CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/00222/2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

GORI KALA DAMAI @ GORI CHHETRI

VS

UNION OF INDIA & ORS. (DEFENCE)

For the applicant : Mr.K.Dutta, counsel
Mr.S.K.De, counsel

For the respondents : Ms.R.Basu, counsel

Order on : 1.8.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking the following reliefs :

a) The Hon'ble Tribunal be kind to direct the respondents to grant family pension to the applicant as per Civil Service Pension Rule, 1972;
b) The Hon'ble Tribunal be kind to direct the respondents to allow family pension to the applicant as a surviving widow of deceased Govt. employee who fails under the first category of entitlement as per Civil Service Pension Rule 1972 along with arrears of family pension.

3. The admitted facts that could be culled out from the pleadings are as under :

Shri Nar Bahadur Chetri Ex.P/No.600928, joined GSF as Durwan on 28.9.1976, and further re-appointed as Fireman Gr. II w.e.f. 1.12.1980. Shri Chetri expired on 4.6.06 while in service after rendering 29 years of service. While in service the employee had furnished his family details for family pension on 16.1.1991 (Annexure R/2) where he declared the following as his family members :-

Smt. Sumitra Devi Chetri – Wife, DOB – 2.5.1960
Shri Suresh Kumar Chetri – Son, DOB – 4.3.1978

Rita Kumari Chetri – Daughter, DOB – 5.7.1980
Shri Birendra Kumar Chetri – Son, DOB – 10.9.1983

He made his last nominations on 18.6.97 stating that the persons mentioned are the members of his family, in terms of Rule 2 of GPF Service Rules 1960, to receive the amount equally after his death and accordingly as evident from Annexure R/3 :

Two sons and one daughter were getting equal share of the benefits of CGEGIS, 1980. As there was no mention of Smt. Gori Chetri or Sumitra Chetri as nominee in the service records, GPF or CGEGIS amount has been paid to his nominees on 11.3.08 in the following manner :

A. GPF Amount

1. Shri Suresh Kr Chetri, son – Rs.36,534/-
   (GPF : 26191 + DLI : 10,343)
2. Shri Birendra Kr. Chetri, son – Rs.36,534/-
   (GPF : 26,191 + DLI : 10,343)
3. Smt. Rita Kumari Chetri, daughter – Rs. Rs.36,534/-
   (GPF : 26,191 + DLI : 10,343)

B. CGEGIS

1. Shri Suresh Kr Chetri, son – Rs.9850/-
2. Shri Birendra Kr. Chetri, son – Rs.9850/-
3. Smt. Rita Kumari Chetri, daughter – Rs.9850/-

4 During the course of hearing ld. Counsel for the applicant vociferously submitted that Sumitra Chetri was the second wife of the deceased whereas the applicant Gori Kala Damai @ Chetri was the first wife. Sumitra Chetri expired in 1993 and therefore the respondents should release the family pension in favour of Gori Kala Damai, the present applicant.

5. Per contra, ld. Counsel for the respondents drawing my attention to Annexure R/4 of the reply would submit that the said Sumitra Devi wrote a letter on 30.8.06 claiming family pension and other dues. She affirmed her status before Metropolitan Magistrate, Kolkata on 18.7.06 and further represented on 9.7.08 (Annexure R/5). When the present applicant prayed for the dues on 27.3.09, her claim was rejected on 14.7.09 (Annexure R/8) on the ground that she was not nominated for the family pension.

6. The ld. Counsel for the applicant at this juncture in support of his contention that the applicant Gori Kala Damai @ Gori Chetri is infact the first wife of the deceased employee, would refer to the following documents :-

(i) A certificate issued by Consulate General of Nepal on 28.11.13 certifying as follows :

"To Whom It May Concern

This is to state that according to the Relationship Certificate No. 065/66 issued by Bami Village Development Committee ward No. 4, Late Nar Bahadur and Mr.Prem Bahadur Pariyar are the husband and son of Mrs. Gori Kala Damai of Bami VDC-4, Gulmi, Nepal respectively.

In this regard, the necessary co-operation provided to her by the concerned authorities would be highly appreciated."

(ii) Another certificate, of same date i.e. 28.11.13, of Consulate General of Nepal certifying that Nar Bahadur, who died on 4.6.06, is the husband of Ms. Gori Kala Damai.

(iii) A certificate of Zila Prasashan Karyalaya that certifies that Nar Bahadur P. Damai is the husband of Gori Kala Damai.

Based on these certificates, ld. Counsel would argue that all the certificates established the fact that Gori Kala Chhetri @ Gori Kala Damai is the wife of Nar Bahadur. Therefore absence of nomination in her favour should not deprive her of her legal right to family pension.

7. However, Annexure A/3 to the OA which is a subscriber's nomination to GPF manifests that Gori Chetri is the nominee.

8. A letter dt. 29.6.78 from Nar Bahadur Chetri states as under :

"To
The General Manager,
Gun & Shell Factory,
Cossipore, Calctta – 2.

Thro : Proper channel.

Sub : Amendment of name of my wife.

Sir,

Most respectfully, I beg to state that the name of my wife is recorded in my service record as Smt. Gori Chetri, which has been her nick name, in place of Smt. Sumitra Chetri.

Smt. Sumitra Chetri alias Gori is my wife and as her nick name is much pronounced, it has been recorded in my service record. But unfortunately, in factory hospital, during her admission recorded as Smt. Sumitra Chetri.

So I request you to kindly arrange to amend my wife's name in the record as Smt. Sumitra Chetri.

I hope you will take necessary action.
Thanking you,

Yours faithfully,

(NAR BAHADUR CHETRI)
Durwan
T.No. 6 S.O."

9. Such being the factual backdrop, as enumeratedabove, I noted the following decisions, extracted with supplied emphasis for clarity :

(i) In ***Smt. Aina Devi –vs- Bachan Singh & Anr. [AIR 1980 All 174]*** rendered by Hon'ble High Court at Allahabad it was held that

> *"Certified extracts from the electoral roll and the family register of a village which are public documents are admissible in evidence to prove their contents. The entries made therein are presumptive evidence of what they recorded until disproved by satisfactory evidence to the contrary. The burden is on the other party to prove that the entries were incorrect."*

ii) In ***Smt. Sheel Wati –vs- Ram Nandini [AIR 1981 All 42]*** it was held that

> *"a marriage though null and void for contravening any of the conditions prescribed by Clauses (i), (iv) and (v) of Section 5 of the Act, has yet to be regarded a subsisting fact, and in that sense it cannot be said to be wholly non est in law, or a nullity, so long as it is not declared to be null and void by a decree of Nullity of the District Court on a petition presented by either party thereto against the other party to the marriage.* ***No third person can treat the marriage to be void*** *or have it adjudged to be null and void in any other suit or proceeding unless it bus already been declared to be so by a decree of Nullity of a District Court in accordance with the procedure prescribed by and under the Act; the only exceptions being the case where the aggrieved spouse of the first marriage on account of whose being living the second marriage is void, prosecutes the other spouse for being punished for bigamy under Section 406 or 495 of the Indian Penal Code, read with Section 17 of the Hindu Marriage Act; or the ease where the aggrieved spouse prosecutes the guilty spouse for a contravention of Clauses (iv) and (v) of Section 5 under Section 18(b) of the Act.*
>
> (emphasis supplied)

iii) In ***Smt. Nirmala & Ors. –vs- Smt. Rukminibai & Ors. [AIR 1994 Karnataka 247]*** the Hon'ble Division Bench referred to a decision rendered in ***Smt. Parameshwaribai –vs- Muthojirao Scindia [AIR 1981 Kant 40]*** propounding the following :

> *"One thing that stands out permanently in this case is that during his life time Narayanrao treated and acknowledged defendant No. 1 as his legally wedded wife and defendants 2 to 7*

as his legitimate children. This position is also not disputed but in fact admitted by the plaintiffs themselves.

When there is a cohabitation of a man and a woman as husband and wife, a presumption arises to the effect that there was a valid marriage between the parties. In Badri Prasad v. Deputy Director of Consolidation the Supreme Court held that where a man and a wpman live as husband and wife for about 50 years, a strong presumption arises in favour of their wedlock. It is also further held that the proof as to the factum of marriage by examining the priest and other witnesses is not necessary in such cases. The law in its wisdom has laid this presumption. If a man and a woman live as husband and wife for a pretty long time and the husband acknowledges his woman as his wife, a presumption can be raised in favour of the legality of their marriage. To expect them to bring witnesses at a point of time when the witnesses will not be available to prove their marriage is to expect something which cannot be done by the parties at that point of time. Therefore, the law in its wisdom has created this presumption in favour of a valid marriage.

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A man and a woman tied together by wedlock form the least unit of our complex society and whenever a man and woman lived as husband and wife for a fairly long time and were so reputed, law presumes that they are living as husband and wife and not in a state of concubinage. Presumption is both with regard to factum of marriage and legality of it. It is a strong presumption as it goes to the root of the structure of society and the persons who challenge it will have to rebut it by clear, cogent and satisfactory evidence. This burden is heavy on them."

The Hon'ble Court held :

In view of the law quoted above, it is clear that a cohabitation of a man and a woman as husband and wife for a long time under the same roof will raise a presumption of a legal and valid marriage in their favour and the off-springs of such union cannot be termed as illegitimate. This presumption will be a rebuttable presumption. But the evidence required to rebut this presumption cannot be an evidence of mere probabilities but it should be an evidence to prove conclusively that the possibility of such valid marriage is completely ruled out. A perpetual union of a man and a woman goes in favour of legality and not a crime. The evidence of DW-1 proves that there was a valid marriage between her and Narayanrao somewhere in 1948 at Hebbal and the case of plaintiffs that DW-1 was a kept mistress of Narayanrao is difficult to accept. From the evidence, it is clear that the age of DW-1 was 60 when she deposed in the year 1986. Therefore she must have been around 22 years of age when she married Narayanrao in the year 1948. No such antecedents of DW-1 are brought in evidence to show that either she came from a family of ill-repute or she was a woman of loose morals or of a bad character so as to make her to live with Narayanrao at such an young age as kept mistress. Even the treatment that Narayanrao meted out to her and her children in his house and in the society at large is as his legitimate wife and legitimate children born to her in his union with DW-1. This leads to an inference that there was a valid marriage between Narayanrao and defendant No. I in the year 1948 at Hebbal as deposed by defendant No. 1. A presumption can

be raised in favour of their marriage by virtue of a law of cohabitation of Narayanrao with defendant No. 1 under the same roof as husband and wife and the treatment meted out to defendant No. 1 by Narayanrao as his legitimate wife and to defendants 2 to 7 as his legitimate children

(emphasis supplied)

iv) In ***Lalsa -vs- District IVth Upper District Judge, Basti & Ors.*** ***[AIR 1999 All 342]*** wherein the railway employee and the female, co-habitants of about 40 years, the omission to mention the female as wife of the concerned employee in the family register the Hon'ble Court found that entry in family register could not be treated as clinching evidence to deny status of wife to the female in question.

v) In ***Bhilaji Bandu Sutar & Lohar -vs- Rangarao Shankar Sutar & Ors. [AIR 2015 (NOC) 519 (BOM)]*** in regard to presumption as to marriage Hon'ble Court held :

"Woman was staying with man for about 22 years till his death. In ration card and voters list she was described as his wife. After his death her name was entered in Gram Panchayat records as owner of suit house. Ration card and voters list were prepared during life time of man and to his knowledge. Electoral roll being public document and prepared by public servant in discharge of his public duty is relevant under Section 35. She would be legally wedded wife of that man."

In view of above there being no rival claimant named Sumitra Devi Or Chetri, the certificates of Consulate General of Nepal adequately demonstrating and establishing the fact that Gori Kala is the wife of Nar Bahadur and no documents having come to the fore establishing the fact that present applicant is not Gori Kala Damai or Gori Kala Chetri, her claim could not be disbelieved.

10. Whether a nomination is mandatory for obtaining family pension can be answered from the following :

In ***Smt Gopa Mazumdar -vs- UOI & Ors.*** this Tribunal found as follows:

"11. According to Family Pension Scheme, expression of 'Family' does not include the widow mother for getting the benefit of family pension. Rule 75(19)(b)(I) of the Railway Service (Pension) Rules, 1993, envisages that 'Family' in relation to railway servant for the purpose of family pension means 'wife' in case of male railway servant. Rule 75(B)(II) of Railway Service (Pension) Rules, 1993, further envisages that family pension is payable to the widow of the deceased railway servant and to his children.

12. *The* ***Hon'ble Apex Court in the case of Violet Issaac -vs- Union of India & Ors. [1991 (1) SCC 725]*** *has opined that rules do not provide for payment of family pension to brother or any other family member of*

relation of the deceased railway employee. The Family Pension Scheme under the rules is designed to provide relief to the widow and children by way of compensation on the untimely death of the deceased employee. The rules do not provide for any nomination with regard to family pension, instead the rules designate the persons who are entitled to receive the family pension. Thus no other persons except those designated under the rules are entitled to receive family pension. The family pension scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since the rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.

13. Recently, the Hon'ble Apex Court in a judgment in the case of ***State of Himachal Pradesh -vs- Kedarnath Sur [1998 SCC (L&S) 556]*** *has settled the controversy regarding claim of the widow mother and father of the deceased Govt. servant by interpreting the provisions of Rule 54(14)(5)(i) of CCS (Pension) Rules, 1972, where the definition of the 'family' has been mentioned. In the said judgment, the Hon'ble Apex Court has held that parents of the deceased Govt. servant are not members of the family to get pension under the definition of Family Pension Scheme, 1964.*

The Bench therefore held as under :

"14. So in view of the aforesaid circumstances, it can be safely said that the applicant, Smt. Gopa Mazumdar, being a widow and having no issue till the death of the deceased employee, Ashoke Kumar Mazumdar, is entitled to get family pension without obtaining and producing any succession certificate, as asked for notwithstanding the fact that the mother of the deceased has raised a claim for payment of family pension to her. Family Pension is not an inheritance and the estate of the deceased It is a statutory benefit which is to be given to the widow nad the children in case of death of an employee by way of compensation. Hence, entitlement of family pension under the scheme is not covered by the Hindu Succession Act."

Therefore it is established that no nomination or succession certificate is required for releasing family pension.

11. Further, the ld. Counsel for the applicant would rely upon a decision rendered by this Tribunal (Chandigarh Bench) in OA 608/PB/88 to contend that jurisdiction to determine marital status of deceased for the purpose of family pension is a service matter and this Tribunal would have jurisdiction to determine marital relation of the applicant with the deceased/pensioner.

12. In the aforesaid legal backdrop and in view of the fact that the certificates produced by the applicant irrefutably and undoubtedly substantiate the applicant's claim that she is the legally married wife of deceased Nar

Bahadur, the respondents if required may depute a Welfare Inspector to make an enquiry in the neighbourhood of the deceased employee to satisfy themselves about the marital status of the present applicant and in existence of Sumitra Devi etc., in order to issue orders in regard to family pension and other dues in favour of the present applicant within three months from the date of communication of this order.

13. Accordingly the OA is disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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