

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

LIBRARY

No. O.A. 350/00498/2015

Date of order: 14.10.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Smt. Kaushalaya Devi,
Widow of Late Siya Ram Rai,
Ex- Drilling Assistant Eastern Region,
Geological Survey of India,
Kolkata - 700 091
Residing at,
Aged about 54 years (20.4.1964),
By faith - Hinduism,
By occupation - service,
Residing at the House of Sunil Chandra Deb,
Village - Nabagram,
P.O. : Panchpota, District - South 24 Parganas,
P.S. Sonarpur, Pin - 700 152, West Bengal.

.. Applicant

- VERSUS -

1. Union of India,
Service through the Secretary,
Ministry of Mines,
Shastri Bhawan, 2, Rajendra Prasad Marg,
New Delhi - 110 001.
2. The Director General,
Geological Survey of India,
27, J.L. Nehru Road,
Kolkata - 700 016.
3. The Deputy Director General,
Geological Survey of India,
Eastern Region, Bhu Bigyan Bhawan, DK-VI,
Sector - II, Karunamoyee, Salt Lake,
Kolkata - 700 091.
4. The Director & Grievance Officer,
Geological Survey of India,
Eastern Region, Bhu Bigyan Bhawan, DK-VI,
Sector - II, Karunamoyee, Salt Lake,
Kolkata - 700 091.

.. Respondents

For the Applicant : Mr. S. Roychowdhury, Counsel

For the Respondents : Ms. D. Nag, Counsel



2.

ORDER (Oral)

Per Mr. Justice G. Rajasuria, Judicial Member:

Heard both.

2. Anim adverting upon the rejection of the prayer of the applicant for family pension under CCS (Extraordinary Pension) Rules, 1939, this O.A. has been filed seeking the following reliefs:

"a) The impugned order being Annexure A-6 be set aside with a direction upon the respondents to pay the applicant all entitlement of family pension to which the applicant is entitled to under the provisions of the Central Civil Services (extra ordinary) pension rules together with interest at the rate of 18% p.a. on all sum fallen due and payable on that sum within a particular period of time to be specified by the Ld. Tribunal.

b) Compensation owing to committing constitutional tort in violation to Right to Dignity engrafted under Article 21 of the Constitution of India in deliberately suppressing the fact that an employee of GSI deployed on field duty always remain to be on duty and owing to such committing of constitutional tort the applicant will be entitled to a sum of Rs. One Crore (Rs. 1,00,00,000/-) and/or to pass such other or further order/orders as your Lordships may deem fit.

c) Cost and costs incidental thereto;

d) And/or to pass such other or further order or orders as to your Lordships may deem fit and proper."

3. The Ld. Counsel for the applicant would advance his arguments which could succinctly and precisely be set out thus:

On 18.10.1982, the applicant's husband in the discharge of his duty was travelling in a pick up van along with other government servants while returning from Darjeeling to Rangpo Drilling in Sikkim and at that time an accident took place

17/10/82

at Peshok Road, which killed seven persons including the applicant's husband. As such, the applicant being the widow of the deceased is entitled to extra ordinary family pension because he died in harness in the discharge of his duties.

5. The Ld. Counsel for the applicant also in order to buttress and fortify his argument would place reliance on the judgement of the Hon'ble Calcutta High Court dated 21.2.2011 in WPCT NO. 247 of 2010 and an excerpt from it would run thus:-

" The Motor Accident Claims Tribunal also upon considering the materials and evidence on record arrived at the specific finding that the husband of the petitioner died in accident while on duty. From the records also we find that Mr. M.N. Mukherjee, Drilling Engineer (Jr.) for Director (Drilling), Drilling Division, Eastern Region, Geological Survey of India, issued a certificate and deposed before the learned Additional District Judge, Darjeeling in connection with the MAC case. In the said certificate Mr. Mukherjee specifically mentioned that the late husband of the petitioner expired in a motor accident while he was on duty. The said certificate is set out hereunder:

Government of India

No. 133/ER/D/SKM/Driller/09

Dated: 2.6.1999

DIRECTOR (DARJEELING)
EASTERN REGION,
GEOLOGICAL SURVEY OF INDIA)
(RIPON STREET) (4TH FLOOR)
CALCUTTA - 700 016.

(TO WHOM IT MAY CONCERN)

This is to certify that Late S.K.Mitra, Ex-Driller was drawing Rs. 2242.50 in the month of September, 1982 the details of which is shown below:-

Pay	Rs. 1200/-
Merger DA-ADA	RS. 243/- + Rs. 120/-
D.A.	Rs. 517/-
CCA	Rs. 50/-
HRA	Rs. 112.50

Total	Rs. 2242.50

His date of birth was on 1.12.1930 and his date of superannuation would have been 30.11.1988, who expired on 18.10.82 in a motor accident at Darjeeling while he was on duty.

Sd/-

(M.N. Mukherjee)
 Drilling Engineer (Jr.)
 For Director (Drilling)
 Drilling Division, E.R.,
 Geological Survey of India."

The authorities concerned, ignoring the specific findings of the Judicial Authority, namely, the learned Additional District Judge, Darjeeling and the learned Tribunal, rejected the claim of the petitioner herein is did not die while he was on duty. The respondent authorities herein cannot ignore the specific finding of the Judicial Authority and arrive at a contrary finding. The learned Tribunal in spite of arriving at the specific finding that the husband of the petitioner died in accident while on duty should not have referred the matter back again to the respondent authorities for taking further decision instead of granting relief to the petitioner by directing the respondent authorities to sanction family pension to the said petitioner in terms of Central Civil Service (Extraordinary Pension) Rules, 1939.

For the aforementioned reasons we set aside the impugned direction passed by the learned Tribunal and also quash the decision of the respondent authorities subsequently taken pursuant to the impugned direction of the learned Tribunal. With the aforesaid directions, we all this writ petition and direct the respondent authorities to sanction family pension to the petitioner strictly in terms of the Central Civil Service (Extraordinary Pension) Rules, 1939 with retrospective effect from the date of sanctioning normal pension to the said petitioner."

5. According to the Ld. Counsel for the applicant, verbatim the objections raised in this O.A. were raised before the Hon'ble Calcutta High Court in WPCT No. 247 of 2010 but the Hon'ble High Court negated all those objections and held that the accident occurred while the late S.K. Mitra was on duty and, accordingly, his widow got extra-ordinary pension. Here it is a ditto case. This case was that case.

6. As per the counsel for the applicant, the findings of the Hon'ble High Court are squarely applicable to this case also because the husband of the petitioner is one among the persons who died in the accident wherein the said Mitra also died. Wherefore, he would pray for a direction to the respondent authorities to extend the benefit of extra-ordinary pension in favour of the applicant with arrears.

7. Per contra, the Ld. Counsel for the respondents in a bid to torpedo and pulverise applicant's contention would pilot her arguments which could briefly and tersely be set out thus. Indebitably and indisputable the petitioner herein did not

file any application for claiming compensation before the Motor Accident Claim Tribunal as it was done by the deceased Mitra's wife. The finding rendered by the Motor Accident Claims Tribunal in the case filed by the Mitra's was applicable only for that case and consequently the finding given by the Hon'ble High Court based on that Tribunal's finding would be in favour of the widow of Mitra only and not in favour of the applicant. The fact finding enquiry by the committee of the department would evince and evidence, portray and describe that the jurisdiction of the Sr. Official namely Mitra and his team of officials including this petitioners husband Deb was only confined to Sikkim, and it did not include Darjeeling and they had no business to go to Darjeeling and the finding given by the fact finding committee cannot be ignored or phoo-phooed, belittled or slighted and it should be given due importance and that admittedly and indubitably the accident took place in a place outside Sikkim jurisdiction.

8. She would also argue that the applicant was given compassionate appointment as MTS and still she is in job. Wherefore the Ld. Counsel for the respondents would pray for the dismissal of the O.A.

9. The point for consideration is as to whether the findings rendered by the Hon'ble High Court in WPCT No. 247 of 2010 are applicable to the facts and circumstances of the case and if so what should be the remedy in favour of the petitioner.

10. At the outset itself we would like to point out that the decision rendered by the Hon'ble Calcutta High Court, within whose jurisdiction the Central Administrative Tribunal is situated, would act as a binding precedent on ^{this C.A.} it. No doubt the Ld. Counsel for the respondents would try to distinguish and differentiate the said cited judgment of the Hon'ble High Court on the main ground that in that case the Hon'ble Calcutta High Court, took into account the finding rendered by the Motor Accident Claims Tribunal. The Hon'ble Calcutta High Court did not give any

independent finding on the factual issue but placed reliance on the decision rendered by the Motor Accident Claims Tribunal relating to the claim filed by the legal heirs of the deceased Mitra. The distinction sought to be made by Ld. Counsel for the applicant is one that of tweedledum and tweedledee, six of the one and half a dozen of the other, a rock and a hard place, and it is not one between chalk and cheese. Had the husband of the applicant herein died in a different accident then the matter would be slightly different. Admittedly the husband of the applicant and the said Mitra died in one and the same accident while travelling in the said pick up van belonging to Government. As such, in this case the respondents cannot be allowed to split hairs or split the two sides of the coin and no more elaboration in this regard is required.

11. However, we would also like to point out that simply because the accident took place outside the Sikkim jurisdiction, one cannot jump to the conclusion that death occurred not on duty. A person on duty, might have had the necessity to travel even beyond the territorial jurisdiction of his area and on that basis alone it cannot be held that the accident took place not in the course of official duty. The Hon'ble High Court also placed reliance on the certificate dated 2.6.1999 issued by the Drilling Engineer (Jr.) for Director Drilling, Drilling Division, GSI to the effect that the said Mitra died while on duty. As such, considering all these facts the Motor Claims Tribunal as well as the Hon'ble High Court rendered the finding.

12. In such as case, we are having nothing on record to take a contrary view to the one taken in the decision of the Hon'ble High Court. Accordingly, the prayer of the petitioner for extra-ordinary pension as is being awarded. The respondent authorities concerned shall pay the extra ordinary family pension contemplated under CCS (Extra-Ordinary) Pension Rules, 1939 with arrears within a period of three months from the date of receipt of a copy of this order.

13. We also direct the respondents to grant 6% interest per annum towards

the arrears, and that authority should revise the pension order accordingly.

14. The O.A. is, accordingly, disposed of. No costs.

(Jaya Das Gupta)
MEMBER(A)

(G. Rajasuria)
MEMBER(J)

SP