

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 07.11.2013

OA No. 755/2012

Mr. Prahlad Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Learned counsel for the applicant submits that he does not wish to file any rejoinder. Thus, pleadings are complete.

Heard learned counsel for the parties. O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 755/2012

Jaipur, the 07th day of November, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Smt. Kamla Mahur wife of Late Shri Om Prakash, aged about 52 years, resident of Gali No. 4, Shivaji Colony, Newai, District Tonk (Rajasthan)

... Applicant

(By Advocate: Mr. Prahlad Sharma)

Versus

1. Union of India through Secretary, Ministry of Defense, New Delhi.
2. The Chief Engineer, SO 3(Rec), Head Quareter Southern Command, Engineer Branch, Pune (Maharashtra).
3. The Garrison Engineer, Military Engineers Services, Garrison Engineer's Office, Khatipura Road, Jaipur (Rajasthan).
4. The CCDA (Pension) Compute Centre, Civil Section/EDP/(GP-VI), Draupadi Ghat, Allahabad.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The brief facts of the case, as stated by the learned counsel for the applicant, are that the husband of the applicant was in service on the post of Mate. He expired on 06.01.1995, therefore, the pensionary benefits of the deceased employee were to be paid to the applicant but the respondents have illegally withheld the amount of the pensionary benefits of the husband of the applicant by saying that there is nomination in favour of the children of the first wife of Late Shri Om Prakash.

Anil Kumar

2. That due to dispute, a Succession Certificate was issued in favour of the applicant and her children on 13.09.2004. Thereafter, the monthly pension was started in the Bank account of the applicant but the monthly pension has not been paid since December, 2009 without any information and notice.

3. That the respondents issued various letters to the applicant regarding submission of revised succession certificate by deleting amount of death gratuity from the same whereas amount of death gratuity cannot be deleted from the Succession Certificate because the applicant and her children are also legally entitled to get the amount of the said death gratuity, as late Shri Om Prakash had also nominated the children of the applicant on 07.12.1988.

4. Learned counsel for the applicant further submitted that the respondents have ignored the important aspect of the matter that the applicant is legally wedded wife of Late Shri Om Prakash, therefore, she is legally entitled to get all pensionary benefits of Late Shri Om Prakash. Therefore, he requested that the respondents may be directed to make the payment of monthly pension from the month of December, 2009 immediately to the applicant and the respondents may also be directed to make all the outstanding payment regarding pension, gratuity claim of the applicant without requiring revised Succession Certificate.

Anil Kumar

5. On the other hand, the Senior Standing Counsel appearing for the respondents graciously admitted that the applicant is entitled to the gratuity amount according to the Succession Certificate issued in her favour by the District Judge, Tonk (Rajasthan) dated 13.09.2004 (Annexure A/2). However, he submitted that the applicant is not entitled to full pension because as per Rule 54 (7) of the CCS (Pension) Rules, 1972, she is entitled to only her share of pension. He submitted that Late Shri Om Prakash had two wives. The applicant is the second wife. She was asked to submit Succession Certificate from the Court of Law for finalization of the family pension claim. The applicant submitted Succession Certificate dated 19.09.2004 issued by the District Judge, Tonk (Rajasthan).

6. That the PCDA (Pension) Allahabad has awarded 100% family pension to the applicant and death gratuity amount distributed between two children out of first wedlock i.e. Deepak (son) and Jyoti (Daughter).

7. The applicant was asked to submit the revised Succession Certificate duly deleting the death gratuity amount. However inspite of repeated reminders, she has not produced the same.

8. The Department was advised by the Senior Central Government Standing Counsel that there is no need to approach the Court of Law to delete the DG amount from the

Anil Kumar

Succession Certificate and family pension is payable as per Rule 54 (7) of the CCS (Pension) Rules, 1972 to the applicant (wife) and two children namely Deepak and Jyoti from the first wife of the deceased, if they eligible. Secondly, as the Succession has been opened, the amount of gratuity is payable as per Succession Certificate issued by the competent court.

9. He submitted that earlier the applicant was wrongly allowed 100% pension by over-looking the provisions of Rule 54(7) of the CCS (Pension) Rules, 1972. According to rules, two children namely Deepak and Jyoti from the first wife of the deceased were/are equally entitled for the family pension. The respondents requested to give consent for the recovery of 50% of the family pension paid to her for the period from 07.01.1995 to 10.09.2008 but she has not given any such consent so far. Therefore, the action of the respondents is according to law and the prayer of the applicant for the payment of 100% cannot be accepted.

10. Heard the learned counsel for the applicant and perused the documents on record. As the learned counsel for the respondents has graciously accepted in their written reply as well as during the arguments that the gratuity can be paid to the applicant according to the Succession Certificate, therefore, the respondents are directed to release the gratuity amount to the applicant as per Succession Certificate (Annexure A/2).

Anil Kumar

11. With regard to pension, I am not inclined to agree with the averments made by the learned counsel for the respondents that it cannot be paid to the applicant according to the Succession Certificate. I have carefully perused the Succession Certificate, which has been issued by the competent court. The respondents have not challenged the validity of the Succession Certificate. The legal heirs of first wife that is Deep (son) and Jyoti (Daughter) were also made party. There is no record to show that they have raised any objection for issuance of the Succession Certificate in favour of the applicant. The respondents themselves have issued 100% pension to the applicant for the period with effect from 07.01.1995 to 10.09.2008. During this period of more than 13 years, there was no objection from Shri Deepak (son) or from Jyoti (Daughter) that they have been denied their pension. Even in the written statement submitted by the respondents in the present OA, it has nowhere been mentioned that they are asking for the payment of pension. Therefore, in my opinion, the applicant is entitled for the pension according to the Succession Certificate issued by the competent court (Annexure A/2). If the respondents had any problem with regard to the legality of the findings of the competent court, they could have challenged it before the appropriate forum but they have not done so, instead they are directing the applicant to get a revised Succession Certificate, which ^{Anil Kumar} is in my opinion is not the correct approach. The Succession Certificate is a

Anil Kumar

legal document issued by the competent court and, therefore, the respondents are directed to honour it.

12. Accordingly the respondents are directed to make the payment of the gratuity and pension as per the Succession Certificate issued to the applicant expeditiously but not later than three months from the date of receipt of a copy of this order.

13. With these observations, the OA is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ