

Central Administrative Tribunal
Principal Bench: New Delhi

OA No.1250/2016

Reserved on: 01.11.2017
Pronounced on: 06.11.2017

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

Pradeep Kumar Saxena,
s/o late Sh. M.N. Saxena
(Sh. Mahinder Nath Saxena)
B/o-Deceased Miss. Beena Saxena (LDC)
R/o 677, Sector – 7, Pushp Vihar,
New Delhi – 110 017. ...Applicant.

(By Advocate: Sh. U. Srivastava)

Versus

Union of India through
Deputy Commissioner,
Directorate of Data Management,
Erstwhile Directorate of Statistic & Intelligence,
Central Excise & Customs (Finance Revenue)
A-Wing, 3rd Floor, Pushpa Bhawan,
New Delhi – 110 062. ...Respondent.

(By Advocate: Sh. Avtar Singh Chauhan)

O R D E R

The applicant has filed the instant Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"(i) *To pass an order to declare that the deceased Miss Beena Saxena was entitled to add a weightage of 5 years under VRS in her qualifying service of 23 years i.e. 28 years qualifying service;*

- (ii) *to pass an order directing the respondent to disburse Death Gratuity according to qualifying service of 28 years & not of 23 years.*
- (iii) *to pass an order directing the respondent to disburse pension & arrears of pension to applicant.*
- (iv) *to pass an order directing the respondent to pay interest 12% per annum compounded annually on GPF & DCRG as mentioned in GO (Ms) No.122, dated 20.02.1995 of Finance (Pension) Department and 18% per annum compounded annually on arrear of pension & rest of the dues till the date of realization;*
- (v) *any such other order or orders as Hon'ble Tribunal deem fit and proper in the facts and circumstances may also be passed."*

2. Facts of the case, as emanated from the OA, are that Miss Beena Kumar (hereinafter referred to as 'deceased') was appointed in Directorate of Statistical Intelligence (which is presently known as Directorate of Data Management, Central Excise & Customs) on 26.03.1976 as L.D.C. She had applied for voluntary retirement to be effective from 11.04.1999 and her request for voluntary retirement was accepted by the competent authority and she was to retire voluntarily w.e.f. 11.04.1999. However, she died on 01.04.1999 i.e. before the date of voluntary retirement. As the deceased was unmarried and issueless, she nominated her father Sh. M.N. Saxena as first nominee and in case of demise of first nominee, her brother Mr. Pradeep

Kumar Saxena (applicant herein) as alternate nominee on 13.03.1982 to receive all the retiral/pensionary benefits. The father of the deceased expired on 07.12.1987, hence, the applicant, brother of the deceased being an alternate nominee, is entitled to receive the pensionary/retiral benefits.

3. In short, the claim of the applicant is that since the notice of VRS of the deceased was accepted by the competent authority, he, being an alternate nominee, is entitled to receive all the pensionary/retiral dues by adding 5 years qualifying service under Rule 49-A of the CCS (Pension) Rules, 1972 as also to receive the family pension after the demise of his sister as his father had already died on 07.12.1987. Despite the clear rule position and as per the nomination, the respondents had denied to add 5 years qualifying service in the service of 23 years rendered by the deceased in order to calculate the retiral dues and family pension. The respondents have also not decided the issue of family pension.

4. Aggrieved, the applicant applied for succession certificate which was issued by the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent

Controller (Central) Delhi vide order dated 03.06.2014 and in spite thereof, the respondents have failed to release the legitimate dues of the deceased by extending the benefit of 5 years adding in the qualifying service, to the applicant, hence, this OA.

5. The respondents have filed their counter affidavit denying the contentions of the applicant made in the OA. They have submitted that though the request of the deceased for voluntary retirement was accepted by the competent authority and she was to retire voluntarily w.e.f. 11.04.1999, but she died on 01.04.1999 i.e. before the date of voluntary retirement. Meaning to say, she is deemed to have died while in service. Therefore, provision of Rule 49-A of CCS (Pension) Rules, 1972 for providing the benefit of 5 years service to be added in the qualifying service for the purpose of calculating pension/family pension does not apply in the case of the applicant. They have also submitted that the applicant and other beneficiaries, as per the succession certificate submitted by the applicant, have already been granted their respective share of dues of the deceased employee. Insofar as the claim of the applicant for family pension is concerned, the same cannot be

released to him as under Rule 54 of the CCS (Pension) Rules, 1972, brother is not in the line of eligible members of the family of deceased either in Category I or Category II to whom the family pension can be passed. They have further submitted that the applicant was not even residing with the deceased. This fact is evident from the police report (Annexure 3) which states that "after 4/5 days of death, when the foul smell came from her house, the police was informed by her next door neighbor, the police break opened the door of her house and found her body in highly decomposed shape". It clearly goes to show that the applicant was not residing with the deceased employee.

6. However, the main claim of the applicant hinges on adding of 5 years qualifying service in 23 years of service rendered by the deceased making that 28 years qualifying service treating the deceased as having retired voluntarily, which argument of the applicant is not sustainable as the employee (Ms. Beena Saxena) died before the date of voluntary retirement and, therefore, she is deemed to have died in harness. Therefore Rule 49-A of the CCS (Pension Rules, 1972) cannot be applied in this case and the applicant is not

entitled to any other dues over and above already paid to him as per rules and succession certificate.

7. I have thoroughly gone through the pleadings of the case, succession certificate and other documents produced by the parties and have carefully heard the arguments of the counsel for the parties.

8. It is not in dispute that Ms. Beena Saxena (deceased employee) died on 01.04.1999 whereas she was to retire voluntarily on 11.04.1999. It is also not in dispute that the applicant and other beneficiaries have already been paid their legitimate dues as per the succession certificate issued by the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent Controller (Central) Delhi. The twin issues which need to be adjudicated is that whether the applicant is entitled to get added 5 years of service in the service rendered by the deceased employee for getting the retiral dues on the basis of enhanced qualifying service and whether the applicant is entitled for the family pension.

9. Insofar as the issue no.1 is concerned, I am of the considered opinion that if the employee had died after

11.04.1999 i.e. the date of voluntary retirement, the applicant would have got the benefit of addition of 5 years qualifying service. But, since the employee died before the date of voluntary retirement, I agree with the argument of the respondents' counsel that the benefit of extension of 5 years qualifying service cannot be given. As regards other reliefs claimed by the applicant in respect of gratuity, leave encashment, GPF etc., the respondents in their written statement have clarified that these dues have been disbursed as per rules and the succession certificate issued by the competent authority. Some of the dues have been paid to the applicant, who was an alternative nominee, while some other dues have been paid to the applicant along with some other family members as per the succession decree issued by the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent Controller (Central) Delhi.

10. Insofar as prayer for family pension is concerned, as has been submitted by the respondents that brother of the deceased employee is not in line of family members either in Category I or in Category II, the applicant, being brother of the deceased employee, is

not entitled to the family pension. I also find that even in the succession certificate so obtained by the applicant from the court of Sh. Sandeep Garg, Administrative Civil Judge-cum-Additional Rent Controller (Central) Delhi and submitted before the respondents, there is no whisper about the family pension to be released to the applicant. In any case, the grant of family pension is governed by Rule 54 of CCS (Pension) Rules, 1972, relevant portion pertaining to family is reproduced below:-

“‘Family’ for Family Pension – For the purpose of grant of Family Pension, the ‘Family’ shall be categorized as under:-

Category-I

- (a) *Widow or widower, up to the date of death or re-marriage, whichever is earlier;*
- (b) *Son/daughter (including widowed daughter), up to the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of 25 years, whichever is the earliest.*

Category-II

- (c) *Unmarried/Widowed/Divorced daughter, not covered by Category I above, up to the date of marriage/re-marriage or till the date she starts earning or up to the date of death, whichever is earliest.*
- (d) *Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.*

Family pension to dependant parents unmarried/ divorced/ widowed daughter will continue till the date of death.

Family pension to unmarried/widowed/divorced daughters in Category-II and dependent parents shall be payable only after the other eligible family members in Category I have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension. Grant of family pension to children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category.”

It can be seen from the above that there is no provision that entitles a brother to make a claim for family pension.

11. In view of the above discussions, rule position and contents of the succession certificate, I am of the considered opinion that the applicant is not entitled to any of the reliefs, as prayed for by him, and the OA, being misconceived, deserves to be dismissed. I order accordingly. No costs.

(Uday Kumar Varma)
Member (A)

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