

Central Administrative Tribunal Principal Bench

TA No. 43/2015

Order Reserved on: 28.07.2016
Order Pronounced on: 12.08.2016

**Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)**

1. Surbhi Advani,
D/o Late Smt. Kamlesh Rani,
R/o 87-A, Pocket-A, Mayur Vihar,
Phase-II, Delhi-110091
2. Parul Advani,
D/o Kamlesh Rani,
R/o 87-A, Pocket-A, Mayur Vihar,
Phase-II, Delhi-110091
3. Baby Tanu,
D/o Kamlesh Rani,
R/o 87-A Pocket-A, Mayur Vihar,
Phase-II, Delhi-110091
4. Master Mani,
D/o Kamlesh Rani,
R/o 87-A, Pocket A, Mayur Vihar,
Phase-II Delhi-110091

(By Advocate: Shri Rakesh Kumar Dudeja)

VERSUS

1. North Delhi Municipal Corporation, Through Deputy Education Officer, NDMC, Rohini Zone, Sector-5, New Delhi
2. State Bank of India, Rajouri Garden Branch, Rajouri Garden, New Delhi
3. The State, Government of NCT of Delhi, Through Chief Secretary, Delhi Secretariat, New Delhi

4. Shri Din Dyal Dudeja,
 S/o Late Shri Nihal Chand,
 R/o 87-A, Pocket-A,
 Mayur Vihar, Phase-II,
 Delhi

- Respondents

(By Advocate: Mr. Manjeet Singh Reen)

ORDER

Dr. B.K. Sinha, Member (A):

In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants, who are daughters and sons of late Kamlesh Rani – deceased employee, seek the following reliefs:-

“(i) directions to the respondent no.1 to release the amount lying with it on account of retiral benefits of the late Smt. Kamlesh Rani i.e. GPF, Gratuity, Earned Leave amount and other admissible dues in favour of the petitioners herein;

(ii) Directions to the respondent no.2 to release the saving amount lying with it in the account of late Smt. Kamlesh Rani in favour of the petitioners herein; and

(iii) Any other or further order(s) or direction(s) which are deemed fit and necessary in the interest of justice.”

2. The case of the applicants, in very brief, is that their deceased mother, an Assistant Teacher in the erstwhile MCD, now the NDMC in Nagar Nigam Primary School at JJ Wazirpur-II, JJ Colony, Wazir Pur , Delhi, demised on 17.05.2005. At the time of expiry of the mother of the applicants, she had dues with the respondent no.1, i.e., GPF, Gratuity, Earned Leave amount and all other

connected benefits arising out of the service of the deceased and the saving amount of approximately R.4,00,000/-. Admittedly, all the applicants, at the time of the deceased employee, were minor, but the applicant nos.1 and 2 have attained majority. The applicant nos. 3 and 4 are still minors and are represented through their elder sister Surbhi Advani, the applicant no.1 herein.

3. It is the case of the applicants that the deceased employee had executed a Will dated 24.01.2005 whereby she bequeathed all her removable and movable properties in favour of her four children, i.e., applicants herein, to the exclusion of her husband. She further appointed her father, one Din Dayal Dudeja, as the Executor of the Will dated 24.01.2005 on the ground that her husband was unemployed and habitual drunkard, and incapable to look after the children. The said husband of the deceased employee, namely, Rajinder Advani had filed a Suit bearing no. 106/2007 titled Rajinder Advanti vs. State before the Ld. Administrative Civil Judge, Central District, Tis Hazari, Delhi seeking a succession certificate in his favour in respect of the estate of the mother of the applicants, including her post-retiral dues. The said Suit was dismissed in default on 21.10.2014 by the. Court of Shri Sandip Garg Administrative Civil Judge after having

observed that the petitioner, i.e., the husband of the deceased employee had not been appearing for the last 5 dates of hearing. During the proceedings, the Ld. ACJ, Tis Hazari Courts, Delhi, vide its order dated 21.10.2008, directed the deceased husband of the applicants to re-deposit the amount of Rs. 1,15,000/- with PNB, which had been illegally drawn by him. In the meantime, the applicants also filed Petition bearing no. Succession Case No. 44/2015 before Ld. ACJ-CCJ-ARC(East), Karkardooma Courts, Delhi on 21.05.2015 for grant of succession certificate in respect of debts, securities etc. of their late mother on the ground that since a Will had already been executed and had not been probated, no succession certificate could be issued. The said petition was rejected on 02.07.2015 and the Ld. Court was also peeved with the non-joinder of Din Dayal Dudaja, who was a necessary party. Now the applicants have come to this Tribunal seeking the afore stated reliefs.

4. The respondents have filed a short reply admitting therein that the applicants are daughters and son of the deceased employee leaving behind her husband -Rajinder Advani and the applicants. It is also mentioned that as per the provisions of Section 15 of the Hindu Succession Act, the said Rajindra Advani is also entitled to the estate of late

Kamlesh Rani. The respondents, in their counter affidavit, stated that it is an admitted position of the applicants that they had filed a Petition under Section 372 of the Indian Succession Act for issuance of succession certificate, which was already rejected vide order dated 02.07.2015, thereby indicating that they are not entitled to the said estate of late Kamlesh Rani and benefit would become payable to them once they are armed with the succession certificate in their favour. This seems to be the sole ground that there is no succession certificate in favour of the applicants and also there is a raising dispute amongst the parties – the applicants and their father.

5. We have considered the pleadings of rival parties as also the documents adduced and the citations relied upon on either side and have patiently heard the arguments advanced by the learned counsels for the parties.

6. The twin issues that arise for our consideration are as under:-

- (i) What are governing factors in release of GPF amount and other pensionary dues?
- (ii) Whether the aforesaid dues can be allowed to the applicants as per 'Will' dated 24.01.2005

7. In respect of the first issue, we start by looking at the Pension Act, 1871 which was framed to consolidate and

amend the law relating to pensions and Grant by Government of money or land revenue. Section 4 of this Act imposes a bar on civil courts entertaining a suit relating to pension or grant of money, except for the circumstances provided under the said Act. For the sake of greater clarity, we extract the provisions of Section 4 of the Act as below:-

“4. Bar on suits relating to pensions.— Except as hereinafter provided, no Civil Court shall entertain any suit relating to any pension or grant of money or land-revenue conferred or made by the Government or by any former Government, whatever may have been the consideration for any such pension or grant, and whatever may have been the nature of the payment, claim or right for which such pension or grant may have been substituted.”

However, an exception has been made under Rule 6 of the Act.

8. Section 12-A of the Act provides for nomination by pensioner to receive money outstanding on account of pension. The said Section is being extracted as hereunder:-

“12-A. Nomination by pensioner to receive moneys outstanding on account of pension.— Notwithstanding anything contained in Section 12 or in any other law for the time being in force—

(a) any person to whom any pension mentioned in Section 11 is payable by the Government of India or out of the Consolidated Fund of India (such person being hereinafter referred to as the pensioner) may nominate any

other persons (hereinafter referred to as the nominee), in such manner and in such form as may be prescribed by the Central Government by rules, to receive after the death of the pensioner, all moneys payable to the pensioner on account of such pension at, before or after the date of such nomination and which remain unpaid immediately before the death of the pensioner; and

(b) the nominee shall be entitled on the death of the pensioner, to receive, to the exclusion of all other persons, all such moneys which have so remained unpaid:

Provided that if the nominee predeceases the pensioner, the nomination shall so far as it relates to the right conferred upon the said nominee, become void and of no effect:

Provided further that where provision has been duly made in the nomination, in accordance with the rules made by the Central Government, conferring upon some other person the right to receive all such moneys, which have so remained unpaid, in the event of the nominee predeceasing the pensioner, such right shall, upon the decease as aforesaid of the nominee, pass to such other persons."

9. Section 15 of the Act empowers the Central Government to make rules and provides as under:-

"15. Power of Central Government to make rules.—The Central Government may, by notification in the Official Gazette, make rules to provide for all or any of the following matters, namely:—

(a) the manner and form in which any nomination may be made under Section 12-A and the manner and form in which such nomination may be cancelled or varied by another nomination;

(b) the manner in which provision may be made, for the purposes of the second proviso to Section 12-A in any such nomination for conferring on some person other than the nominee the right to receive moneys payable to the nominee in such nomination predeceases the pensioner.

10. Under the Payment of Arrears of Pension (Nomination)

Rules 1983 framed under Section 15 of the Pension Act, Rule 4 entitles the nominee of the petitioner to receive arrears of pension, after the death of the pensioner all moneys payable to the pensioner on account of such pension on, before or after the date of such nomination and which remain unpaid immediately before the death of pensioner. For the sake of greater clarity, the said Rule is being reproduced as hereunder:-

“4. Any pensioner to whom any pension is payable by the Government out of the Consolidated Fund of India may nominate any other person (hereinafter referred to as the nominee) in accordance with provisions of Rule 5 who shall receive, after the death of the pensioner all moneys payable to the pensioner on account of such pension on, before or after the date of such nomination and which remain unpaid immediately before the death of pensioner.

11. Section 5 of the Nomination Rules 1983 lay down the manner in which the nomination and changes of nomination are to be made. While Section 6 states that nomination made under Rule 5 and accepted by the Pension Disbursing Authority or the Head of Office, shall be

a conclusive proof with regard to the person nominated to receive arrears of pension of the pensioner under these rules. In the instant case, we find from the record that the deceased employee had nominated her two brothers to receive her pension vide entry dated 13.10.1992 in the event of her death. This nomination remains unchanged, though a Will has been executed in favour of the applicants. Instead the deceased employee had executed 'Will' on 24.01.2005, just prior to her death where she wills as follows:-

"Presently I am posted at JJ Wazirpur (Old-1) School as Asstt. Teacher. Recently throat cancer is detected to me and I have no hope of long life. Therefore, I am planning to make arrangements for securing the future of my small children. This is also necessary for the reasons that my husband is unemployed for the last few years and is totally dependent upon me. Besides he has some bad habits also due to which I have the apprehension that he may not waste or misuse my property and money/assets on himself rather to utilize the same for the welfare of the children. Therefore, by way of this Will I desire that my property/assets which have been earned/acquired by me on my own, be managed in the following manner:-

After my death my whole movable and immovable properties/assets my children would be entitled to the same. The entire money in my PNB Bank and SBI Bank accounts as also the serve benefits like PF, Gratuity, Leave Encashment and/or any other benefits be kept in any Government Bank in the form of FDR in four equal shares till the children attain the age of 21 years. After completion of 21 years of age every child will have the right to use the money so kept in any manner he/she wants. No one will have the right to use the money, FDR or the interest in it and the interest, if any, accruing on the same shall be

reinvested and my father Sh. Din Dayal Dudeja shall be the guardian of the children in the FDRs and he will be reinvested the same till the attainment of age of 21 years by every child. If my father pre-deceases prior to completion of 21 years of age of any of my children, this responsibility would be of my brother Rakesh Kumar.”

However, it is an admitted fact that pension does not constitute a part of the estate. We are guided by the fact that none of all nominees that being brothers of the deceased employee, have appeared to claim the pension amount. Instead the brother of the deceased employee has been made the guardian in place of father of the deceased employee in the case he expires before the children have attained majority. In view of these provisions, we are of the considered opinion that the claim of the two official nominees having not been pressed has lost its validity.

12. We now take up the claim of the father of the applicants' father – Rajinder Advani whose creditability stands impinged by the Ld. ACJ DIG Vinay Singh, Delhi vide order dated 21.10.2008 holding him as alcoholic, decrpytic and incapable of taking care of the interest of the applicants. Moreover, he has not been heard of since 2009. Therefore, under Section 108 of Indian Evidence Act, 1872, the burden of proving that he is alive lies upon those who

affirm these facts. However, there is none before us who affirms these facts.

13. Now we are only left with the applicants as the sole legal claimants. We have already held that the applicants are not strangers. They are daughters and son of the deceased employee and are armed with a Will, even if not probated. There are none others before us who have a valid claim to pension and post-retiral dues of the deceased employee. In a recently decided case by this very Tribunal in OA No. 4083/2012 titled **Kamlesh Kumar Sharma Vs. Govt. of NCT of Delhi & Ors.** decided on 03.06.2016 has granted pension even where the applicant was not armed with the succession certificate and did not have nomination as well. In the case of **Poonam vs. Union of India & Ors.** (OA No. 314/2015) MANU/CA/0008/2016 decided on 04.01.2016 where the applicant, a wife of the deceased employee, was not having a succession certificate, yet the Tribunal decided to grant her pension and release her other post-retiral dues on the basis of nomination form of the deceased employee. Likewise, in the case of **Bimla vs. Union of India & ors.**, MANU/CA/0240/2013 decided on 11.07.2013, a similar decision was taken in respect of DCRG. We also take note of the fact that the conditions of the applicants are pitiable and they have been put to

tremendous hardships for their survival and are being supported by their grandfather. Therefore, we choose to exercise of power of equity in their favour and direct as follows:-

- (i) The pension of the deceased employee and other dues shall be released in favour of the applicants subject to their executing and undertaking that in case of succession certificate being issued overriding their claim, they shall refund the amount;
- (ii) The minor children shall continue under the guardianship of their grandfather till they attain majority;
- (iii) The exercise, as ordained above, shall be completed by the respondents within a period of two months from the date of receipt of a certified copy of this order.
- (iv) There shall be no order as to costs.

14. With the above directions, the TA stands disposed of.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)