

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO. 290/00282/16
&
MISC. APPLICATION NO. 290/00282/16

RESERVED ON : 07.02.2018

JODHPUR, THIS THE 9TH DAY OF MARCH, 2018

CORAM
HON'BLE MR SURESH KUMAR MONGA, JUDICIAL MEMBER

INDRA WIDOW OF LATE SHRI SUAI LAL ALIAS SAWAI LAL AGED 58 YEARS, RESIDENT OF 56, HARIJAN BASTI, SANT TEJA NAGAR, BHADWASIA ROAD; JODHPUR; LATE SHRI SUAI LAL SON OF SHRI GOPI RAM RETIRED FROM THE POST OF PACKER SPECIAL IN 224 ADVANCE BASE ORDINANCE DEPOT, BANAR, JODHPUR.

.....APPLICANT

BY ADVOCATE: MR VIJAY MEHTA.

VERSUS

1. UNION OF INDIA, THROUGH THE SECRETARY TO GOVERNMENT, MINISTRY OF DEFENCE, RAKSHA BHAWAN, NEW DELHI.
2. PRINCIPAL CDA (PENSIONS), DRAUPADI GHAT, ALLAHABAD-14.
3. COMMANDANT, 224 ADVANCE BASE ORDINANCE DEPOT., BANAR, JODHPUR.
4. MANAGER, STATE BANK OF BIKANER & JAIPUR, KRASHI MANDI, MANDORE ROAD, JODHPUR.

.....RESPONDENTS

RESPONDENT NO. 1 TO 3 BY ADVOCATE : MR B.L. TIWARI.
RESPONDENT NO. 4 BY ADVOCATE : MR NITIN OJHA

ORDER

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT HER HUSBAND SUAI LAL ALIAS SAWAI LAL WAS A PERMANENT EMPLOYEE WORKING AS A PACKER SPECIAL IN THE ESTABLISHMENT OF RESPONDENT NO. 3. HE RETIRED ON 30.09.2005. IN THE SERVICE RECORD MAINTAINED IN THE OFFICE OF RESPONDENT NO. 3, THE NAME OF THE APPLICANT HEREIN WAS MENTIONED AS THE WIFE OF SAWAI LAL. IT HAS FURTHER BEEN AVERRED THAT THE APPLICANT WAS LIVING WITH HER HUSBAND

UPTIL THE DATE OF HIS DEATH, I.E. 13.01.2015. IN THE GPF-DS ACCOUNTS MAINTAINED BY THE CDA (FUNDS), THE NAME OF THE APPLICANT WAS ALWAYS MENTIONED AS NOMINEE OF SAWAI LAL. SAWAI LAL WAS GRANTED PENSION W.E.F. 01.10.2005 AND IN TERMS OF PENSION PAYMENT ORDER (PPO) DATED 09.03.2006, HE CONTINUED TO GET PENSION UPTIL THE DATE OF HIS DEATH. AFTER HIS DEATH, THE APPLICANT HEREIN SUBMITTED A REPRESENTATION ALONGWITH HIS DEATH CERTIFICATE AND CLAIMED FAMILY PENSION. THE RESPONDENT NO. 4 BANK ADVISED HER TO OPEN AN ACCOUNT AND ACCORDINGLY SHE HAD ALSO OPENED AN ACCOUNT IN THE SAID BANK. THEREAFTER, SHE SUBMITTED REPRESENTATIONS WITH RESPONDENT NO. 3 AND REQUESTED HIM TO PASS APPROPRIATE ORDERS FOR GRANT OF FAMILY PENSION. SINCE THE SAID REPRESENTATION DID NOT FIND FAVOUR WITH RESPONDENT NO. 3, THEREFORE, THE APPLICANT GOT ISSUED A NOTICE THROUGH HER COUNSEL ON 26.10.2015 TO RESPONDENT NO. 2 & 3 CALLING UPON THEM TO GRANT HER FAMILY PENSION AND ARREARS WITH INTEREST WITHIN A PERIOD OF ONE MONTH. PURSUANT THERETO, THE SENIOR ACCOUNTS OFFICER (P) IN THE OFFICE OF RESPONDENT NO. 2 VIDE HIS LETTER DATED 07.01.2016 (ANNEX. A/22) ADDRESSED TO RESPONDENT NO. 4 BANK DIRECTED THEM TO VERIFY CORRECTNESS OF THE DEATH OF THE SERVICE PENSIONER AND RELEASE FAMILY PENSION AS PER THE ORIGINAL COPY OF THE PPO HELD IN THE BANK BUT STILL NO ACTION WAS TAKEN. FEELING AGGRIEVED, THE APPLICANT HAS INVOKED THE JURISDICTION OF THIS TRIBUNAL U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985 WITH THE PLEADINGS THAT SHE HAS NOT REMARRIED AND ENTITLED TO GET THE FAMILY PENSION IN TERMS OF RULE 54 OF CCS (PENSION) RULES, 1972.

2. THE RESPONDENTS NO. 1 TO 3 BY WAY OF FILING A JOINT REPLY, HAVE JOINED THE DEFENCE AND OPPOSED THE CLAIM OF THE APPLICANT. THE RESPONDENT NO. 4 BANK HAS ALSO FILED A SEPARATE REPLY AND OPPOSED THE CLAIM OF THE APPLICANT ON MERITS APART FROM A PRELIMINARY OBJECTION THAT THE DISPUTED QUESTIONS OF FACTS ARE INVOLVED IN THE INSTANT CASE AND IT CANNOT BE ADJUDICATED UPON BY THIS TRIBUNAL.

3. THE RESPONDENTS NO. 1 TO 3 HAVE MAINTAINED A STAND IN THEIR REPLY THAT DECEASED EMPLOYEE HAD SUBMITTED AN APPLICATION DATED 14.10.1992 (ANNEX. R/2) BEFORE THE PERSONNEL OFFICER NOMINATING HIS TWO SONS AS NEXT OF HIS KINS INSTEAD OF THE APPLICANT. IT HAS FURTHER BEEN AVERRED THAT THE APPLICANT HAD ALSO SUBMITTED AN AFFIDAVIT (ANNEX. R/3) STATING THEREIN THAT SHE HAD MARRIED ONE OM PRAKASH S/O SURJA RAM AND HAVE GOT NO RIGHTS IN THE SERVICE BENEFITS OF THE DECEASED GOVERNMENT SERVANT SAWAI LAL.

4. THE RESPONDENT NO. 4 BANK IN ITS REPLY HAS AVERRED THAT IT IS NOT EMPOWERED TO GRANT FAMILY PENSION TO A PERSON WHOSE NAME IS NOT DISCLOSED IN PPO, BECAUSE BANK AS A FINANCIAL

INSTITUTION, IS ONLY A DISBURSING AGENCY AND NOT AN EMPLOYER AND, THEREFORE, THE CONCERNED EMPLOYER IS ONLY EMPOWERED AND IS AUTHORIZED TO ISSUE ORDER FOR GRANT OF FAMILY PENSION. IT HAS FURTHER BEEN AVERRED THAT THE NAME OF THE APPLICANT HAS NOT BEEN DISCLOSED IN THE PPO (ANN.A/3) UNDER THE HEAD OF 'FAMILY PENSION' AT COLUMN 'C' AND THUS, THE BANK CANNOT RELEASE THE FAMILY PENSION AMOUNT TO APPLICANT. IT HAS STILL FURTHER BEEN AVERRED THAT THE ISSUANCE OF LETTER DATED 07.01.2016 (ANNEX. A/22) BY THE O/O PCDA (PENSIONS) DOES NOT CREATE ANY RIGHT IN FAVOUR OF THE APPLICANT BECAUSE THE LETTER HAS ALSO BEEN WITHDRAWN SUBSEQUENTLY BY RESPONDENT NO. 2 ON 24.08.2016.

5. WHILE FILING THE REJOINDER TO REPLY SUBMITTED BY RESPONDENTS NO. 1 TO 3, THE APPLICANT HAS DENIED THE SUBMISSION OF LETTER DATED 14.10.1992 BY HER HUSBAND NOMINATING HIS TWO SONS NEXT OF HIS KINS INSTEAD OF THE APPLICANT. THE AFFIDAVIT ANNEX. R/3 ALLEGEDLY SUBMITTED BY THE APPLICANT HAS ALSO BEEN DENIED BY HER. SHE HAS DISPUTED HER SIGNATURES ON THE SAID AFFIDAVIT. IT HAS CATEGORICALLY BEEN AVERRED BY HER THAT SHE NEVER MARRIED OM PRAKASH AND THE AVERMENTS MADE IN THIS REGARD IN THE REPLY ARE FALSE. SHE NEVER DIVORCED HER HUSBAND SAWAI LAL AND WAS LIVING WITH HIM UPTIL THE DATE OF HIS DEATH. EVEN PRESENTLY, SHE IS RESIDING IN THE HOUSE OWNED BY HER DECEASED HUSBAND AND THE CHILDREN BORNE OUT OF THE SAID WEDLOCK ARE ALSO RESIDING WITH HER. SHE HAS FURTHER STATED THAT THE ASSERTION MADE BY HER IN PARA 4.3 OF THE OA WITH REGARD TO ENTRY OF HER NAME IN THE SERVICE RECORD HAS NOT BEEN DENIED BY RESPONDENTS NO. 1 TO 3.

6. HEARD LEARNED COUNSELS FOR THE PARTIES.

7. MR VIJAY MEHTA, LEARNED COUNSEL FOR THE APPLICANT CONTENDED THAT THE FAMILY PENSION DOES NOT DEPEND UPON THE FORMS OF NOMINATION AND THE SAME IS GOVERNED BY RULE 54 OF THE CCS (PENSION) RULES, 1972. HIS CONTENTION WAS THAT AFTER DEATH OF THE PENSIONER, HIS WIDOW BECOMES ENTITLED TO GET THE FAMILY PENSION. HE FURTHER CONTENDED THAT THE FAMILY PENSION IS NOT PART OF THE ESTATE OF THE DECEASED AND HE HAS GOT NO RIGHT TO DISPOSE OF THE SAME BY WILL OR OTHER DOCUMENTS AND, THEREFORE, THE NOMINATION PLACED ON RECORD AS ANNEX. R/4 & R/5 BY THE RESPONDENTS HAVE NO RELEVANCE. IT WAS HIS FURTHER CONTENTION THAT THE NON-MENTIONING OF THE NAME OF THE APPLICANT IN THE PPO IS A FAULT ON THE PART OF THE RESPONDENTS AND BECAUSE OF THE SAME, THE APPLICANT CANNOT BE DEBARRED FROM RECEIVING THE FAMILY PENSION.

8. PER CONTRA, MR B.L. TIWARI, LEARNED COUNSEL FOR THE RESPONDENTS NO. 1 TO 3 CONTENDED THAT THE APPLICANT HERSELF HAD SUBMITTED AN AFFIDAVIT STATING THEREIN THAT SHE HAD

MARRIED ONE OM PRAKASH S/O SURJA RAM AND SHE WILL NOT CLAIM ANY BENEFIT OUT OF THE SERVICE OF SHRI SAWAI LAL. HIS CONTENTION WAS THAT IN VIEW OF HER OWN AFFIDAVIT, SHE HAS LOST THE RIGHT TO CLAIM FAMILY PENSION. HE FURTHER SUBMITTED THAT THE DECEASED EMPLOYEE DURING HIS LIFE TIME HAD ALSO NOMINATED HIS SONS NAMELY MUKESH KUMAR AND FARAJ KUMAR TO RECEIVE THE FAMILY PENSION AFTER HIS DEATH. SHRI TIWARI FURTHER SUBMITTED THAT THE APPLICANT HAS EVEN OTHERWISE WAIVED OF HER RIGHT TO GET FAMILY PENSION. HE PLACED RELIANCE UPON A JUDGMENT RENDERED BY THE HON'BLE SUPREME COURT IN THE CASE OF M/S GALDA POWER AND TELECOMMUNICATION V. UNITED INDIA INSURANCE COMPANY LIMITED REPORTED AS AIR 2016 SC 4021.

9. MR NITIN OJHA, LEARNED COUNSEL FOR RESPONDENT NO. 4 BANK CONTENDED THAT THE NAME OF THE APPLICANT WAS NOT SHOWN IN THE PPO AND THE BANK BEING A DISBURSING AUTHORITY OF PENSION CANNOT DISBURSE THE FAMILY PENSION TO HER. HE FURTHER SUBMITTED THAT LETTER ANNEX. A/11 ALLEGEDLY WRITTEN BY THE APPLICANT'S HUSBAND SAWAI LAL WAS NEVER RECEIVED IN THE BANK AND, THEREFORE, THE SAME IS OF NO RELEVANCE FOR DISBURSING THE FAMILY PENSION TO APPLICANT. HE FURTHER CONTENDED THAT THE BANK AS A FINANCIAL INSTITUTION IS ONLY A DISBURSING AUTHORITY AND NOT AN EMPLOYER. IT IS THE EMPLOYER ONLY WHO IS EMPOWERED TO ISSUE ORDER FOR GRANT OF FAMILY PENSION. IT WAS HIS CONTENTION THAT THE INSTANT OA AGAINST THE BANK IS MISCONCEIVED AND DESERVES TO BE DISMISSED.

10. I HAVE CONSIDERED THE RIVAL CONTENTIONS OF THE LEARNED COUNSEL FOR THE PARTIES AND PERUSED THE RECORD.

11. ADMITTEDLY, THE APPLICANT WAS THE LEGALLY WEDDED WIFE OF THE DECEASED GOVERNMENT SERVANT SAWAI LAL. THE FACT WITH REGARD TO HER NOMINATION IN THE GPF-DS STATEMENT OF ACCOUNTS ANNEX. A/1 & A/2 ARE NOT IN DISPUTE. THE ONLY ASSERTION DISPUTING THE SAID FACT THAT THE APPLICANT'S NOMINATION IN THOSE DOCUMENTS COULD NOT BE CHANGED BY THE RESPONDENTS DUE TO INADVERTENCE, CANNOT BE BELIEVED IN THE ABSENCE OF ANY SPECIFIC PLEADINGS REGARDING THAT INADVERTENCE ON THE PART OF ANY OFFICIAL OF THE RESPONDENTS. THE AFFIDAVIT ANNEX. R/3, ON WHICH HEAVY RELIANCE HAS BEEN PLACED BY THE RESPONDENTS, HAS BEEN CATEGORICALLY DISPUTED BY THE APPLICANT IN HER REPLICATION. SHE HAS MADE VERY CATEGORICAL ASSERTION TO THE EFFECT THAT SHE NEVER MARRIED OM PRAKASH S/O SURJA RAM WHOSE NAME HAS BEEN MENTIONED IN THE AFFIDAVIT ANNEX. R/3. THE RESPONDENTS HAVE NOT PLACED ON RECORD ANY OTHER DOCUMENT EXCEPT THE AFFIDAVIT ANNEX R/3 IN ORDER TO ESTABLISH THE FACT THAT NO VALID MARRIAGE HAD SURVIVED BETWEEN THE APPLICANT HEREIN AND THE DECEASED GOVERNMENT SERVANT SAWAI LAL UPTIL

THE DATE OF HIS DEATH. THE CATEGORICAL ASSERTION MADE BY THE APPLICANT THAT SHE LIVED WITH HER HUSBAND SAWAI LAL AND STILL RESIDING IN THE HOUSE OWNED BY HIM ALONGWITH CHILDREN BORNE OUT OF THE SAID WEDLOCK HAS NOT BEEN REBUTTED BY THE RESPONDENTS. THE RESPONDENTS HAVE FAILED TO PRODUCE ON RECORD ANY DOCUMENT ESTABLISHING THE MARRIAGE OF THE APPLICANT WITH OM PRAKASH. NOR ANY OTHER DOCUMENT HAS BEEN PLACED ON RECORD ESTABLISHING THE FACT OF DISSOLUTION OF THE MARRIAGE BETWEEN THE APPLICANT AND DECEASED GOVERNMENT SERVANT SAWAI LAL. IN THIS VIEW OF THE MATTER, IT CANNOT BE SAID THAT THE APPLICANT IS NOT THE WIDOW OF DECEASED GOVERNMENT SERVANT SAWAI LAL.

12. IN VIEW OF THE PROVISIONS OF RULE 54(8)(I) OF THE CCS (PENSION) RULES, 1972, THE FAMILY PENSION CANNOT BE PAID TO MORE THAN ONE MEMBER OF THE FAMILY. AT THE SAME TIME, EXCEPT AS PROVIDED IN SUB-RULE (7), IF A DECEASED GOVERNMENT SERVANT OR PENSIONER LEAVES BEHIND A WIDOW, THE FAMILY PENSION BECOMES PAYABLE TO THE WIDOW FAILING WHICH TO THE ELIGIBLE CHILD. SUB-RULE (12) OF RULE 54 OF THE CCS (PENSION) RULES, 1972 FURTHER MAKES A PROVISION THAT AS SOON AS A GOVT. SERVANT ENTERS GOVERNMENT SERVICE, HE IS REQUIRED TO SUPPLY DETAILS OF HIS FAMILY IN A PRESCRIBED FORMAT TO THE HEAD OF OFFICE. CLAUSE (B) OF THE SAID SUB-RULE FURTHER MAKES A PROVISION THAT A GOVERNMENT SERVANT SHALL COMMUNICATE TO THE HEAD OF OFFICE ANY SUBSEQUENT CHANGE IN THE SIZE OF THE FAMILY. IN THE CASE IN HAND, THE APPLICANT HAS MADE A CATEGORICAL ASSERTION THAT IN THE SERVICE RECORD OF THE DECEASED GOVERNMENT SERVANT SAWAI LAL, MAINTAINED IN THE OFFICE OF RESPONDENT NO. 3, THE APPLICANT'S NAME FINDS MENTION AS HIS NOMINEE. THE SAID FACT HAS NOT BEEN DENIED SPECIFICALLY BY RESPONDENTS NO. 1 TO 3 IN THEIR REPLY. NEITHER ANY ASSERTION HAS BEEN MADE IN REPLY TO THE EFFECT THAT THE DECEASED GOVERNMENT SERVANT HAD COMMUNICATED TO THE HEAD OF OFFICE ABOUT ANY SUBSEQUENT CHANGE IN THE SIZE OF THE FAMILY. IN THIS VIEW OF THE MATTER ALSO, IT CANNOT BE SAID THAT THE APPLICANT HEREIN IS NOT THE WIDOW OF THE DECEASED GOVERNMENT SERVANT SAWAI LAL. THE SONS BORNE OUT OF THE WEDLOCK OF THE APPLICANT AND THE DECEASED GOVERNMENT SERVANT SAWAI LAL, WHO HAVE BEEN NAMED AS NOMINEES IN THE DOCUMENTS ANNEX. R/2 & R/4, HAVE NOT COME FORWARD TO CLAIM THEIR PREFERENTIAL RIGHT TO HAVE THE FAMILY PENSION BY DISPUTING THE FACT OF SUBSISTENCE OF LEGALLY VALID MARRIAGE OF THE APPLICANT WITH DECEASED GOVERNMENT SERVANT SAWAI LAL UPTIL THE DATE OF HIS DEATH. IN THE FACTS AND CIRCUMSTANCES OF THE CASE, I AM OF THE CONSIDERED VIEW THAT THE APPLICANT CANNOT BE DENIED HER RIGHT TO CLAIM FAMILY PENSION IN TERMS OF RULE 54

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OF THE CCS (PENSION) RULES, 1972.

13. ACCORDINGLY, THE INSTANT OA IS ALLOWED. THE RESPONDENTS ARE DIRECTED TO PROCESS THE CASE OF THE APPLICANT FOR GRANT OF FAMILY PENSION AND RELEASE THE SAME ALONGWITH ARREARS WITHIN A PERIOD OF TWO MONTHS FROM THE DATE OF RECEIPT OF A CERTIFIED COPY OF THIS ORDER. NO COSTS.

(SURESH KUMAR MONGA)

MEMBER (J)

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