4.1 As can be seen from the facts as stated above, the husband of the applicant was appointed as CSBO on 15th January, 72 and he died at his village Deolawas on 26th April, 2000. Even according to the version of the respondents, husband of the applicant has worked in Military Exchange regularly till June, 90 and most of the time he remained absent from duty only after 11th June, 90 till his death on 26.4.2000. On a query posed to the learned counsel for the respondents by this Tribunal as to whether pension and pensionary benefits has been paid to the applicant even on today, the learned counsel for the respondents informed this Tribunal that no such retiral benefits has been sanctioned and paid to the applicant till date. This shows insensitive approach on the part of the concerned authorities and thereby flouting the provisions contained in the CCS (Pension) Rules, 1972. No family pension and Death-cum-Retirement Gratuity (DCRG) has been paid to the applicant even after a lapse of 3

60

years from the date of death of the Govt. servant and such attitude on behalf of the concerned authorities cannot be appreciated. The relevant procedure prescribed for the pension or family pension and DCRG in respect of Govt. servant who died while in service is contained in Rules 77 to 80 of the CCS (Pension) Rules, 1972. A salient features of the provisions as contained in these rules inter-alia are -

- (i) As soon as the Head of Office receives intimation regarding death of the Govt. servant (Gazetted or Non-Gazetted) while in service, he shall initiate immediate action for obtaining claims for family pension and DCRG,
- (ii) When the family is eligible for family pension, 1964, the Head of Office should address the widow/widower or gurdian of minor children to make a claim,
- (iii) The Head of Office shall simultaneously undertake completion of Form 18 of CCS (Pension) Rules. He shall go through the service book of the deceased Govt. servant and satisfy himself as to whether annual certificate of verification of service for the entire service are recorded therein. He shall accept the unverified portion of service, if any, as verified on the basis of valid entries in the Service Book and also on the basis of other relevant material to which he may have ready access. It should, however, be ensured that the service was continuous and was not forfeited on account of dismissal, removal or resignation from service. The process of determination of qualifying service and qualifying emoluments

4

shall be completed within one month of the receipt of the intimation regarding the date of the death of the Govt. servant and the amount of family pension and DCRG shall be calculated accordingly,

- (iv) On receipt of claim, the Head of Office shall complete the prescribed forms and send them to the Accounts Officer responsible for the issue of pension payment order alongwith the Govt. servant's service book duly completed up-to-date and any other documents relied upon for the verification of the service claimed in such a manner that they can be conveniently consulted. This should be done not later than one month of the receipt of the claim by the Head of Office. If the claim has not been received from the beneficiary or beneficiaries by that time, the items 22 to 27 of form 18 may be left unfilled and when the claim are received the same shall be forwarded to the Accounts Officer with a request that items left unfilled in Form 18 may be filled in,

- (v) After the documents referred to above have been sent to the Accounts Officer, the Head of Office shall issue a sanction letter in favour of the claimant endorsing a copy thereof to the Accounts Officer indicating the amount of hundred per cent of provisional family pension and gratuity as determined. He shall then draw the amount of provisional pension and the amount of hundred per cent of the gratuity and deduct therefrom the dues which are to be recovered and also the

amount to the held over for adjustment of the unassessed dues in the same manner as pay and allowances of the establishment are drawn by him and disburse the same to the claimant. The payment of provisional pension shall continue for a period of six months from the date following the date of death of the Govt. servant unless the period is extended by the Accounts Officer and

- (vi) The Accounts Officer within a period of three months from the date of receipt of documents from the Head of Office, shall exercise the requisite checks and complete Section I of Part IV of Form 18 and assess the amount of family pension and DCEG. He shall authorise the pay of balance of DCEG after adjusting the Govt. dues, if any, and also arrears of family pension, if any, in respect of the period for which provisional family pension was drawn and disbursed by the Head of Office. If the provisional family pension drawn and disbursed by the Head of Office is found to be in excess of final family pension as assessed by the Accounts Officer, it shall be open to the Accounts Officer to adjust the excess amount by short payment of family pension payable in future, However, if the provisional DCEG drawn and disbursed by the Head of Office is found in excess of the amount finally assessed by the Account Officer, the gratuitant shall not be required to refund the excess. The Accounts Officer shall promptly intimate to the Head of Office the fact of issue of Pension Payment Order and also the order for payment of the balance
- 4

DCRG. If the Accounts officer is not able to assess the final amount of family pension and DCRG within the stipulated period, he shall communicate the fact to the Head of Office to continue to disburse the provisional family pension to the claimant for such period as may be specified by him.

4.2 Even if the DCRG and family pension cannot be finally settled within a period of 3 months from the date of death of the Govt. servant, rule 80-B of the CCS (Pension) Rules, 1972 stipulates that the Accounts Officer should communicate the fact to the Head of the Office and authorise the Head of Office to continue to disburse the provisional family pension to the claimant for such period as may be specified by him.

4.3 Yet there is a provision in the CCS (Pension) Rules, 1972 which deals with the contingency where the service records of the deceased Govt. employee are incomplete and how the amount of family pension and gratuity is to be determined in such cases. Such provision is contained in rule 79 of the CCS (Pension) Rules, 1972. In this case Rule 79 sub rule (a) (iii) to (v) is relevant which provides as under:-

"(iii) If the deceased Govt. servant at the time of death had rendered more than seven years of service and the service of last seven years is not capable of being verified and accepted by the Head of Office but the service rendered during the last year is capable of being verified and accepted, the Head of Office, pending the verification of service for seven

by

years, shall calculate the amount of family pension in accordance with the provisions of sub-rule (2) and sub-rule (2-A) of Rule 54.

(iv) The service for the last seven years shall be verified and accepted within the next two months and the amount of family pension at the enhanced rate and the period for which it is payable shall be determined in accordance with the provisions of sub-rule (3) of Rule 54.

(v) The determination of the amount of family pension in accordance with the provisions of sub-clauses (i), (ii) and (iii) shall be done within one month of the receipt of intimation of the date of death of the Government servant."

Despite the procedure provided in Rule 77 to 80 of CCS (Pension) Rules, 1972, salient features of which have been reproduced above, no efforts whatsoever have been made by the Head of Office/ Accounts Officer to settle the pensionary claim of the deceased Govt. employee. The applicant has also not even paid provisional family pension in terms of Rule 80-B of the CCS (Pension) Rules, 1972, in case the DCEG and family pension could not be finally settled within a period of 3 months from the date of the death of the Govt. servant. The reason given by the respondents in not finalising the case of the applicant cannot be accepted and deserves outright rejection.

4.4 As already stated above, the respondents have given two reasons for delay in settling the family pension and DCEG case of the applicant. The first reason given by the respondents is that the pay could not be fixed under

62

Carried over to been sent by
Regd Post to seey trans. of letter
to Bell's

WAL 1187 3 early mess. to be sent
alt. 10.6.03

WAL 1182, 83

alt. 9.6.03

RFR 1997 effective from 1.1.96 because the deceased employee has not signed the option, a pre-requisite requirement for pay fixation. With great respect, such submission on behalf of the respondents cannot be accepted at all. In case the deceased Govt. employee has not signed the option within the prescribed period as stipulated in RFR, 97, that rule itself stipulates contingency how the pay has to be fixed when the employee has not exercised any option. Normally, the employee has to exercise option within 3 months failing which it is deemed that the employee has exercised option for revised pay scale. The option of the employee cannot be kept open for indefinite period. It was incumbent upon the respondents to refix the pay of the husband of the applicant w.e.f. 1.1.96 and if the respondents has not fixed the pay of the applicant's husband w.e.f. 1.1.96 in terms of RFR, 97, the entire responsibility lies on the respondents for which the deceased employee cannot be blamed at all. This fact itself shows how the respondent-Department is functioning without commenting any further on this aspect.

The second reason given by the respondent for not settling the the pensionary claim of the deceased employee is that he became irregular in service after June, 90 till his death on 26.4.2000. According to the respondents, the deceased employee remained absent from service without leave for 9 years 3 months and 26 days. With great respect, this is no reason for not paying the applicant even family pension which shall be calculated in accordance with the provisions of Sub-rule (2) and (2-A) of Rule 54 in terms of rule 79, the relevant porition of which has been quoted above.

5. Admittedly, the deceased employee has rendered more than 7 years of service and even according to the respondents there is no dispute regarding verification of service for first 18 years and the dispute is regarding verification of service after June, 90 till his death. As such in terms of provisions contained in Rule 79 (a) Sub-rule (iii) to (v) the applicant was entitled for pensionary benefits and determination of amount of the family pension has to be done within one month of the receipt of intimation of the death of the Govt. servant. Simultaneously, for the purpose of DCEG, where the service record are not complete, there is a provision in rule 79 (b). Thus, the appropriate authority has violated the provisions of the aforesaid rule in impugntiy. The fact remains that the widow has not been paid any family pension and DCEG even after a lapse of 3 years of the death of her husband. This shows the callous attitude and insensitive approach on the part of the concerned authority who were required to settle the claim and make payment of family pension and DCEG within one month of receipt of intimation of the death of the Govt. servant and in case the claim for family pension could not be settled within the time prescribed under the rules, it was incumbent upon them to pay provisional family pension and DCEG. The reason advanced by the respondent in not finalising the pensionary claim to the widow is that the service of the deceased employee after June, 90 till his death on 26.4.2000 could not be verified, is not legally sustainable in view of the provision contained in rule 79 of the CCS (Pension) Rules, 1972. It is not the case of the respondents that the applicant is not entitled for family pension. This is a case of an unfortunate

4

derelection of duty on the part of the authority concerned who failed to finalise pension papers expeditiously. The widow has been left in lurch and reduced to destitution and penury. This callous and insensitive approach is highly deplorable. The respondents as model employer, are expected to take prompt action atleast to pay provisional pension in case the family pension could not be finalised for want of complete service records. This is a case where the provisions of rules as quoted above has been violated in impugntity.

6. Without commenting further on the matter and in the facts and circumstances of this case, direction is given to the respondents to settle the DCRG and family pension case of the deceased Govt. servant within two months from today failing which the applicant shall be entitled for interest at the rate of 12% on the amount which may be held due and admissible to the applicant in accordance with the rules. The applicant is further held entitled to interest on DCRG in terms of Rule 68 of the CCS (Pension) Rules, 1972 after 3 months from the date of death of the deceased Govt. employee till the payment is made as the delay in the payment is clearly attributed to the administrative lapses. The applicant shall also be entitled for a cost which is assessed as Rs. 2000/- to be paid within two months from today.

7. Let the Dy. Registrar sent a copy of this order to the Secretary, Ministry of Defence under the seal and signature of this Tribunal for appropriate action as may be deemed fit in view of the observations made in Para 5 supra so that the provisions contained in the rules are

strictly followed in future and widow/widower or gurdian of minor is paid family pension and other claims within the period prescribed under the rules.

8. With the above directions, the OA is disposed of.



(M.L. CHAUHAN)

Member (J)