

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00846/2017

Jabalpur, this Tuesday, the 06th day of November, 2018

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Usha Sonkar
W/o Late Mohan Lal Sonkar,
Aged about 50 yrs.
Dependent Sister of
Late K.K. Sonkar
Ex-Mail Man RMS,
'JB' Division Jabalpur
R/o 581 (571 New)
Maharishi Arvind Ward,
Khatik Mohalla,
Ghamapur Chowk
Jabalpur 482001 Mobile 9713360348

-Applicant

(By Advocate –**Shri J.B. Singh**)

V e r s u s

1. Union of India,
Through Secretary
Department of Posts,
Ministry of Communication,
Dak Bhavan, 1, Sansad Marg
New Delhi 110001

2. Postmaster General
Indore Region Indore 452001

3. Superintendent RMS
JB Division Civil Lines,
Jabalpur 482001

- Respondents

(By Advocate –**Shri D.S. Baghel**)
(Date of reserving the order:-31.10.2018)

ORDER

This Original Application has been filed by the applicant against the order dated 19.06.2017 (Annexure A-4, A-5 and A-6) and order dated 04.07.2017 (Annexure A-9) passed by respondent No.3, whereby she has been asked to produce succession certificate for payment of Death-cum-Retirement Gratuity and other terminal benefits.

2. The applicant has prayed for the following reliefs:-

“8(i) Quash in the interest of justice the order dated 19.06.2017 (Annexure A-4, A-5 and A-6) and order dated 04.07.2017 (Annexure A-4) passed by the Respondent No.3 being unjustified, arbitrary and against the provisions of rules;

8(ii) Order for the payment of DCRG, Pension and other Terminal benefits viz; Leave Encashment, GPF, CGEGIS etc. as are due and admissible on the death of the deceased, late K.K. Sonkar;

8(iii) Any other order/orders which this Hon'ble Court deems fit and proper.

8(iv) Cost of the petition may also kindly be awarded.”

3. The case of the applicant is that she is a widow of Late Shri Mohan Lal Sonkar, who died on 13.12.1988 (Annexure A/1), she along with her two daughters namely Sonia and Meenu shifted to her brother Shri K.K. Sonkar's house, as there was no means of livelihood at her husband's house. She along with her daughters was residing in her brother's house and were fully dependent on

him. Her brother Shri K.K. Sonkar, who was working on the post of Ex-Mail Man, RMS 'JB' Division Jabalpur was expired on 18.12.2016 (Annexure A/3) while working in the Head Record Office under RMS 'JB' Division Jabalpur.

3.1 The applicant's late brother Shri K.K. Sonkar had nominated the applicant for getting the payment of DCRG on 29.09.2003 as being fully dependent and residing with him. It is submitted by the applicant that her late brother had taken divorce with his wife Smt. Jyoti Sonkar in the year 2003 as per customary traditions prevailed in Khatik Samaj. Smt. Jyoti Sonkar was paid lump sum of maintenance amount of Rs.35000/- and other materials on 06.10.2015 (Annexure A/2) in presence of Samaj's Head duly registered in the Samajik Register.

3.2 Being fully dependent on his late brother Shri K.K. Sonkar, applicant claimed for payment of terminal benefits including pension and DCRG to the respondent-department. However, vide letter dated 19.06.2017 the respondent-department asked the applicant as well as her daughters to produce the succession certificate for payment of DCRG and other terminal benefits. In response to the said letter, the applicant vide letter dated 28.06.2017 (Annexure A-7) stated that being single and absolute nomination in favour of the applicant, no succession certificate for

payment of DCRG is required as per rules. The applicant thereafter preferred a detailed representation dated 12.07.2017 (Annexure A-10) stating that as per pension Rules, DCRG is payable only to the nominee irrespective of the existence of wife which has already been divorced. But no heeds have been given by the respondent-department. Hence, the applicant is before this Tribunal.

4. The respondents in their reply have submitted that Late K.K. Sonkar made a DCRG nomination on 26.09.2003 (Annexure R/1) in the name of Smt.Usha Sonkar (ex-Official sister) and niece Ku. Sangeeta and Meenu. Late Shri K.K. Sonkar had also filed a family member list on 05.10.2005 (Annexure R/2) whereby the name of his wife Smt. Jyoti Sonkar is mentioned. After the death of the official, the case of pension was handed over to IRM for enquiry, which submitted his enquiry report dated 02.01.2017 (Annexure R/3) whereby it has come to a conclusion that “divorce of the deceased employee and Smt. Jyoti Sonkar was made in the presence of society members with the consent of both but the case was not presented in the court. Further, in the preference of family members widowed sister is ranked last in the list. Thus, succession certificate by court along with consent of it is essential for finalization and settlement of case.” In view of this, respondent-department vide letter dated 19.06.2017 (annexure R-4, R-5, and

R-6) asked the applicant and her two daughters to produce succession certificate. Thereafter the applicant submitted a copy of Samajik Panchayat Resolution dated 04.5.2003 along with letter dated 06.10.2015 to make payment of DCRG to her under Central Civil Services (Pension) Rules, 1972 (hereinafter to referred as “**Pension Rules**”) as per Rule 51, 53 and 54 (Annexure R/8, R/9, and R/10).

4.1 In the reply the respondents have admitted that late deceased employee Shri K.K. Sonkar had nominated the applicant and her two daughters on 29.09.2003. It has also been admitted by the respondents that late Shri K.K. Sonkar brother of the applicant had taken divorce with his married wife namely Smt. Jyoti Sonkar in the year 2003 as per customary traditions prevailed in ‘Khatik Samaj’ but not before the Court.

4.2 It has been further submitted by the respondents that as per Rule 54(1)(b)(iii) under the Pension Rules , 1972 regarding the family pension it has been stated that the family of the deceased shall be entitled to family pension. Hence the O.A. filed by the applicant is without any substance and is liable to be dismissed.

5. The applicant has filed rejoinder to the reply filed by the respondents and has reiterated its earlier stand taken in the O.A. It has been submitted by the applicant that Smt. Jyoti Sonkar had

already been divorced by the deceased employee as per customary rites on 04.05.2003 (Annexure R/9) as confirmed on 06.10.2015 (Annexure R/10). So, when Smt. Jyoti Sonkar ceased to exist as wife after divorce and not claimed any of the terminal benefits, then making her formal party is not required. Being only one claimant that too a valid nominee, there is no justification for asking succession certificate. It has been specifically submitted that as the deceased employee has no family member, the applicant is entitled to family pension and other terminal benefits.

6. Heard the learned counsel for both the parties and perused the pleadings and documents annexed therewith.

7. On perusal of Annexure R-1, it is clear that the applicant (Usha Sonkar) along with Sonia and Meenu has been nominated in the relevant Form-I nomination for DCRG under Rule 53(1) of the Pension Rules by the deceased employee. So, there is no dispute regarding the nomination under Rule 53 (1) in respect of applicant. The only objection of the respondent-department is that as per Annexure R/2 dated 05.10.2005, the name of Jyoti Sonkar has been shown, whereas the case of the applicant is that Smt. Jyoti Sonkar was divorced as per custom by the deceased K.K. Sonkar on 04.05.2003 (Annexure R/9) and as per Annexure A/2, Smt. Jyoti

Sonkar was paid lump sum of maintenance amount of Rs.35000/- on 06.10.2015.

8. The learned counsel for the applicant has relied upon the Rule 51 of the Pension Rules, which is pertaining to the gratuity purpose. The relevant Para 51(1)(a) is as under:-

“51(1)(a) The gratuity payable under Rule 50 shall be paid to the person or person on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53.”

So, the name of the applicant has appeared as nominee which is clear from Annexure R/1.

9. As per Rule 53(1) there is a provision for nomination and the relevant Rule 53 of the Pension Rules is as under:-

“53(1) A Government servant shall on his initial confirmation in a service or post, make a nomination in Form 1, conferring on one or more persons the right to receive the [retirement gratuity/death gratuity payable under Rule 50.”

10. Further Rule 50 (6) of the Retirement/Death Gratuity is as under:-

“50 (6) For the purposes of this rule and Rules 51, 52 and 53, ‘Family, in relation to a Government servant, means-
(i) wife or wives including judicially separated wife or wives in the case of a male Government servant,
(ii) husband, including judicially separated husband in the case of a female Government servant,
(iii) sons including stepsons and adopted sons,
(iv) unmarried daughters including stepdaughters and adopted daughters,
(v) widowed daughters including stepdaughters and adopted daughters,

- (vi) *father- including adoptive parents in the case of individuals whose personal law permits adoption.*
- (vii) *mother*
- (viii) *brothers below the age of eighteen years including stepbrothers,*
- (ix) *unmarried sisters and widowed sisters including step sisters*
- (x) *married daughters, and*
- (xi) *children of a pre-deceased son.”*

So, from the above Section 50(6) the word ‘Family’ has been defined and unmarried sisters and widowed sisters including stepsisters appeared under Rule 50(6)(ix). So the case of the applicant is covered being a member of ‘family’. It is clear from the combined reading of Rules 50, 51 and 53 that the Retirement/Death Gratuity is to be paid to the nominee, indicated in the Form I under Rule 53 and the widowed sister is covered under the word ‘Family’. The definition of ‘family’ is defined for the purpose of Rule 50 and also for Rules 51, 52 and 53. So, the reasons given by the respondent department that the succession certificate is required for the purpose of retirement/death gratuity is not tenable in the eyes of law. Resultantly, the reasons given in Annexure A/4, A/5, A/6 and A/9 are illegal.

11. As far as family pension is concerned, the name of the widowed sister is not included. The relevant Rule 54(14)(b) is as under:-

“54 (14)(b) “family” in relation to a Government servant means –

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(ii) unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughters, including such son and daughter adopted legally;

(iii) dependent parents;

(iv) dependent disable siblings (i.e. brother or sister) of a Government servant.]”

So, for the purpose of family pension, the sister/divorced sister/widowed sister is not included. Hence in view of the clear position in the above stated Rule 54(14)(b), the applicant is not entitled for family pension.

12. In view of the above, this O.A. is partly allowed. The impugned order dated 19.06.2017 (Annexure A/4, A/5 and A/6) and order dated 04.07.2017 (Annexure A/9) are quashed and set aside. Respondents are directed to pay the Retirement cum Death Gratuity to the applicant, as the applicant has been properly nominated as per Rule 53 of the Pension Rules, within a period of 60 days from the date of receipt of a copy of this order. No costs.

(Ramesh Singh Thakur)
Judicial Member