

OPEN COURT

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No.330/01077/2015

This the 18th day of September, 2018

Hon'ble Mr. Justice Bharat Bhushan, Member (J)

Smt. Gyanwati Kashyap w/o late Bahadur Ram resident of
N.L. 11/11, Barra, Part 6, Kanpur Nagar.

..... Applicant

By Advocate: Sri P.K. Mishra

Versus

1. Union of India through its Secretary, Ministry of
Communication (P&T) Dak Bhawan, New Delhi.
2. Senior Superintendant Railway Postal Service, K.P.
Mandal, Kanpur Nagar.

..... Respondents.

By Advocate:-Sri V.K. Shukla

ORDER

HON'BLE MR. JUSTICE BHARAT BHUSHAN, MEMBER (J)

The present Original Application (O.A.) under Section 19 of the Administrative Tribunals Act, 1985 (A.T Act) has been filed primarily for retiral benefits and family pension along with interest.

2. The facts of this O.A. are that late Bahadur Ram was appointed in the Postal Department on 10.9.1964 and retired on 30.6.2004. Subsequent to his retirement, the applicant died on 30.9.2005. After the death of employee Bahadur Ram, his stated wife Smt. Gyanwati Kashyap informed the Department about the death of her husband and requested for payment of retiral benefits and family pension. Department did not take any action in this regard.

3. The applicant kept on approaching the Department but her request did not find favour with the department. It is submitted that late Bahadur Ram left behind his three sons and widow, applicant. Several representations were made,

copies of which have been annexed with the present O.A. but of no avail. Therefore, the applicant was compelled to file the present O.A.

4. The respondents have filed counter affidavit, wherein they have claimed that late Bahadur Ram during his service period had submitted details of his family on 6.4.2004, prior to his retirement, in prescribed form i.e. Form No. 3, in which he had shown himself alone in the family. However, the department admitted that on 4.12.1996, late Bahadur Ram had submitted earlier form No. 3, mentioning the name of Smt. Gyanwati Kashyap as his widow. On account of this conflict, the department could not ascertain whether any of his family members were alive or not at the time of retirement of late Bahadur Ram. Due to this uncertainty, the competent authority did not allow the family pension to the applicant.

5. The applicant has filed Rejoinder reply reiterating her claim and also submitted various documents in order to establish her right for family pension.

6. In the Supplementary Counter Affidavit, respondents have not asserted any new facts and reiterated the submissions made in the counter reply.

7. Heard Sri P.K. Mishra, learned counsel for applicant and Sri V.K.Shukla, learned counsel for respondents.

8. The denial of family pension to the applicant is based on only one fact i.e. a Form No. 3 which was allegedly filled by late Bahadur Ram on 6.4.2004, disclosing only his name. The respondents/department have claimed that non-inclusion of other family members in the form No. 3 (Annexure R-1) has created dispute about existence of any family at the time of retirement of late Bahadur Ram. It is,

however, pertinent to point out that department itself has admitted that in the year 1996, late Bahadur Ram had admitted the existence of his wife Smt. Gyanwati Kashyap and his three children. Para No.3 of the counter reply is reproduced below:-

“However, previously on 4.12.1996, aforesaid Shri Bahadur Ram had submitted a Form -3 mentioning Smt. Gyanwati Kashyap as his wife. Thus, after his retirement, it could not be ascertained that any of his family member was alive or not at the time of his retirement and in the aforesaid circumstances the D.A. (P) Lucknow did not allow for family pension in the instant case.”

9. It is therefore, amply clear that late Bahadur Ram indeed had acknowledged the existence of his family including the applicant, Smt. Gyanwati Kashyap as his wife. This was shown in the official documentation. In fact, the applicant has filed copy of this document as Annexure-1 wherein the name of Smt. Gyanwati Kashyap and his three children are clearly visible, disclosing the relationship with late Bahadur Ram as well. The record reveals that department had given service benefits to the family of late Bahadur Ram, such as Central Government Health Scheme (CGHS) Card etc., copy of this card is available on record as Annexure -1 to the Rejoinder, which clearly indicate the name of Smt. Gyanwati Kashyap as well as three children. This card in fact, include the name of late Bahadur Ram as well. A copy of form No. 54(12) issued by the department also show the presence of applicant and her children in the life of late Bahadur Ram. Copy of this document is also available on record, whereupon even the photographs of entire family

is available. Copy of voter list (Annexure RA-7), Election Commission of India Identity Card (Annexure RA-8), copy of family register (Annexure RA-9), entries of banks (Annexure RA-10), copy of High School certificate of children, specially of Km. Neha Kashyap (Annexure RA-12) disclosing the name of both parents are also available on record and all these documents leave little to the imagination.

10. Now, the question arises why was one document namely form No. 3 filled by late Bahadur Ram, just prior to his retirement did not include the name of his entire family. This is a document which is used by the Department to deny the financial assistance to the family of deceased employee.

11. Learned counsel for applicant has submitted that on 10.9.2001, late Bahadur Ram met with a serious accident and he was disabled due to this accident. All negotiations with the Department in respect of treatment of late Bahadur Ram was done by the present applicant Smt. Gyanwati Kashyap. Late Bahadur Ram was admitted in Regency Hospital, Kanpur for treatment. He was suffering from Paraplegia and was declared 80% disabled. The discharge summary of hospital is also available on record as Annexure RA-3 which clearly shows that late Bahadur Ram suffered serious injuries. Disability certificate (Annexure RA-5) issued by Chief Medical Officer, Kanpur Nagar discloses that Bahadur Ram was suffering from Paraplegia (Post-Head Injury). He was also declared disabled upto 80% . The photograph of late Bahadur Ram was appended on this certificate. The applicant claim that all correspondence with the Department was done by the applicant regarding the treatment etc. of her late husband. The claim of the applicant is that at the time of submission of new form No. 3

on 6.4.2004, late Bahadur Ram was suffering from serious disabilities subsequent to his significant head injury in the accident. His mental faculties were not good. Therefore, he probably could not give the details of his family members.

12. This Tribunal has gone through the entire available documents and pleadings on record. It is absolutely clear that late Bahadur Ram did have a family. He had disclosed the presence of his family including existence of his wife and three children to the Department as well as on other forums on various occasions. Some of these documents have also been mentioned by this Tribunal on the earlier part of this judgment. Department itself provided several benefits to the entire family such as CGHS card etc.

13. It is pertinent to point out that much touted form No. 3 is not the source of family pension, The source of family pension are, prevailing departmental rules as well as relationship of deceased with the claimant. Form No. 3 is merely an information. If the department has other source of information including the earlier document dated 4.12.1996, as admitted by the department itself in para 3 of the counter reply, it should have been sufficient for grant of family pension. There is no doubt about existence of family. If the department had cared to examine, the documents available with the department and the facilities extended by the department to the family of late Bahadur Ram were sufficient for such conclusion. If there was any doubt about identity of applicant, then department could have simply instituted a quite inquiry for establishing the identity of applicant. It is pertinent to point out that some of the documents available with the department itself i.e. photographs of entire family (Annexure RA-1), the question of identity if there was one,

could have been resolved easily but the department in heartless and cruel fashion kept on denying the family pension to the applicant without making any effort to ascertain the rights of the applicant and her children.

14. Grant of family pension is attributable to the prevailing rules of the Department as well as the relationship of applicant with the deceased employee. The family pension cannot be attributed merely to a piece of paper filled by deceased employee in the aftermath of serious accident involving head injury. He was suffering from Paraplegia and declared 80% disabled. This Tribunal cannot believe that department was unaware of condition of late Bahadur Ram. In such a situation, it was incumbent upon on department to provide solace to the beleaguered employee by making extra effort to ascertain the factual situation. Unfortunately, Bahadur Ram died within 15 months of his retirement and since then applicant Smt. Gyanwati Kashyap has been chasing her rightful dues. There are various ways for establishing identity of a person. In case of Government employee, it is comparatively easier.

15. Hon'ble Apex Court in the case of **Dr. Uma Agrawal Vs. State of U.P. and another reported in 1999 Supreme Court Cases (L&S) 742** has deprecated the attitude of delayed disbursement of retiral benefits, holding that grant of family pension is not a bounty but a right of Government servant. Hon'ble Apex Court further noted that delays are occurring even in regard to family pensions for which too there is a prescribed procedure.

16. In the present case, 13 years have elapsed but the respondents have failed to provide any financial succor to the family of late Bahadur Ram on flimsy ground of one

paper filled by the deceased when he was suffering from Paralegia and 80% disability.

17. Considering all the facts and circumstances, this O.A. deserves to be allowed and accordingly, allowed with cost. Respondents are directed to provide remaining retiral benefits, if any, to the applicant and family pension within a period of four months from the date of receipt of certified copy of this order.

18. Applicant has claimed interest on the remaining retiral dues including the family pension. The remaining retiral dues have neither been quantified nor separately indicated. Therefore, this Tribunal is not able to ascertain other remaining retiral dues. However, it is evident that family pension has indeed not been paid for almost 13 years. This has adversely affected the family of late Bahadur Ram. The Tribunal believes that this is a fit case for awarding interest to the applicant but it would not be appropriate to send back the O.A. for computation of interest as this would further delay the payment of family pension to the applicant. This Tribunal itself quantify the interest payable at Rs. 50,000/- and direct that the same shall be paid to the applicant within four months from the date of receipt of certified copy of this order as has been done by the Hon'ble Apex Court in the case of **Dr. Uma Agrawal Vs. State of U.P. (supra)**.

(JUSTICE BHARAT BHUSHAN)
MEMBER (J)

HLS/-

