

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING AT INDORE

Original Application No. 881 of 2003

Indore, this the 12<sup>th</sup> day of January, 2005

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

1. Shri Sunil, S/o. Makkulal,  
aged 18 years, Occupation-Nil
2. Rakhi, D/o. Makkulal, aged-  
14 years, Minor, through Guardian  
Mother Smt. Umabai, Wd/o Makkulal
3. Deepak, S/o. Makkulal, aged-  
about 12 years, Minor, through  
Guardian Mother Smt. Umabai, Wd/o.  
Makkulal, All resident of Village Deogar,

All resident of Village Deogar,  
Tehsil Bagli, District Dhar.

... Applicants

(By Advocate - Shri S.L. Soni on behalf of Smt. Vinita Phaye)

V e r s u s

1. Bank Note Press, through its  
Chief Manager, Bank Note Press,  
Campus, Dewas.
2. Accounts Officer, Bank Note  
Press, Bank Note Press Campus,  
Dewas.

... Respondents

(By Advocate - Shri Umesh Gajankush)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicants have  
claimed the following main reliefs :

"(a) issue appropriate writ or direction to the  
respondents to start family pension regularly from  
the death of Shri Makkulal i.e. 4.6.1991 to all the  
children equally instead the date from 21.5.2000,

(b) direct the respondents to disburse other  
benefits accrued to the applicants after the death of  
Shri Makkulal."

2. The brief facts of the case are that the applicants  
father late Makkulal was working in the office of respondent

No. 1 as a sweeper and died in harness on 4.6.1991. After his

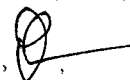


death regarding claims over the gratuity, insurance and family pension, etc. the mother of the applicants filed an OA before the Tribunal bearing OA No. 395/2002. The Tribunal vide its order dated 13.8.2003 disposed of the said OA by holding that the second wife is not entitle but the children are entitle and directed the respondent No. 1 to consider the claim of the applicants within two months. In compliance of the aforesaid order the respondents have issued letter dated 29.8.2003, whereby they have sanctioned the pension in favour of applicant No. 1 @ Rs. 1275/- p.m. with effect from 21.5.2000 to 2.5.2010 or till his marriage. The claim of the applicants is justified on the basis of the order passed by this Tribunal and the applicants are entitled for pension from the date of death of their father late Makkulal from 4.6.1991. Hence, this OA is filed.

3. Heard the learned counsel for the parties and carefully perused the records.

4. It is argued on behalf of the applicant that the mother of the applicants was the second wife of their late father Makkulal and she was declared as not entitled for the monthly pension of late Makkulal but the applicants were held to be entitled being the children of late Makkulal, by the judgment passed by the Civil Judge, Dewas. But the respondents have started to pay the family pension to the applicant No. 1 only from 21.5.2000 vide letter dated 29.8.2003, while the applicants are entitled for family pension from the date of death of their father i.e. on 4.6.1991. Hence, the applicants are entitled for the reliefs claimed.

5. In reply the learned counsel for the respondents argued that the deceased Makkulal had two wives. Ku. Tina was the daughter from his first wife. The first wife of late



Makkulal Smt. Chandrabai died on 2.10.1990. Smt. Umabai being the second wife of late Makkulal admitted that Ku. Tina is the daughter of Late Makkulal from his first wife in her application dated 24.9.1991 (Annexure R-8). Hence, Late Makkulal was having two <sup>living</sup> wives i.e. Smt. Chandrabai and Smt. Umabai. He had also furnished marriage declaration at the time of joining in which he stated that he is married and is having only one living wife. Ku. Tina, D/o. of late Makkulal from his first wife late Smt. Chandrabai is only entitled for the family pension and the second wife Smt. Umabai cannot be said to be legally wedded wife and therefore her request as per affidavit dated 7.6.1983 could not be considered. As per order dated 30.11.1998 passed by the District Court, Dewas, Smt. Umabai was not declared as legally wedded wife of late Makkulal but her three children were declared to be entitled to get the share of pensionary benefits. Accordingly, Ku. Tina being elder daughter of late Makkulal from his first wife has been sanctioned family pension with effect from 5.6.1991 to 20.5.2000. When she got married on 21.5.2000 the next eligible member of the family of late Makkulal was the applicant No. 1 Sunil and hence, the family pension was granted to him with effect from 21.5.2000 according to the rules. Applicant Sunil or other two applicants were not entitled for family pension from the date of death i.e. from 4.6.1991 of their late father Makkulal, because Ku. Tina was the eldest child of late Makkulal. Hence, the action of the respondents is perfectly legal and justified.

6. After hearing the learned counsel for both the parties and on careful perusal of the records, we find that the deceased employee late Makkulal had two wives i.e. Smt. Chandrabai and Smt. Umabai. Ku. Tina was the daughter from his first wife and all the three applicants are sons and daughter of his second wife. Legally second wife was not



entitled for any benefits because she was held to be not legally wedded wife. Rule 54(7)(a)(ii) of CCS (Pension) Rules, provides that on the death of a widow, her share of the family pension shall become payable to her eligible child. It is further provided by an insertion of notification dated 29th January, 1991 that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares, shall not lapse, but shall be payable to the other widow or widows and/or to the other child or children otherwise eligible, in equal shares. Further Rule 54(8)(i) provides that except as provided in sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time. The respondents have admitted to pay the family pension to Ku. Tina, daughter of the late Makkulal from his first wife soon after his death till she got married i.e. from 5.6.1991 to 20.5.2000. Thereafter, the respondents have started paying family pension from 21.5.2000 to the applicant No. 1 Sunil being the son of late Makkulal from his second wife, whereas the applicant No. 1 was legally entitled for equal share of the family pension alongwith Ku. Tina <sup>from the date of death</sup> of their father i.e. from 5.6.1991, as he was also the eldest son of late Makkulal from his second wife. The mother of the applicants is not entitled for the family pension as she is not the legally wedded wife of late Makkulal but the eldest applicant No. 1 being the son of late Makkulal from his second wife is entitled to get the share of pension, soon after the death of his father i.e. from 5.6.1991 as per the aforesaid discussed rules. All the three applicants shall not get the equal share of the amount of family pension of the deceased of CCS (Pension) Rules, employee at a time according to Rule 54(8)(i) discussed above. Thus, the respondents have started to pay the family pension to only applicant No. 1 at a time leaving the other two

applicants. This action of the respondents is legally justified but the applicant No. 1 was legally entitled to receive the family pension from 5.6.2001<sup>4391</sup> i.e. soon after the death of his father alongwith Ku. Tina daughter of late Makkulal from his<sup>first</sup> wife, equally.

7. Considering all the facts and circumstances of the case, we are of the opinion that this Original Application deserves to be partly allowed. Accordingly, the Original Application is partly allowed with a direction to the respondents to pay the equal share of family pension to the applicant No. 1 Sunil from 5.6.1991 i.e. soon after the death of his father till 20.5.2000, within a period of four months from the date of receipt of a copy of this order. No costs.

(Madan Mohan)  
Judicial Member

(M.P. Singh)  
Vice Chairman

"SA"

पूरांकन सं ओ/व्या.....जबलपुर, दि.....

पतिविविध कार्य दिनांक:-

- (1) सचिव, उच्च न्यायालय, जबलपुर
- (2) आवेदन की प्रतिकापी के काउंसलर
- (3) प्रत्यक्षी प्रतिकापी के काउंसलर
- (4) संयोजक, दंडाध्यक्ष, जबलपुर न्यायाधीश सचिना एवं आवेदन के प्रतिकापी हेतु

उप रजिस्ट्रार

Ord. 11/19 8449  
DAV Indue  
11-11-91 1948  
DAV Indue

Issued  
on 19.1.05