

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1023 OF 2017

New Delhi, this the 5th February, 2018

CORAM:

HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER

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Lila Nisha,
Resident of B-18,
Indira Camp, Kalyan Puri,
Delhi 110091

.....

Applicant

(By Advocate: Mr.Surinder Kumar Bhasin)

Vs.

Ministry of Home Affairs and others through

1. Dy.Commissioner of Police,
III/VI BN, Delhi Armed Police,
Vikas Puri,
New Delhi 110018

2. Commissioner of Police, Delhi,
Police Headquarters,
M.S.O. Building,
New Delhi 110002

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Respondents

(By Advocate: Ms.Harvinder Oberoi)

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ORDER

In this O.A. filed on 15.3.2017 under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- “(i) To direct the Respondents to pay to the Respondent (*sic*) interest at the rate of 12(Twelve) per cent per annum on the delayed payment of retirement dues such as DCRG,

Pensionary benefits including arrear of pension, leave encashment etc. from the due date till the date of actual payment.

- (ii) Grant such other and further reliefs as deemed fit and proper in the facts and circumstances of the case.”

2. I have carefully perused the records and have heard Mr.Surinder Kumar Bhasin, learned counsel appearing for the applicant, and Ms.Harvinder Oberoi, learned counsel appearing for the respondents.

3. Brief facts of the applicant's case are that Mr.Amir Khan joined Delhi Police as a Head Constable (Driver) on 10.3.1968. Mr.Amir Khan first married 'Smt. Surya Begum'. On death of 'Smt. Surya Begum', Mr.Amir Khan again married 'Smt. Shamshed Begum'. 'Smt. Shamshed Begum' died of cancer. On death of 'Smt. Shamshed Begum', Mr.Amir Khan again married the applicant-'Smt. Lila Nisha' in January 1985 by exchange of garland in 'Sai Baba Mandir', Lodhi Road. To confirm this marriage, Mr.Amir Khan and the applicant again married as per the Muslim custom and procedure, vide Certificate of *Nikah* issued by the *Qazi/Imam*. There were three children born to Mr.Amir Khan through his first and second wives. While in service, Mr.Amir Khan passed away on 2.1.1998 due to ill health. Till the date of death of Mr.Amir Khan, those children were brought up by and were living with Mr.Amir Khan and the applicant. She was the third wife of Mr.Amir Khan. Respondent no.1, vide letter dated 12.3.1998 and subsequent reminder dated 14.5.1998 (Annexure 1 collectively), required her to attend his office and fill up the pension papers. Accordingly, she filled up the pension papers, and, by letter dated 17.5.2000 (Annexure 2

collectively), requested respondent no.1 to settle and pay to her all pensionary benefits. Instead of making payment of pensionary and GPF dues, respondent no.1, by letter dated 22.8.2000 (Annexure 3), required her to submit 'Succession Certificate' issued by the First Class Magistrate in respect of all the legal heirs of Mr.Amir Khan so that the pension case in respect of Mr.Amir Khan could be finalized. Therefore, she filed petition before the competent court for grant of Succession Certificate. The learned ACJ-cum-ARC (Central) Delhi, issued Succession Certificate in her favour on 7.8.2014 (Annexure 5). She submitted the Succession Certificate before respondent no.1 on 7.8.2014 and made a request to respondent no.1 to release all the pensionary benefits, etc., in her favour. After a lot of persuasion, respondent no.1 released the following benefits to her:

- “(i) DCRG Rs.1,50,568.00 vide Cheque No.936310 dated 29.07.2015 drawn at State Bank of India, Tis Hazari, Delhi.
- (ii) Pensionary benefits (including arrear of pension) amounting to Rs.9,00,359.00 vide Cheque No.839479 dated 23.11.2015 drawn at State Bank of India, Tis Hazari, Delhi.
- (iii) Rs.30,000/- vide Cheque No.936429 dated 30.07.2015 drawn at State Bank of India, Tis Hazari, Delhi.”

As no interest on the above pensionary benefits for the period of delay was paid to her, the applicant served a legal notice dated 13.2.2017 (Annexure 8) on respondent no.1 claiming interest @ 12% per annum from 2.1.1998 till the date of actual payment. Respondent no.1 replied to the legal notice, asserting that the applicant was not entitled for any interest on pensionary

benefits, vide letter dated 22.2.2017(Annexure 9), which is reproduced below:

“Subject: Legal Notice regarding payment of interest on delayed payment of pensionary benefits to Smt. Lila Nisha, W/o late Head Constable (Dvr.) Amir Khan, No.7181/DAP is as under:

Point No.1 to 5: Head Constable (Dvr) Amir Khan, No.7181/DAP had expired on 02.01.1998 due to illness. His name was struck off from the roll of Delhi Police w.e.f. 03.01.1998 vide order dated 09.01.1998. His crimination charges (Rs.2000/-) were handed over to one Smt.Leela Devi. On scrutiny of Service Record of the deceased, it was found that Smt. Suria Beghum was mentioned as his wife on the page of names of family members. Whereas one Smt. Lala Devi has been nominated for the benefits of Delhi Police Mutual Welfare Scheme. Furthermore, no nomination was made by the deceased, for payment of DCRG, as no such record is found in the Service Record at the time of preparation of pension case on 20.09.1998. No one from his family came forward to submit legal documents i.e. death certificate, legal heir certificate, etc. to claim the pensionary benefits. In this regard, the office of 6th Bn DAP had sent seven letters on the available address of the legal heir through Indian Post with the request to submit required documents, but in vain.

Later on, the following four persons, claiming their relationship with the deceased as noted against each, came forward to seek financial benefits of the deceased and submitted a legal heir certificate issued in their favour by S.D.M., Vivek Vihar, Delhi:-

S.No.	Name	Age	Relationship
1	Smt. Lila Nisha	45 yrs	Wife
2	Sh.Firoj Khan	28 yrs.	Son
3	Sh.Raj Khan	20 yrs	Son
4	Ms.Saira Bano	18 yrs	Daughter

To ascertain the actual legal heir of the deceased an enquiry was got conducted to know real facts and details of all wives of late Head Const.(Dvr.) Amir Khan. On the basis of the enquiry report, legal opinion of the then Legal Advisor of the CP, Delhi was obtained in this case and it was decided to ask the claimants to produce the succession certificate for the settlement of family pension case. Smt. Lilla Nisha, R/o B-18, Indira Camp, Kalyan Puri, was directed to submit a ‘Succession

Certificate' to decide the family pension case vide this office U.O. dated 09.01.2001.

Smt. Leela Nisha had filed OA No.156/2001 in the Hon'ble Court claiming that she is actual claimant and legal heir of the deceased Head Constable (Dvr.) and requested for Succession Certificate from the Court in her favour. On the last date of hearing fixed for 14.02.2007, the Hon'ble Court dismissed her application for Succession Certificate.

Later on, the Hon'ble Court of Shri Sandeep Garg, ACJ cum ARC (Central) Delhi vide judgment dated 07.08.2014 passed the order regarding Succession Certificate in the favour of Smt. Lila Nisha.

Point No.6 to 9: The delay for disbursing of pensionary benefits is not on the part of the Department, as this case was pending for want of succession certificate. Your client (Mrs.Lila Nisha) had claimed for family pension and other benefits along with succession certificate only on 08.08.2014 and submitted the relevant affidavits and other required documents on 28.11.2014.

Legal opinion of the competent authority regarding entitlement of (Smt. Lila Nisha) family pensioner for the payment of interest on pensionary benefits, was obtained and it was opined that the delay was on the part of legal heir of the deceased, as the case was pending for want of succession certificate. Accordingly, the family pension case was submitted in the office of PAO-IV, Tis Hazari, Delhi for the finalization of pensionary benefits in favour of Smt. Leela Nisha. Family pension case/DCRG was finalized from the office of PAO-IV, Tis Hazari, Delhi on 20.07.2015. Thus, the delay in release of pensionary benefits in the case of your client is not attributed on the part of this office, as the case was pending for want of succession certificate, as per detail mentioned above.

Point No.10 to 13: As regard OA No.948/2011 and OA No.3356 of 2010, in this regard it is stated that each and every case is decided on its merits. As per Rule 68 of CSS (Pension) Rules, 1972 *"If the payment of gratuity has been authorized later than the date when its payment becomes due and it is clearly established that the delay in payment was attributable to administrative lapses, interest shall be paid at such rate as may be prescribed and in accordance with the instructions issued from time to time."* In the instant case of your client the case was pending for releasing the pensionary benefits due to delay

on the part of your client, as per service record deceased Head Constable (Dvr) had not nominated your client as nominee in the nomination forms of DCRG/DPWS and CGEIS benefits as well as in the family members list. Your client was briefed by the office of the DCP/6th Bn. DAP for submitting the succession certificate in this regard.

As per rule position explained above your client is not entitled for any payment of interest on delayed pensionary benefit in view of the above submission.”

In view of the above, the present O.A. was filed by the applicant on 15.3.2017 seeking the reliefs as aforesaid.

4. In their counter reply, besides reiterating the contents of the letter dated 22.2.2017 (Annexure 9), the respondents have stated, *inter alia*, that Mr.Amir Khan had never intimated them about his second marriage after the death of his first wife-‘Smt. Surya Begum’. The cremation charge of Rs.2000/- was handed over to ‘Smt. Leela Devi’ at the time of death of Mr.Amir Khan. After death of Mr.Amir Khan, respondent no.1 sent letters dated 12.3.1998, 14.5.1998,26.6.1998, 4.9.1998, and 31.12.1998 to Smt.Lila Devi to produce the legal heir documents and to attend the office to fill up the pension papers, but the Post Office returned those letters undelivered with the remarks that “*Is Name Ka Koi Nahi Rahta*”. Thereafter, respondent no.1 sent letters dated 26.4.1999 and 9.6.1999 to Mr.Firoj Khan to produce the legal heir documents and to attend the office to fill up the pension papers, but the Post Office also returned those letters undelivered with the remarks that “*Kafi Talash Kerne per Bhi Pata Nahi Laga*”. It has also been stated by the respondents that the applicant submitted the Succession Certificate dated 8.8.2014 along with legal heir affidavit on 28.11.2014

claiming payment of pensionary benefits. After completing the formalities, the pension case was finalized and all the pensionary benefits were paid to the applicant in the year 2015.

5. In the above context, Mr.Surinder Kumar Bhasin, learned counsel appearing for the applicant, invited the attention of the Tribunal to Rule 53 of the CCS (Pension) Rules, 1972 and the instructions issued thereunder by the Government from time to time, and submitted that the respondents were under obligation to review the service record of Mr.Amir Khan and to ensure that nominations for DCRG, etc., were obtained from him, and necessary entries made in his service book. It was also submitted by Mr.Surinder Kumar Bhasin that Mr.Ami Khan had duly intimated the respondents about his marriage with the applicant, and on the basis of official record, when the respondents handed over the cremation charge of Rs.2000/- to the applicant as the wife of Mr.Amir Khan, the subsequent plea taken by the respondents that Mr.Amir Khan had not nominated the applicant to receive the DCRG and other pensionary benefits on his death and that the applicant should produce succession certificate in support of her claim was nothing but a clever ruse with a view to deny and/or delay the payment of pensionary benefits to her. Therefore, the applicant was entitled to interest on the pensionary benefits with effect from the date following the date of death of Mr.Amir Khan till the date of actual payment. In support of the case of the applicant, Mr.Surinder Kumar Bhasin relied on the following decisions:

- (i) *S.K.Dua Vs. State of Haryana and another*, Civil Appeal No.184 of 2008, decided by the Hon'ble Supreme Court on 9.1.2008;
- (ii) *Dr.Satya Prakash Vs. Union of India and others*, OA No.4131 of 2010, decided by the Principal Bench of the Tribunal on 4.8.2011;
- (iii) *Urmila Sharma Vs. Chief Secretary, GNCT of Delhi and others*, OA No.3355 of 2010, decided by the Principal Bench of the Tribunal on 16.8.2011;
- (iv) *Brijendra Sigh Vs. The Union of India and others*, OA No.1611 of 2011, decided by the Principal Bench of the Tribunal on 20.9.2011; and
- (v) *Jagdish Kumar Vs. Union of India and another*, O.A.No.948 of 2011, decided by the Principal Bench of the Tribunal on 30.11.2011.

I have carefully perused the above decisions.

6. *Per contra*, it was submitted by Ms. Harvinder Oberoi, learned counsel appearing for the respondents that on the facts and in the circumstances of the case, there was no delay on the part of the respondents in paying the pensionary benefits to the applicant.

7. The applicant has not produced before this Tribunal any document showing that Mr.Amir Khan had intimated the respondent-Department about his marriage with Smt. Shamshed Begum after death of his first wife Smt. Surya Begum, or with the applicant after the death of his second wife Smt. Shamshed Begum. The nomination for benefit under the CGEIS (Annexure R-1) submitted by Mr.Amir Khan clearly shows the name of 'Surya Begum' as his wife. It is, thus, evident that Mr.Amir Khan had mentioned 'Surya Begum' as his wife. In the absence of any intimation by

Mr.Amir Khan to the respondent-Department about the death of his wife- 'Smt. Surya Begum', or his marriage with 'Smt.Shamshed Begum' for the second time and her death, or his marriage with the applicant-'Smt. Lila Nisha' for the third time, the question of execution and submission of fresh nomination paper by Mr.Amir Khan or making of appropriate entry in his service book/record by the respondent-Department did not arise. Furthermore, the nomination for benefits under the Delhi Police Mutual Welfare Scheme, 1990 (Annexure R-2), which is stated by the respondents to have been submitted by Mr.Amir Khan mentioning 'Smt. Leela Devi' as his wife, does not bear the signature of Mr.Amir Khan. It has not been explained by the respondents as to how the said nomination was available on service record of Mr.Amir Khan. If at all the applicant was staying with Mr.Amir Khan along with the children born through the first and second wives of Mr.Amir Khan during the life time of Mr.Amir Khan and after death of Mr.Amir Khan at 'H.No.13/106, Trilok Puri, Delhi', she ought to have received any of the letters dated 12.3.1998, 14.5.1998, 26.6.1998, 4.9.1998 and 31.12.1998 addressed by respondent no.1 to 'Smt. Lila Devi' at the same address, claiming that she was the third wife of Mr.Amir Khan, and ought to have also approached respondent no.1 for releasing the pensionary benefits in her favour. The applicant only, for the first time, by her letter dated 17.5.2000 (Annexure 2), requested respondent no.1 to settle and pay to her all pensionary benefits. In the absence of any material on service record of Mr.Amir Khan showing applicant-'Smt.Lila Nisha' as his wife,

respondent no.1 cannot be faulted for requiring the applicant to submit succession certificate, vide his letter dated 22.8.2000 (Annexure 3). If at all the applicant felt that respondent no.1 acted illegally and arbitrarily in disputing her status as the third wife of Mr.Amir Khan and in requiring her to produce succession certificate, the applicant ought to have either approached the competent authority or the judicial forum for redressal of her grievance. Instead of doing so, the applicant made application before the competent court of law for issuance of succession certificate in the year 2000/2001 and could obtain the succession certificate only on 7.8.2014. On submission of the succession certificate and affidavit of legal heirs by the applicant on 27.11.2014, the respondent-Department finalized the matter and paid the pensionary benefits only in July and November 2015. The plea of the applicant that respondent no.1 paid cremation charge of Rs.2000/- to her on the death of Mr.Amir Khan was disputed by the respondents who have specifically asserted that the cremation charge of Rs.2000/- was handed over to Smt. Lila Devi. In view of the above, and on the totality of the facts and circumstances of the case, I have no hesitation in holding that the delay in payment of pensionary benefits to the applicant was not at all attributable to administrative lapses. It cannot also be said that the respondents willfully and deliberately, or without rhyme or reason, delayed the releasing of the pensionary benefits in favour of the applicant. Therefore, decision of the respondents refusing to accede to the applicant's claim for payment of

interest on the pensionary benefits cannot be said to be perverse, arbitrary and illegal.

8. The decisions relied upon by Mr.Surinder Kumar Bhasin, learned counsel appearing for the applicant, being distinguishable on facts, do not support the case of the applicant.

9. Resultantly, the O.A., being devoid of merit, is dismissed. No costs.

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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