

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

OA/020/752/2018 & MA/20/476/2018

**Reserved on: 02.04.2019
Order pronounced on: 03.04.2019**

Between:

P. Ramanamma,
W/o. Late P. Sanyasi,
Aged 50 years, Occ: unemployed,
Resident of Perantalapuram (V),
Regupalam (PO), Yelamaichili (M),
Visakhapatnam, A.P.

...Applicant

And

1. The Union of India rep. by
The General Manager,
S.C. Railway, Rail Nilayam, III Floor,
Secunderabad – 500 071.
2. Divisional Railway Manager,
Vijayawada Division,
South Central Railway,
Vijayawada.
3. The Senior Divisional Personnel Officer,
Vijayawada Division,
South Central Railway,
Vijayawada.

...Respondents

Counsel for the Applicant ...

Mr. N. Subba Rayudu

Counsel for the Respondents ...

Mrs. A.P. Lakshmi, SC for Railway

CORAM:

Hon'ble Mr. B.V. Sudhakar

... ***Member (Admn.)***

ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for non grant of secondary family pension to the applicant.
3. Applicant's father, Late Sri R.Ramaswamy while working as Gangman, in the respondents organisation has died on 11.5.1977 and at that time the applicant was 2 years old. Thereafter mother of the applicant was granted family pension. Applicant was married but as fate would have it, her husband too passed away on 24.8.2009 and therefore the applicant had to live a dependent on her mother. Sadly her mother left for the heavenly abode on 23.11.2010 leaving her as an orphan. Consequently applicant approached the respondents for grant of secondary family pension but it was rejected since in the certificate issued by the revenue authorities, the name of the applicant's father was shown as Sri Ramanaidu and in the PPO is was indicated as Sri Ramaswamy. The applicant submitted an affidavit stating that the names Ramaswamy and Ramanaidu belong to one and the same person. As it was not entertained by the respondents, applicant submitted succession certificate issued by the competent court on 16.7.2015. Despite such submission, there being no response from the respondents the OA has been filed.
4. The contentions of the applicant are that she is eligible for family pension as per Railway board orders and not granting secondary family pension despite filing affidavit as well as succession certificate is irregular. The applicant has no source of income to eke out a living and that she is an orphan who is illiterate, desparately looking forward for the secondary family pension to survive.

5. Respondents inform that on the demise of the applicant's father, her mother while claiming family pension on 18.6.1977 stated that her daughter Smt Pyli Ramanamma was aged 18 years old, whereas in the OA it is adduced that she is aged only 2 years at the time of the death of her father. Even her surname was shown as Pyli instead of Paila as shown in the succession certificate. In the voter identity card the date of birth of the applicant was shown as 1.1.1995 and in the Adhar card her year of birth was indicated as 1967. As per Railway Board orders the applicant would be eligible to claim secondary family pension if she were to establish herself as the daughter of the deceased employee. The discrepancies pointed out about the date of birth and the difference in her name and that of her father, cast a doubt about her identity as the daughter of the deceased employee. Besides, respondents claim that the succession certificate was got issued without impleading them and therefore they have filed two petitions before the competent court for submitting facts on their behalf.

6. Heard both the counsel and perused the documents and the material papers submitted.

7. I) As is evident from the records placed, applicant is illiterate and her mother too. Respondents have issued an impugned order stating that applicant is not eligible for family pension since there is discrepancy in regard to her father's name. To reconcile the discrepancy applicant has filed an affidavit as well succession certificate from the competent court. As per Railway Board orders issued in 2013 applicant is eligible for family pension. After obtaining the required documents and not granting the secondary family pension to the applicant by raising other grounds not adduced in the impugned order is not in

consonance with the observation of the Hon'ble Supreme Court in Mohinder Singh Gill & Anr vs The Chief Election Commissioner , on 2 December, 1977 reported in 1978 AIR 851, 1978 SCR (3) 272, as extracted below.

"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in Gordhandas Bhanji

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to effect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

Therefore, the respondents cannot improve upon their Impugned order by bringing out new facts in the reply statement. Their objection was to the different names of the deceased employee which was resolved by the issue of the succession certificate issued by the competent court.

II) Respondents have further asserted that there are discrepancies in the age, surname etc of the applicant as per different records submitted by the applicant. It needs to be appreciated that the applicant is an illiterate and hence margin has to be given for this factor. It is common knowledge that illiterate tend to give varied information because of ignorance of not being aware of the

consequences there of. Nevertheless, respondent organisation being a public organisation due care has to be taken in issues of this nature. To allay their doubts the applicant has submitted the succession certificate from the competent court. On such submission respondents claim that they have filed two petitions before the competent court which issued the succession certificate to present their side of the story. Therefore they would like to await a decision on the matter. This stance of the respondents is not fair since the succession certificate holds ground till it is cancelled. Respondents submitting that the issue would kept in cold storage till the issue is decided by the competent court does not augur well for justice. To be candid , this stand is in direct contravention of the observation of the Hon'ble Supreme Court in Ashok Sadarangani & Anr vs Union Of India & Ors on 14 March, 2012 in Writ Petition (CRL.) No.26 of 2011 which is as under:

“19. As was indicated in Harbhajan Singh's case (supra), the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference.

The reference made in Gian Singh's case (supra) need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field.”

Till the succession certificate is modified or cancelled it remains valid. Hence the respondents have to process the secondary family pension based on succession certificate issued.

III) Learned counsel for the respondents has added another dimension to the issue by stating that there is delay in filing the OA for claiming the family

pension. This does not stand to reason because pension is a continuous cause of action. Ld Counsel for the applicant has submitted the verdict of Hon'ble Chandigarh bench of this Tribunal and of the Hon'ble Supreme Court to rebut the averment made.

In fact, Hon'ble Supreme Court in M.R. Gupta vs Union Of India & Ors on 21 August, 1995 reported in 1996 AIR 669, 1995 SCC (5) 628 has observed as under, which demolishes the argument of delay in seeking employee related service benefits :

"The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Others vs. Mattapalli Raju and Others, AIR 1950 Federal Court 1)."

Therefore the legal principle is clear that family pension which is akin to salary paid on a monthly basis, is a continuous cause of action and the concept of limitation does not deter claim in regard to family pension. Accordingly, MA/20/476/2018 seeking condonation of delay is allowed.

IV) Thus based on the above stated facts the OA succeeds. The action of the respondents is against law and rules. Hence the impugned order dt 4.8.2013 is quashed. Hence the respondents are directed to consider as under:

- i) To grant secondary family pension to the applicant from the date of death of her mother ie 23.11.2010 with prevailing GPF rate of interest from the date due till the date of payment.
- ii) Time permitted to implement the order is 3 months from the date of receipt of the order.
- iii) No order as to costs.

With the above directions the OA is allowed.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

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