

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4578/2014

This the 5th October, 2016

Hon'ble Shri P.K. Basu, Member (A)

Ms. Nityawati Sharma
Aged about 51 years
D/o Late Shri Shiv Charan Sharma
198/20, Shri Ram Nagar
Shahdara, Delhi-110032. ..Applicant

(By Advocate: Shri M K Bhardwaj)

Versus

Union of India and Ors.:

1. The Secretary
Ministry of Communication &
Information Technology
Department of Post
Dak Bhawan, Delhi.
2. The Post Master General
Department of Post
Ministry of Communication &
Department of Post
Dak Bhawan, Delhi.
3. The Director of Accounts
Postal Accounts Office
Delhi-110054.
4. The Sr. Superintendant of Post Offices
Delhi East, Delhi-110001. ...Respondents

(By Advocate: Shri Hanu Bhaskar)

O R D E R (ORAL)

The applicant, D/o of late Shri Shiv Charan Sharma who was an employee of the Postal Department, has filed this Original Application with the prayer that she be granted family pension

after the death of her father as she is the unmarried daughter of late Shri Sharma. Vide letter dated 15.02.2011, the respondents have written to the applicant regarding her claim stating as follows:-

"Please find enclosed herewith your representation, in original, with the request to provide mother's death certificate. The death certificate of father as well as mother is also compulsory for processing the case."

2. According to learned counsel for the applicant, the late Government servant, Shri Sharma, had retired from Govt. service in the year 1977 and later on died on 21.10.2003. His death certificate is also filed as Annexure A-3. The learned counsel for the applicant states that the applicant is not in a position to provide her mother's death certificate as she had died in 1982 and after such a long time it has not been possible for her to obtain a death certificate despite serious efforts made by her in this regard. The applicant has also filed (A-7) application dated 19.05.1997 by late Shri Shri Shiv Charan Sharma in which he has stated as follows:-

"I retired from the office of the Director of Accounts (Postal) Delhi as a Senior Accountant. My P.P.O. No. is D.H. 30507 Dt. 26.11.1977. At present I am drawing my pension from the office of the Sub-Post Master, Anaj Mandi, Shahdara. I have to say that while filling in my nomination form I did not nominate any body as my wife had died and all my children had crossed the age of 21 years. I am now told that an unmarried daughter is entitled for such benefits without any age bar. In view of this I request you to kindly supply me a nomination form urgently or add the name of my daughter viz. Nityawati Sharma in the form at your end under intimation to me at the following address.

Thanking you,

Dated:-19.5.97"

3. This was followed by a reminder dated 24.12.1999 (Annexure A-2). It is the contention of the learned counsel that Annexure A-7 and Annexure A-2 establish that the applicant's mother had died before the date the first application was made i.e., 19.05.1997 and secondly that her father had intended to nominate her in the record of the respondents. Learned counsel for the applicant further states that Government instructions on Rule 54 of CCS (Pension) Rules (para 22) provides as follows:-

"(22) In the event of death of a family pensioner, the arrears of family pension is payable to eligible member of the family next in line.-It is not considered necessary to provide the facility of nomination for family pension. In the event of death of a family pensioner, the right to receive any arrears of family pension would automatically pass on to the eligible member of a family next in line in accordance with Rule 54 of CCS (Pension) Rules, 1972."

4. Moreover, under para 13 it is provided that as per provisions of DOP&T OM No.1/17/86-P. & P.W., dated 29.08.1986, presumption of death after seven years from the date of FIR being lodged will apply and an indemnity bond would be obtained from the family members.

5. Learned counsel for the respondents states that the applicant has not been able to furnish the death certificate of the mother of the applicant. Moreover, there is no information or

request by other children of Late Shri Shiv Charan Sharma. It is stated that in the absence of original death certificate of the mother, a certificate from the Competent Authority regarding her marital status, unemployment and Income and further consent from eligible daughters of Late Shri Shiv Charan Sharma, it would not be possible to consider processing of her case.

6. I have heard the learned counsel and also gone through the relevant rules cited by the parties. In my opinion, the respondents are only harassing the applicant taking a technical view in the matter that the death certificate of the mother has not been filed by the applicant. Their concern about the fact that other children of the deceased Govt. employee may also raise similar claims in future plus the certificate regarding the marital status of the applicant, however, seem to be genuine concerns. Learned counsel also raised preliminary objection that the cause of action arose in 2003. Even after the letter dated 15.02.2011 was issued three years have passed before the OA was filed on 19.12.2014. Thus, this OA is hopelessly time barred and, therefore, not maintainable.

7. As regards limitation issue raised by the learned counsel for the respondents, there is indeed delay from 2011 till 2014. However, under the circumstances, I condone this delay as apparently the applicant has been running around to obtain her mother's death certificate.

8. From Annexure 7, the following facts emerge;
 - (a) That the wife of late Govt. servant had died even prior to 19.05.1997 and;
 - (b) Secondly that he wanted the applicant to be nominated to receive the pensionary benefits. Moreover, as pointed out by the learned counsel for the applicant, counting from 1997 also 7 years have passed and, therefore, the fact of the death of the mother can be reasonably concluded.
 - (c) The other issue raised by the respondents is that so far nothing has been heard from the other children. The other children were definitely aware of family pension and would have approached the respondents for family pension. From the letter dated 19.05.1997, it appears that late Shri Shiv Charan Sharma himself had been aware that other children are not eligible having crossed 21 years of age and he had asked for nomination of the applicant being an unmarried daughter. Therefore, even this objection raised by the respondents is not valid.
 - (d) As regards the respondents need to satisfy themselves that she is indeed an unmarried person, this fact needs to be ascertained.

8. I, therefore, dispose of this OA with the following directions:-

- (1) The respondents shall request the competent authority which would perhaps be the local Sub Divisional Magistrate of the area, to inquire and report to the respondents whether the applicant is indeed unmarried or not.
- (2) In case the certificate at (1) is that she is unmarried then the family pension would be released after obtaining an indemnity bond as provided in the rules.

A time frame of three months is fixed for compliance of this order. No costs.

**(P.K. Basu)
Member (A)**

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