

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 26th day of May, 2010

Original Application No. 236/2009

CORAM:

HON'BLE MR. M.L.CHAUHAN, JUDL. MEMBER

1. Ajodya Devi w/o Shri Banshi Das, aged around 59 years, r/o Patan, Tehsil Kishangarh, District Ajmer.
2. Banshi Das s/o late Bihari Das, aged around 63 years r/o Patan, Tehsil Kishgarh, District Ajmer.

... Applicants

(By Advocate: Shri Amit Mathur)

Versus

1. Union of India through its Secretary, Department of Post, Ministry of Communication, New Delhi.
2. Superintendent, RMS-J Division, Ajmer.

... Respondents

(By Advocate: Shri Vijay Saini, proxy counsel for Shri S.S.Hasan)

ORDER (ORAL)

Applicants are mother and father of Shri Gopal Sharma, Ex-Mailman, HRO, Ajmer who died in road accident on 25.11.2005. While in service, son of the applicants made nomination of DCRG on 17.6.1986 in favour of his father and on 30.9.1992 he made another nomination in respect of CGEIS in favour of his wife Smt. Anju Devi.

As per Rule 53 (4) of CCS (Pension) Rules, 1972, nomination made earlier is treated to be void after marriage. As can be seen from the stand taken by the respondents in the reply, Smt. Anju Devi, wife of the deceased preferred claim for payment of consequential benefits. Simultaneously, Smt. Ayodhya Devi, mother of late Shri Gopal Sharma also preferred claim. Since there was nothing on record of the respondents to suggest that Smt. Anju Devi has been legally divorced by Shri Gopal Sharma, as such, the claimants were advised to produce succession certificate. Accordingly, the Additional District and Sessions Judge, Kishangarh in Un/Misc. No.7/2006 decided on 30.7.2007 granted succession certificate in respect of Gratuity, GPF, Salary and wages etc. in the name of the applicant No.1 and accordingly a sum of Rs. 1,53,426/- was released to applicant No.1. Since there was no mention about the family pension in the succession certificate and as per the record maintained by the respondents Smt. Anju Devi is not divorced wife of the deceased, as such, the applicants were advised to obtain fresh succession certificate in respect of the family pension. Since the dispute between the parties relating to Gratuity, Provident Fund and other allowances except family pension has been settled, I am only required to deal with the issue of family pension.

3. The respondents have filed reply thereby controverting the stand taken by the applicants.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

5. The question which requires my consideration is whether it was proper for the employer to insist for the succession certificate for the purpose of payment of family pension. In other words, whether the family pension admissible after the death of an employee can be treated to be estate and thus made subject matter of testamentary disposition/succession certificate. Another question which requires my consideration is whether parents of a deceased are entitled to the family pension.

6. The family pension is to be paid as per Rule 54 of the CCS (Pension) Rules, 1972. Sub-rule 6(i) of Rule 54 provides that the family pension is payable in case of a widow or widower up to the date of death or re-marriage, whichever is earlier. Sub-rule 8(i) of Rule 54 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 and whereas Sub-rule 8(ii) provides that if a deceased Government servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child. Sub-rule 14(b) of Rule 54 defined family in relation to a Government servant to mean wife in the case of a male Government servant, or husband in the case of a female Government servant including judicially separated wife or husband and also son below the age of 25 years and unmarried daughter below the age of 25 years. Children legally adopted before retirement are also included in the family. At this stage, it will be useful to reproduce Rule 54 Sub-rule 14(b) which thus reads:-

“(14) For the purpose of this rule,-

(a).....

(b) "family" in relation to a Government servant means-

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(ii) son who has not attained the age of twenty five years and unmarried daughter who has not attained the age of twenty five years, including such son and daughter adopted legally."

Thus, from reading of the aforesaid provisions, it is clear that family pension shall be granted to the widow/widower and where there is no widow/widower to the minor children of a Government servant who may have died while in service. Under the rules son of the deceased is entitled to family pension until he attains the age of 25 years, and unmarried daughter is also entitled to family pension till she attains age of 25 years or gets married, which ever is earlier. The Rule do not provide for payment of family pension to brother or any other family member or relation of the deceased Government servant. The family pension scheme under the Rules is designed to provide relief to the widow and children by way of compensation for the untimely death of the deceased employee. The rules do not provide any nomination with regard to family pension, instead the rules designate the persons who are entitled to receive the family pension. Thus no other person except those designated under the Rules are entitled to family pension. The family pension scheme confers monetary benefit on the wife and children of the deceased

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Government servant, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of welfare scheme framed by the Government to provide relief to the widow and minor children of the deceased employee. Since the Rules do not provide for nomination of any person by the deceased employee during his life time for the payment of family pension, he has not title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

7. Thus, in view of the law laid down by the Apex Court in the case of Jodh Singh vs. Union of India and Anr., 1980 (4) SCC 306, where the pensionary benefits of the deceased employee do not form part of the estate of the deceased thus can never be subject matter of testimony disposition, it was not proper for the respondents to insist the applicants to produce fresh succession certificate for grant of pensionary benefits.

8. Thus in view of what has been stated above, I am of the considered view that parents of the deceased employee are not entitled to the pensionary benefits as they are not included in the definition of the 'family' for the purpose of claiming family pension from the Government. According to me, as already stated above, no other person except those designated under the rules are entitled to receive the family pension in view of restricted meaning given to definition of 'family' as against the extended meaning

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given for the purpose of gratuity in terms of Rule 50(6) where even parents, brother and sister etc. have been held entitled for the amount. The relevant rule confers monetary benefit to wife and children of the deceased Government employee. At this stage, I wish to refer to the decision of the Apex Court in the case of State of Gujarat vs. Sarti Devi, AIR 1996 SC 937 where the definition of the family was para-materia to the case in hand and it was held that in view of express definition of family, the mother of the employee who died in harness has not been included as member of the family to claim any family pension from the Government.

9. Thus, for the foregoing reasons, I am of the view that the applicants are not entitled to family pension, a such, the present OA being bereft of merit, is accordingly dismissed with no order as to costs.

10. In view of the order passed in the OA, no order is required to be passed in MA No.166/2009, which shall stand disposed of accordingly.



(M.L.CHAUHAN)
Judl. Member

R/