

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

BENCH, ALLAHABAD

(This the 31st Day of May 2019)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/01600/2016

(U/S 19, Administrative Tribunal Act, 1985)

Madan Kumar Tewari (Mentally Retarded) – Dead, S/o Late Shri Gauri Shankar Tewari, through his Elder Brother, Shri Ashok Kumar Tewari, resident of House No. 1003/854-A, Old Katra, Allahabad 211002 (U.P.) Represented through L.R. Ashok Kumar Tewari S/o Late Gauri Shankar Tewari Elder brother of Shri Madan Tewari House No. 1003/854-A, Old Katra, Allahabad.

..... Applicant

By Advocate: Shri P.K. Sinha/Shri Jaswant Singh

Versus

1. Union of India Ministry of Finance, Government of India, New Delhi through its Secretary.
2. Central Board of Excise, Custom and Service Tax, 38, Mahatma Gandhi Marg, Civil Lines, Allahabad through its Commissioner.
3. Pay and Accounts Officer, Central Board of Excise, Customs and Service Tax 38, M.G. Marg, Civil Lines, Allahabad, through its Commissioner.
4. Office of the Accountant General II, Accounts (P.A II Section), U.P. Allahabad.

..... Respondents

By Advocate: Shri Ashutosh Shukla

ORDER

1. The present Original Application has been filed by the applicant Madan Kumar Tewari (Dead) under section 19 of Administrative Tribunals Act, 1985 seeking following reliefs:-.

"8.1 To pass an order directing the Respondents to release family pension to Shri Madan Kumar Tewari son of late G.S.

Tewari and younger brother of the applicant, who is mentally retarded; and

8.2 To pass any order directing the respondents to also pay the arrear of family pension from 24.02.2014 i.e., from the date of death of wife of late G.S. Tewari together with 18% interest per annum; and /or

8.3 To issue any other order or direction as this Hon'ble Tribunal may deem fit and proper in the fact and circumstances of the case; and

8.4. To award cost of this Application to the applicant".

2. Case of applicant Madan Kumar Tewari (died during the pendency of the OA and represented by his brother Ashok Kumar Tewari as his legal heir) is that his father Gauri Shanker Tewari after retirement was drawing his pension from the respondent-department and his father had written to department that after the death of his wife, the family pension be given to his son (applicant). The Pay and Accounts Office had written letter (Annexure-4) to Accounts officer, AG office that in the event of death of Induwati wife of Gauri Shanker Tewari the family pension in terms of Sub Rule 6 of Rule 54 of CCS Pension Rules, 1972 subject to fulfilment of other conditions may be paid to Madan Kumar Tewari son of G.S. Tewari who is mentally retarded and is not in a position to earn his livelihood independently through the natural guardian on production of death certificate of Indrawati wife of deceased G.S.Tewari and that vide letter dated 8.7.1985, (Annexure-5) Accounts Officer wrote to the Treasury Officer, Allahabad to pay the family pension to the applicant M.K. Tewari subject to fulfilment of other conditions may be paid to Madan Kumar Tewari son of G.S. Tewari who is mentally retarded and is not in position to earn his livelihood independently through the natural guardian on production of death certificate of Indrawati wife of deceased

G.S.Tewari and certificate that applicant is not earning his livelihood.

3. On advice of Assistant Collector vide letter dated 24.3.1983 (Annexure A-6) to get his son Madan Kumar Tewari examined by Civil Surgeon for exact mental or physical condition, Gauri Shankar Tewari got his son (applicant) examined from Civil Surgeon, Allahabad, who vide letter dated 26.7.1983 (Annexure 7) informed Assistant Collector that applicant Madan Kumar Tewari is mentally retarded and is not in a position to earn his livelihood independently. After the death of his father on 31.7.1993 and mother on 24.2.2014, Ashok Kumar elder brother of applicant started looking after the said applicant. It is the further case of applicant that after the death of his mother, he approached the Account Officer of the respondents who vide letter dated 22.5.2015 (Annexure 8) informed the Chief Accounts Officer for grant of family pension and was informed by Chief Accounts Officer vide letter dated 2.6.2015 (Annexure 9) that all the formalities have been completed and the family pension may be approved to the applicant, that the service book of his father is untraceable and as soon as the service book is located the proceeding would be carried further. It is further case of applicant that despite request made by the applicant, respondents have not paid him the family pension. Hence the present O.A.
4. In their counter affidavit, respondents have averred that the sole ground that the service book of late G.S Tewari as well as the correspondence referred to by the applicant is not available in the office of respondents and that no ground has been made out by the applicant to substantiate his claim of family pension and the OA be dismissed.
5. I have heard and considered the argument of learned counsels for the parties and gone through the material on record.

6. Applicant has placed the death certificate of his mother, who died after the death of her husband G.S. Tewari. It be noted that applicant Madan Kumar Tewari expired on 22.10.2018 as per the death certificate placed on record and name of his legal heir Ashok Kumar Tewari was brought on record. Respondents are denying the entire case put forth by the applicant. However, copies of the correspondence of Central Excise Collectorate Allahabad pertaining to the case of applicant are clear that applicant Madan Kumar Tewari was the son of G.S. Tewari employees of respondents department and that applicant was mentally retarded as per the certificate of the Civil Surgeon Allahabad. The correspondence pertaining to the office of respondents is clear that order has been passed by the Accounts Officer directing the Treasury Officer Allahabad vide Annexure 5 to pay the family pension in terms of Sub Rule 6 below Rule 54 of CCS (Pension) Rules 1972 to M.K. Tewari son of G.S. Tewari who is mentally retarded and not in a position to earn a livelihood through natural guardian on production of certificate of death of Indrawati wife of G.S. Tewari and certificate that M.K. Tewari have not started earning his livelihood.
7. From the material on record, no specifically the correspondence of the respondents department as well as their vague and inconclusive reply to the averments made in the OA, it is clear that applicant Madan Kumar Tewari on the death of his mother Indrawati on 24.2.2014 is entitled to family pension from the date of death of his mother on 24.2.2014 to the death of applicant on 22.10.2018. Therefore, direction is given to the respondents to release family pension from the date of death of his mother on 24.2.2014 to the death of applicant on 22.10.2018, which would be due to the estate of deceased applicant Madan Kumar Tewari and payable to his elder brother Ashok Kumar Tewari who avers that he is guardian of his younger brother within a period of 3 months from the date of receipt of copy of this order with

interest of 7% per annum. It is made clear that the payment of family pension would be disbursed to Ashok Kumar Tewari subject to production of guardian ship certificate issued in terms of Rule 54 (6) (vi) of CCS (Pension) Rules 1972.

8. Original Application is accordingly disposed of. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

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