

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

This the 19th day of July 2019

ORIGINAL APPLICATION NO. 330/00679/2018

HON'BLE Mr. RAKESH SAGAR JAIN, MEMBER (J)

1. Smt. Bachani Devi wife of Late Shri Molai Ram.
2. Anubhav Kumar son of Molai Ram, Resident of Village Chakaisa,
Post Maharajganj, District Ghazipur.

..... Applicants

By Advocate: Ms. Saumya Mandhyan

Versus

1. Union of India through Secretary, (Post and Telegraph
Department), New Delhi.
2. The Director, Postal Services, Uttar Pradesh, Lucknow.
3. Senior Superintendent, Railway Mail Services, Gorakhpur Division,
Gorakhpur.
4. The Post Master General, Gorakhpur.

..... Respondents.

Advocate: Shri Jitendra Prasad

ORDER

1. This OA has been filed by the applicants Bachani Devi and Anubhav Kumar under Section 19 of the Administrative Tribunals Act, 1985, praying for the following relief:-

“(i) To issue a writ, order or direction in the nature of certiorari quashing the order dated 03.07.2018 pass by respondent No.3.

- (ii) To issue a writ, order or direction in the nature of mandamus commanding the respondents not to give effect the order dated 03.07.2018.
- (iii) To issue a writ, order or direction in the nature of mandamus commanding the respondents to make payment relating to the retiral dues and other benefits of the deceased Late Shri Molai Ram to the applicant Nos. 1 & 2.
- (iv) To issue a writ, order or direction in the nature of mandamus commanding the respondents to grant interest on the delayed payment.
- (v) To issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.
- (vi) To award cost of the petition to the applicants".

2. Case of the applicants, as per the O.A, is that the applicant Bachani Devi is wife and Anubhav Kumar is the son of late Molai Ram who was in Government service. It is the case of applicants that in Original Suit against Molai Ram and other persons, which was decided by Civil Judge (Sr. Division) Ghazipur vide judgment dated 22.09.2017 which gave a finding about marriage between applicant No. 1 and Molai Ram and that after the partition of property amongst the shareholders, the share of Molai Ram in joint property has been mutated in favour of applicants. Therefore being the wife and son of Molai Ram, the applicants are entitled to the retiral benefits of deceased Molai Ram. It has also been averred that the names of brothers of Molai Ram were included in Nomination Form of deceased Molai Ram whereupon the brothers filed O.A. No. 799/2013 wherein vide order dated 13.03.2018 it was held that the brothers are not entitled to retiral dues and the issue of disbursement was to be decided by the respondents. It is the case of applicants that they filed number of documents like family certificate issued by the Tehsildar, residence certificate, revenue record etc but the respondents by way of impugned order dated

03.07.2018 rejected the claim of applicants on the ground that they should get a Succession Certificate from the Court.

3. Applicants have challenged the impugned order on the ground that succession certificate is required only when there are more than one claimant for the family pension and other pensionary benefits and in the present case except the applicants there is no other claimant and hence insistence on succession certificate is unwarranted. Applicants' second contention is that in the CCS (Pension) Rules, 1972 there is no provision for obtaining succession certificate for grant of family pension and other retiral benefits. As their request has not been considered by the respondents, they have filed the present OA, praying for the reliefs mentioned Para No.2 above.
4. In response to the notices issued, the respondents entered appearance and filed reply in which it has been stated that deceased never indicated the applicants as his wife and son during his service period in his service record. During the scrutiny of his service records/service book, it was found that he had nominated his mother (since deceased) and in alternate, his brothers who as per the order of the Tribunal are not entitled to the retiral benefits. In these conditions, the service benefits cannot be disbursed to the application without production of the succession certificate.
5. I have considered the arguments of the learned counsels for the parties and also perused the pleadings.
6. Impugned order dated 03.07.2018 reads as under:

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7. It is not in dispute that looking to the facts of the case, it is to be taken that there is no valid nomination made in the service record of deceased Molai Ram as to who should receive his retiral benefits

after his death. The payment of family pension and death gratuity are governed by Rule 77 of the CCS (Pension) Rules, 1972, which reads as under:

“77. Obtaining of claims for family pension and [death gratuity]

(1) Where the Head of Office has received an intimation about the death of a Government servant while in service, he shall ascertain whether any [death gratuity] or family pension or both is or are payable in respect of the deceased Government servant.”

8. This Rule clearly prescribes that in case of non-existence of any nomination, Head of Office is required to ascertain about the person(s) to whom gratuity is to be paid. There is no insistence on a succession certificate under this rule.
9. Reference may be made to ***Rameshwari Devi v. State of Bihar - (2000) 2 SCC 431*** wherein Hon’ble Apex Court directed the respondents to conduct a detailed enquiry. In that decision the Hon’ble Apex Court held: “In the present case we are concerned only with the question as to who is entitled to the family pension and death-cum-retirement gratuity on the death of Narain Lal. When there are two claimants to the pensionary benefits of a deceased employee and there is no nomination wherever required the State Government has to hold an inquiry as to the rightful claimant. Disbursement of pension cannot wait till a civil court pronounces upon the respective rights of the parties. That would certainly be a long drawn affair. The doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be

a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rational manner.”

10. In the present case, I have noticed from the pleadings that the respondents have been insisting on the succession certificate without discharging their statutory duties under this rule to make an enquiry and ascertain the person(s) eligible for receiving such benefits. The applicant, however, has been insisting that there is no other claimant other than her to the family pension and death gratuity. The respondents have also not mentioned anywhere as to their receiving any counter-claim for receiving such benefits from any other person. The claim of the brothers of deceased Ram Molai has already been negated by the Tribunal. The impugned being in violation of CCR pension Rules deserves to be set aside.
11. Alternatively, the impugned order deserves to be set aside on the ground that it was incumbent upon the Competent Authority to pass a reasoned order observing the principles of natural justice, which are totally lacking in the present case. The impugned order of the competent authority is very brief, sketchy and lacks reasoning. It is now well settled principle of law that in case a public authority wants to pass an adverse order, it has to follow the principles of natural justice and to pass a speaking order. In the present case, respondents have failed to consider the impact and interpret the documents placed on record by the applicants in support of their case.
12. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the case of Kranti Associates Private Limited and Anr. Vs. Masood Ahmed Khan and Ors., (2010) 9 SCC 496 has held that a quasi judicial/administrative authority must record reasons in support of its conclusions. The insistence on recording of reasons is meant to serve the wider principle that justice must not only be done it must also appear to be done. In para-47, it has been held that:-

"7. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have

been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".
- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

13. Therefore, thus, seen from any angle, the impugned order dated 03.07.2018 of the respondent No. 3 does not fulfil the legal requirements as laid down by the Hon'ble Apex Court and has no legs to stand in law. Therefore, I hold that respondent No. 3 has neither recorded cogent reasons, nor examined the matter in the right perspective.

14. After analyzing all the points raised by the applicants in their OA, I find that order passed by respondent No. 3 is wholly cryptic, non-speaking and without application of mind and have been passed in most casual and perfunctory manner as it has not been passed in accordance with the decision of Hon'ble Supreme Court in the case of Ram Chander Vs. Union of India and Ors. 1986 SCC (L&S) 383, N.M Arya Vs. United India Insurance Company – 2006 SCC (L&S) 840 and DFO Vs. Madhusudan Rao. 2008 Vol. 1 Supreme Today page 617 wherein it has been held that while deciding the representation or appeal or revision by the Competent Authority, speaking order should be passed. It is evident that the applicants raised several grounds and placed documents in support of their case but respondent No. 3 without considering each and every ground raised by the applicants and interpreting the documents and their evidentiary value, submitted by applicants rejected their prayers by a cryptic and non-speaking order.

15. It was argued by learned counsel for respondents that the applicants are duty bound under Rule 52 of CCS Pension Rules to file a Succession Certificate for disbursement of the gratuity amount. However, the contention of respondents is placed on misconception of scope of Rule 52. In the present case, the question of existence of family of deceased Ram Molai is yet to be decided, as such, in the present existing state of affairs, when the question of claim of applicants who consider themselves to be family of deceased Ram Molai is yet to be settled, the applicability of Rule 52 does not arise. So, this contention of respondents cannot

be accepted at this stage of the case of applicants which is yet to be processed and decided.

16. Under the circumstances, I am of the view that insistence on succession certificate from the applicant by the respondents is uncalled for, for the reasons mentioned in the pre-para. The respondents are required to discharge their obligatory duties under Rules 54 and 77 of the CCS (Pension) Rules, 1972, to make an enquiry and ascertain the name(s) of the person(s) who is/are entitled to receive the family pension and death gratuity. I, therefore, dispose of the OA in the following terms:

- I. Impugned Order dated 03.07.2018 passed by respondent No. 3 is set aside;
- II. Respondent No.3 shall make an enquiry with regard to person(s) eligible for receiving the family pension and death gratuity in terms of Rules 54 and 77 of the CCS (Pension) Rules, 1972, within a period of four weeks from the date of receipt of a certified copy of this order;
- III. If respondent No.3, after making enquiry comes to a conclusion that there is no claimant other than the applicant, then shall sanction family pension and death gratuity to the applicants within 8 weeks thereafter;
- IV. Respondent No. 1 shall decide the matter afresh by a reasoned and speaking order meeting all the grounds raised by the applicants and considering the documents filed by applicants in accordance with law and communicate the decision to the applicants.

17. There is no order as to costs.

(RAKESH SAGAR JAIN)
Member (J)

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