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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00975/2014 &
M.A.No.060/01394/2014

Date of Decision : 11.9.2015
Reserved on: 09.09.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Sangeeta, wd/o Pardeep Kumar, d/o Ram Parkash, now r/o Ward No.10, Lohia Khas, Navi Abadi, Tehsil Shahkot, District Jalandhar.

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Applicant

Versus

1. General Manager, Northern Railways, Baroda House, New Delhi.
2. Divisional Regional Manager, DRM Office, Northern Railways, Ferozepur.
3. Neha daughter of late Sh. Pardeep Kumar, r/o 27-B, Burt Road, Ferozepur City.

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Respondents

Present: Mr. P.K. Bansal, counsel for the applicant
Mr. Rohit Sharma, counsel for the respondents

ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

"8 (ii) Directions be issued to respondents no.1 and 2 to release the benefits of pension, gratuity, leave encashment, provident fund, Group Insurance Scheme etc and all other benefits available on the death of the husband of the applicant and also direction be issued to the respondents to give appointment on compassionate basis to the applicant.

(iii) Interest be awarded at the rate of 18% from the date these benefits became due till the date of actual payment to the applicant."

2. MA No.060/01394/2014 has been filed seeking condonation of delay of 4010 days in filing the OA. It has been stated in the MA that the husband of

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the applicant had expired on 09.05.2002 and the applicant submitted an application dated 20.08.2002 regarding the retiral benefits but the same was never decided. Respondent no.3 and mother-in-law of the applicant had filed a civil suit against the applicant as well as the Department of Railways on 30.05.2002 which remained pending and was finally disposed of vide order dated 02.04.2014 passed by Civil Judge (Senior Division) Ferozepur. The suit remained pending for 4324 days and vide order dated 02.04.2014, learned Civil Court directed that the Railways will make the payment as per rules. Even thereafter the Department of Railways did not make the payment of dues to the applicant. Since the applicant had been made to suffer due to the pendency of the civil case she should not be penalized and the delay of 4010 days in filing the OA be allowed.

3. Averment has been made in the OA that one Sh. Pardeep Kumar, (husband of the applicant) was working as IOW Khalasi with respondents no.1 to 2. He was earlier married to one Smt. Kamlesh and out of this wedlock Neha (respondent no.3) was born. Smt. Kamlesh died in the year 1995 and thereafter late Sh. Pardeep Kumar married the present applicant on 18.06.1999. Sh. Pardeep Kumar also expired on 09.05.2002. Before his death, he had executed an affidavit nominating the applicant regarding his property. It is further stated that the applicant made several oral as well as written requests to respondent no.2, including application dated 20.08.2002 for release of benefit of pension, gratuity, leave encashment, provident fund and all other admissible benefits as well as grant of compassionate appointment to her but till date only a meager

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amount of Rs.15,000 had been released to her and an equivalent amount had been released to Ms. Neha. Hence this OA.

4. In the reply to MA as well as in the written statement, preliminary objection has been taken on behalf of the respondents that the delay in filing the OA cannot be condoned as the claim of the applicant arose in 2002 while the OA had been filed in 2014. Further, it has been stated that there is no documentary proof as to whether late Sh. Pardeep Kumar, had got married to Smt. Sangeeta. It has been admitted that Sh. Pardeep Kumar had executed an affidavit seeking that the name of the applicant be entered as nominee in his record. It is further stated that in the civil suit the parties had compromised in the Lok Adalat and Smt. Sangeeta undertook to pay one lakh to Smt. Puleshra (mother-in-law) when she got arrears of pension and had also given up her right for job in case of compassionate appointment to Ms. Neha (Annexure R-3). Since the respondent Department was not a party to the compromise, the Department moved an application that payment would be made as per the rules and this was allowed vide order of the Civil Judge dated 02.04.2014. It has further been stated that provident fund, leave encashment and GIS had since been released in favour of Smt. Sangeeta and Neha and rest of the payments like family pension and DCRG were in the process of being released. Also, Smt. Sangeeta never applied for appointment on compassionate grounds.

5. Additional affidavit was filed on behalf of the respondents on 22.07.2015 wherein it has been stated as follows:-

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“4. After decision of the ld. Civil Court, the payment of provident fund i.e. Rs.14,548 released on 09.07.2014, the leave encashment amounting of Rs.3,496 and GIS amounting of Rs.15,698 has been released on 09.07.2014 in favour of Smt. Sangeeta and Ms. Neha.

It is pertinent to submit here that the rest of the payments like family pension has now been settled and being issued the PPO No.0115050840 and 0115050841 in favour of the applicant and respondent no.3 Ms. Neha. Regarding payment of DCRG, the same is under consideration because there is some objection has been raised by the account office regarding some dues / recovery against the deceased employee as he has taken festival allowance amounting of Rs.750 and a loan of Rs.40,000 from the Northern Zone Railway Employee Society) which is still outstanding.”

6. Arguments advanced by the learned counsel for the parties were heard, when learned counsel for the applicant pressed that the MA regarding condonation of delay should be allowed as claim for family pension was a continuous cause of action. He further stated that some payments had been released to the applicant but the amount of family pension due to her along with arrears had not yet been credited to her bank account. He also stated that he would not press the claim for appointment on compassionate grounds through the present OA but sought liberty to file afresh the claim in this regard.

7. Learned counsel for the respondents stated that since the PPO had been issued in favour of the applicant, the family pension would be released to her from the date of death of the deceased employee. He also sought to place on record letter no.726-E/1/6248/pension, dated 13.08.2015 wherein it had been mentioned that an amount of Rs.40,750 was recoverable from the deceased employee and this amount had to be deducted from the amount of retiral benefits released to the applicant and Ms. Neha (respondent no.3).

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8. We have given our careful consideration to the matter. It is seen that although there was no stay order issued by the Civil Court in regard to payment of family pension to the applicant, the respondent Department did not take any action in this regard after the death of the deceased employee on 09.05.2002, although as per the policy / rules, in case of an employee dying in harness, the officials of the concerned Department are required to hold an enquiry regarding the entitlement of the retiral benefits and release the same to the family of the deceased employee expeditiously. The deceased employee had filed an affidavit with the respondent Department that he had solemnized his marriage with Ms. Sangeeta d/o Ram Parkash and her name be entered in the nomination because she is his wife (Annexure A-1). Inspite of this affidavit being on record with the respondent Department, as admitted in the written statement, the matter regarding release of family pension in favour of the applicant did not make any head way. It was only after the Civil Suit between the applicant, her mother-in-law and respondent no.3 was settled on 05.02.2014 that the payment of provident fund, leave encashment and GIS was released in favour of the applicant and Ms. Neha.

9. The OA was filed in October, 2014 while the PPO regarding family pension has been issued only after DPO, Northern Railway, Ferozepur was directed to be present on 28.07.2015 to explain the matter and even till date, as per the statement of the applicant's counsel, the amount of the family pension along with arrears has not been credited to the bank account of the applicant. The stand of the respondent Department that the OA is barred by limitation is

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without merit as claim for family pension in indeed a continuous cause of action and the widow of a deceased employee cannot be allowed to suffer on account of the insensitivity of the officers of the respondent Department to their responsibility in this regard. Hence the respondent Department is directed to pay interest @ 8% per annum on the amount of family pension due to the applicant, to be computed on monthly accrual basis, till the date of actual disbursement of the arrears of the family pension to the applicant. Since GIS and leave encashment cannot be termed as terminal benefits, no interest is allowed on belated release of the same. It is presumed that the interest would have been allowed on the provident fund released to the applicant as the rules provide for this. In view of letter dated 13.08.2015 (taken on record), since recovery of some amount is to be made from the retiral benefits, nothing appears to be payable to the applicant on account of DCRG.

10. M.A.No.060/01394/2014 is therefore allowed and the OA is disposed of with direction to the respondents to release the interest payable to the applicant, as per directions above, within a period of two months from the date of receipt of a certified copy of this order being served upon the respondents.

11. No costs.

B. A. Agrawal
(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh

Dated: 11.9.2015

SV:

R. Sandhu
(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER