

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 291/2013

Reserved on: 25.02.2016
Pronounced on: 26.02.2016

Hon'ble Mrs. Chameli Majumdar, Member (J)

1. Smt. Vimlesh w/o late Jagmal Singh
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhagal, New Delhi – 110 014.
2. Ms. Jyotika
d/o late Jagmal Singh & Smt. Vimlesh
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhagal, New Delhi – 110 014.
3. Master Deepak
s/o late Jagmal Singh & Smt. Vimlesh
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhagal, New Delhi – 110 014.
4. Ms. Priyanka
d/o late Jagmal Singh & Smt. Vimlesh
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhagal, New Delhi – 110 014.
5. Master Suraj
s/o late Jagmal Singh & Smt. Vimlesh
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhagal, New Delhi – 110 014.

*(Applicants no. 2 to 5 being minor are being represented
through their natural mother i.e. applicant no.1)*

...Applicants

(By Advocate: Sh. Inderjit Singh)

Versus

1. Central Public Works Department through
Director General, Nirman Bhawan,
New Delhi.
2. Executive Engineer,
Central Public Works Department,
I.P. Bhawan, New Delhi.

3. Smt. Raj @ Usha w/o late Jagmal Singh,
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhogal, New Delhi – 110 014.
4. Ms. Deepika
d/o late Jagmal Singh & Smt. Raj @ Usha
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhogal, New Delhi – 110 014.
5. Ms. Monika,
d/o late Jagmal Singh & Smt. Raj @ Usha
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhogal, New Delhi – 110 014.
6. Master Akash
s/o late Jagmal Singh & Smt. Raj @ Usha
R/o A-12, Sidharth Basti,
Hari Nagar Ashram, Jangpura,
Bhogal, New Delhi – 110 014.
*(Respondents no.4 to 6 being minor are being represented
through their mother i.e. respondent no.3)*
7. Smt. Raj Rani Bhushan
w/o late Jagmal Singh
R/o A-61/2, Garima Garden,
Loni Road, Shahibabad,
District-Ghaziabad, U.P.
8. Master Shivam Raj
s/o late Jagmal Singh & Smt. Raj Rani Bhushan
R/o A-61/2, Garima Garden,
Loni Road, Shahibabad,
District-Ghaziabad, U.P.
*(Respondent no.8 being minor is being represented
through his mother i.e. respondent no.7).*

...Respondents

(By Advocate: Sh. Hilal Haider)

ORDER

Smt. Vimlesh (applicant no.1) being the third wife of late Jagmal Singh, deceased employee of CPWD, and her four minor children, being applicant nos. 2 to 5, have filed this Original Application under Section 19 of the

Administrative Tribunals Act, 1985 challenging the action of the respondents in not releasing the pensionary benefits to the applicant nos. 2 to 5. The applicants have impleaded the second wife of the deceased employee as respondent no.3 and her three minor children as respondent nos.4 to 6. Smt. Raj Rani Bhushan, being the second wife of the deceased employee and Maser Shivam Raj, being the adopted minor son of Smt. Raj Rani Bhushan, have also been impleaded in this OA as respondent nos. 7 & 8.

2. The case of the applicants, in short, is that the deceased employee Jagmal Singh had three wives. After the death of the deceased employee Jagmal Singh, his second wife Smt. Raj @ Usha (respondent no.3) filed a Petition in the Court of Ld. Administrative Civil Judge, Central Delhi, New Delhi praying for a Succession Certificate in respect of debts and securities along with pensionary benefits of the deceased Jagmal Singh under Section 372 of the Indian Succession Act. During the course of the proceedings, the first wife, being the respondent no.7 and third wife, being the applicant no.1, filed their objections claiming to be legally wedded wives of the deceased employee. However, they admitted in the said proceedings that the deceased employee legally married to the respondent no.7 on 27.12.1977 but they had no issue out of the said wedlock.

As such, they had adopted one minor son namely Shivam Raj (respondent no.8). While the first wife was living, the deceased employee married respondent no.3 on 11.05.1984 and out of the said wedlock, respondent nos. 4 to 6 were born. It was also recorded in the said order that the said employee married applicant no.1, being a marriage for the third time, on 30.10.1990 and out of the said wedlock, applicant nos. 2 to 5 were born.

3. I have gone through the order passed by the Administrative Civil Judge in the Succession case. It appears that after going through the records as well as statements adduced by the parties and after hearing the arguments during the proceedings, Ld. Administrative Civil Judge passed its order on 21.12.2010. The learned counsel for the applicants submits that the Ld. Administrative Civil Judge issued Succession Certificate in favour of applicant nos. 2 to 5 as well as respondent nos.4 to 6 and respondent nos.7& 8. The learned counsel submits that the respondent authorities illegally and arbitrarily did not release the family pension in respect of the applicants who are legally entitled to pensionary benefits. However, the learned counsel has admitted that other than the family pension, all other pensionary benefits were released to them.

4. The respondents have filed their reply. The plea of the respondents is that only Smt. Raj Bhushan was entitled to the family pension of the deceased as per Family Pension Rules in vogue whereas all the children were entitled for debts and securities of the deceased employee to the extent of 1/9 share each. Accordingly, the pensionary benefits like leave encashment and gratuity were released to all the above nine successors whereas other pending benefits like GPF amount and Insurance amount under CGHS were being processed for releasing the payment in nine equal shares and the family pension was released to Smt. Raj Bhushan as per the order passed in the Succession proceedings.

5. I have gone through the operative portion of the judgment, which, *inter alia*, reads as under:-

“Therefore, in view of the above, I am of the considered opinion that there is no impediment for grant of succession certificate in favour of petitioners No.2 to 8 namely Jyotika, Deepak, Priyanka, Deepika, Suraj, Monika and Akash and in favour of Objectors Shivam Raj and Raj Bhushan qua the debts and securities of deceased Jagmal Singh. I accordingly direct that a succession certificate be issued in favour of Petitioners No.2 to 8 namely Jyotika, Deepak, Priyanka, Deepika, Suraj, Monika and Akash and in favour of Objectors Shivam Raj and Raj Bhushan in equal shares i.e. 1/9th share each qua the debts and securities of deceased Jagmal Singh in terms of Ex.PW1/D, on filing of requisite court fee and on furnishing an indemnity bond with one surety within 15 days.

Objector, Smt. Raj Bhushan, is also entitled for the family pension of the deceased as per family pension in vogue.”

6. After careful perusal of the order passed by the Ld. Administrative Civil Judge, Central Delhi in the Succession

Proceedings, it appears that the succession certificate was issued in favour of all the children fathered by the deceased employee and in favour of Smt. Raj Bhushan (respondent no.7) being the first wife, who was the Objector in the said proceedings.

7. The learned counsel for the respondents, referring to the paragraph wherein it has been mentioned that Smt. Raj Bhushan is also entitled to the family pension, submits that the pension was released only in favour of Smt. Raj Bhushan in terms of the order passed in Succession Case.

8. It appears that the respondents have wrongly interpreted the said order. It is abundantly clear from the order that '**Smt. Raj Bhushan is also entitled...**'. It means that Smt. Raj Bhushan is entitled for all the retirement benefits including family pension. It is nowhere mentioned in the order of the Ld. Administrative Civil Judge that other eligible minor children would not be entitled to the proportionate share of family pension.

9. Under Rule 54 of the CCS (Pension) Rules, 1972 [hereinafter referred to as 'Pension Rules'], minor children as well as divorced, unmarried daughters upto the age of 25 years or till they get married would be entitled to family pension apart from the widow.

10. The Hon'ble Supreme Court in *Rameshwari Devi Vs. State of Bihar* [2000(2) SCC 431] held that when a Hindu male dies intestate, the children of the deceased employee born out of the second wedlock would be entitled to a share in the family pension till they attain majority. In the same judgment it has been clarified that the children may be born out of a void marriage between the deceased employee and their mother. But they would be entitled to the property of the deceased father.

11. The Hon'ble High Court of Delhi in *Anita Vs. Union of India & Ors.* [192 (@012) Delhi Law Times Pg.449] held as under:-

"4. The Counsel for the respondent/review applicant Smt. Rita also relies on Rajeshwari V. Silvia Florance, 2002 Law Suit (Kar) 632 where a learned Single Judge of the Karnataka High Court relying on Rameshwari Devi (supra) held that family pension is designed to provide relief to the widow and minor children and is in the nature of a welfare scheme and that merely because the family pension is required to be sanctioned only in the name of certain persons that does not mean that they are the only beneficiaries of the scheme and that ultimately pension can be sanctioned in the name of more than one person. Relying again on Section 16 of the Hindu Marriage Act, the children of the deceased Government servant though borne of a void marriage were held entitled to the amount payable under the Family Pension Scheme during the period of their minority."

12. From careful reading of the entire Rule 54 of the Pension Rules, it is evident that the word 'Family' is used before pension. Therefore, the whole object of releasing the family pension is to give financial benefit to the entire family.

With this object Rule 54 of the Pension Rules was framed which provides that the period for which family pension is payable is relatable to the life spell of the widow/widower or till re-marriage and in the case of a son until he attains the age of 25 years and in the case of an unmarried daughter until she attains the age of 25 years or until she gets married, whichever is earlier. Under Rule 54(7)(b) of the Pension Rules, the pension is payable in shares. The Hon"ble Delhi High Court in *Anita Vs. Union of India & Ors.* (supra) held that Rule 54 of the Pension Rules does not only provide pension for the widow alone but to all the beneficiaries of pension particularly minor children till they attain the age of 25 years.

13. In the instant case I have already held that applicant nos. 2 to 5 being the minor children of the 3rd wife along with respondent no.7 being the widow of the deceased employee and the minor children of the second wife being respondent nos. 4 to 6 are entitled to the proportionate share of family pension.

14. It is submitted that the legally wedded wife being respondent no.7 expired on 20.05.2014 but her adopted son Master Shivam Raj (respondent no.8) is still surviving. I have already clarified that the respondents have wrongly interpreted the order passed by the Administrative Civil

Judge in succession proceedings. That apart, when the statute is very clear with regard to the entitlement of all the minor children till they attain the age of 25 years and the widow of the deceased employee to receive the proportionate share of family pension, the respondents cannot deny disbursement of the same to all the eligible beneficiaries.

15. Having regard to the facts and law stated hereinabove, the respondents are directed to pass appropriate orders after considering the eligibility for family pension of the claimants in terms of their present age and criteria required for family pension, and thereafter to release the proportionate share of pension to them from the date the respondent no.7, being the widow of the deceased employee, expired. The amount of family pension, which was already paid to the respondent no.7 (since deceased) cannot be refunded or returned in view of her said demise. Accordingly, the respondents are directed to pass appropriate orders in terms of the directions and in the light of the observations made above, within a period of two weeks from the date of receipt of certified copy of this order. The instant Original Application stands disposed of accordingly.

(Chameli Majumdar)
Member (J)