

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.473/2017

Reserved on: 26.07.2017
Pronounced on: 10.10.2017

Hon'ble Mr. Uday Kumar Varma, Member (A)

1. Aman Kumar Pandey, Aged 19 years
s/o Late Shri Ram Dulare Pandey,
R/o Vishnu Nagar Colony (Usru)
Tehsil Sadar, Distt. Faizabad,
UP Pin – 224 001.

2. Smt. Sushila Devi, Aged 45 years,
wd/o Late Shri Ram Dulare Pandey,
R/o Vishnu Nagar Colony (Usru)
Tehsil Sadar, Distt. Faizabad,
UP Pin – 224 001. ...Applicants

(By Advocate: Mr. Om Prakash)

Versus

1. General Manager,
MTNL, Nehru Place,
New Delhi – 110 099.

2. Chairman and Managing Director,
MTNL
5th Floor, Mahanagar Doorsanchar Sadan,
9, CGO Complex, Lodhi Road,
New Delhi – 3.

3. Manoj Kumar Pandey c/o Harish Kumar,
House No.272, Sector 7, Naharpur Gaon,
Near Car Market, Rohini,
New Delhi – 110 085. ...Respondents

(By Advocate: Ms. Neha Bhatnagar)

O R D E R

On an earlier occasion, applicant no.2 Mrs. Sushila Devi, who claimed to be the surviving wife of the deceased

employee Ram Dulare Pandey, an employee of the respondents, approached this Tribunal by way of OA No.2949/2014 seeking a direction to the respondents to pay GPF amount, family pension and other pensionary benefits on account the death of her husband. As the deceased employee, during his life time, had got recorded Geeta as his wife – mother of respondent no.3 and her two children namely Manoj and Saroj, there arose a dispute about the deceased's legal succession and, therefore, the said OA was dismissed by the Tribunal vide order dated 28.01.2015. Notwithstanding this dismissal of the OA, certain directions were issued to the respondents, which are reproduced hereunder:-

“16. However, on the facts and in the circumstances of the case, I issue the following directions:

(1) The respondents shall hold appropriate enquiry into the matter of settlement of the terminal benefits of Shri Ram Dulare Pandey, the deceased employee.

(2) During the enquiry, the respondents shall ensure attendance of Smt. Geeta (the first wife), Mr. Manoj Kumar Pandey (son of first wife), Ms. Saroj (daughter of first wife), Smt. Sushila Devi (the applicant), and Mr. Aman Kumar Pandey.

(3) During the enquiry, their statements should be recorded.

(4) If necessary, the respondents shall depute a responsible officer to the permanent residence of Shri Ram Dulare Pandey and permanent residences of the aforesaid persons for the purpose of recording their statements and the statements of relatives of Shri Pandey. The respondents are also free to collect any other relevant information from the local authorities.

(5) *The respondents shall give opportunity to all concerned to produce relevant documents before them in support of their respective claims.*

(6) *Thereafter, the respondents shall examine the Service Book and personal file and other relevant files in respect of Shri Ram Dulare Pandey right from the date of his joining the organization till the date of death. On the basis of all the records and evidence, both documentary and oral, to be laid by all concerned, the respondents shall record their findings and take appropriate decision as to the entitlement of any member/members of the family to the terminal benefits of Shri Pandey and thereafter make payment of the same strictly in accordance with the relevant rules. The respondents shall pass a reasoned and speaking order containing their findings and decision, and shall also communicate the same to all concerned.*

(7) *After taking the decision in the aforesaid manner, the respondents shall ensure prompt payment of all the dues to the member/members of the family of Shri Ram Dulare Pandey, who is/are found to be entitled to the same.*

(8) *The entire exercise shall be completed within three months from today.*

17. *With the aforesaid observations and directions, the O.A. is dismissed. No costs.”*

2. In compliance of the Tribunal's order dated 28.01.2015, the respondents having made enquiries, submitted the report and rejected the claim of the applicants, who have filed the present OA No.473/2017, vide the impugned order dated 22.09.2015 on the ground that Smt. Geeta is the legally wedded wife and not the applicant no.2 nor her son Sh. Aman Kumar Pandey was the legitimate son of the deceased employee.

3. Applicant no.1, being aggrieved by the respondents order dated 22.09.2015, approached the High Court of Delhi challenging the Tribunal's order dated 28.01.2015 passed in OA No.2949/2014 by way of WP(C) No.1611/2016, which was disposed of vide order dated 27.01.2017. Though the High Court did not express any opinion on the merits of the case, yet in the order it was opined that Tribunal's order dated 28.01.2015 would not foreclose or prevent the petitioner from raising his claim as the son of late Ram Dulare Pandey and accordingly his entitlement to the retirement benefits and claim for family pension. For the sake of clarity, relevant portion of the High Court's order is reproduced hereunder:-

*“6. In view of the aforesaid discussion, we hold that the order dated 28th January, 2015 passed in OA No.2949/2014, **Sushila Devi Versus General Manager, Mahanagar Telephone Nigam Limited and Another**, would not foreclose or prevent the petitioner from raising his claim as the son of late Ram Dulare Pandey and accordingly his entitlement to the retirement and claim for family pension. However, we clarify that we have not expressed any opinion on merits and on any other aspect. The writ petition is accordingly disposed of. No costs.”*

4. In view of the above directions of the High Court, applicants have approached this Tribunal by way of the present OA for quashing the enquiry report dated 22.09.2015 passed by the respondents declaring the applicant no.1 as illegitimate son against all settled canons

of law with a direction to the respondents to pay terminal benefits payable to the applicant in view of High Court's order dated 27.01.2017 along with amount of GPF, family pension and other payables like DCRG, GSLIS and leave encashment due to the applicants.

5. The respondents have filed their written statement denying the claim of the applicants. They have taken the preliminary objection of res judicata stating that the applicant no.2 had filed earlier OA for herself as well as for her son (applicant no.1 herein) as his guardian and lost the legal battle vide Tribunal's order dated 28.01.2015 passed in OA No.2949/2014. They have also stated that in compliance of the Tribunal's order dated 28.01.2015, they have got conducted the enquiry and found that one Geeta Devi was the legitimate wife, Manoj Kumar Pandey, legitimate son and Saroj was the legitimate daughter of the deceased employee, and the applicants herein were the illegitimate son and wife respectively. It is also submitted on behalf of the respondents that the Tribunal's order dated 28.01.2015 passed in OA No.2949/2014 has attained finality and the applicants cannot claim or try to reargue the matter which has already been settled by the Tribunal.

6. I have thoroughly gone through the pleadings of the case and carefully heard the arguments so advanced by the respective counsel.

7. From the facts of the case it clearly appears that this is a case where the legitimacy of successors of the deceased employee is being contested. On one hand, there is a claim of legally wedded wife and three children (wife is no more now) and on the other hand, claim is made by the son of a woman, who was supposedly an illegal wife of the deceased. In my view this dispute is not a dispute related to service matter. It is a dispute that relates to succession and legality of the heirs of the deceased employee for which the Tribunal has no jurisdiction. The question of payment of retiral dues or family pension etc. will arise only after the issue of succession or legality of heirs of the deceased employee is established. Such an exercise of declaring succession or legality of the heirs is beyond the jurisdiction of this Tribunal. It has also been brought to my notice that the applicant no.2 has already obtained a succession certificate but that is meant for GPF amount only.

8. The retiral dues of government employee fall into various categories. Some dues are to be paid, if the employee is deceased, according to the nomination made by

the deceased employee in the relevant records and the rules may provide that the nominee is entitled to receive the said amount. Therefore, for those dues, which are strictly based on nomination, the respondent department has to take action accordingly. However, there can be other kinds of dues which are to be paid to the legal successors of the deceased employee. It seems that it is this kind of dues which is a matter of dispute between Aman Kumar Pandey (applicant no.1) and his mother Smt. Sushila Devi (applicant no.2), who is supposedly not the legally wedded wife of the deceased employee on one hand and late Geeta, legally wedded wife of the deceased employee, and her three children, on the other.

9. In this view of the matter, to meet the ends of justice, I deem it appropriate to direct the respondents to ask the applicants as well as private respondent and all others who claim to be legitimate successors of the deceased employee to obtain legal succession certificate(s) or any such relevant and legal documents and submit the same to the respondents in support of their claim. Once such succession certificates/legal documents are obtained and produced before the respondent-department, the respondents shall consider the same in accordance with

rules and law and pass appropriate orders with respect to the payment of retiral dues of the deceased employee.

10. I, therefore, dispose of the present OA with the above directions. The respondents are further directed to settle the claims within a period of two months of receipt of such succession certificates and any other relevant legal documents.

11. No costs.

(Uday Kumar Varma)
Member (A)

/Ahuja/