

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

Original Application No.21/1068/2018

Date of Order: 15.07.2019

Between:

P.B. Sudha Rani, D/o. P.N. Bhoopathi,
Aged about 54 years, Occ: House Keeper,
R/o. H. No. 96, TIT Blocks,
Bollaram, Sadar Bazar, Secunderabad,
Telangana State.

... Applicant

And

Union of India, Rep. by

1. The General Manager,
South Central Railways,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
South Central Railway,
Secunderabad Division, Secunderabad.
3. The F.A & CAO,
South Central Railway,
Rail Nilayam, Secunderabad.

... Respondents

Counsel for the Applicant ... Mr. K. Siva Reddy

Counsel for the Respondents ... Mrs. A.P. Lakshmi, SC for Rlys

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

2. The OA is filed challenging the order rejecting sanction of secondary family pension vide impugned order dt.23.10.2018.

3. Brief facts which are to be adumbrated are that the applicant is the unmarried daughter of Sri P.N.Bhoopathi, who superannuated from the respondents organisation on 31.8.1992 and later breathed his last on 19.6.2016. Mother of the applicant had separated from her father in 1990 and did not rejoin him. Being the unmarried daughter, an application was preferred for secondary family pension, enclosing relevant documents. The same was rejected and hence the OA.

4. The contentions of the applicant are that she was dependent on her father. Mother of the applicant is not drawing family pension. The whereabouts of the mother were not known either to her husband or to other family members. Rejecting grant of family pension is violative of Articles 14 and 21 of the Constitution.

5. Respondents per contra, state that the ex-employee at the time of retirement on 31.8.1992 has furnished his wife name (Smt. P. Padmavathi) and joint photograph for processing of pension papers though the applicant claims that her mother deserted them in 1990. The applicant's name does not figure in the pension booklets. Further, mother of the applicant has complained on 10.8.1992 to stall release of terminal benefits as there are some court cases pending. In response, wife of the ex-employee was advised that retirement benefits cannot be withheld due to court cases and went ahead in releasing the terminal benefits plus authorising family pension in her name. On the death of the ex-employee

in 2016, based on the application made by the applicant for secondary pension, she was asked to submit the requisite documents. One of the documents submitted is the medical identity card issued in 2002-2003 wherein her name figures as unmarried daughter as well as that of her mother. Thus, the mother of the applicant was living with the family in 2002-2003 and hence the claim that she had deserted the family in 1990 before retirement of the ex-employee is false. Brother of the applicant on lodging police complaint, the later have certified that it is not possible to trace the missing woman who has not seen since the last 28 years and that there is no evidence that she is dead. Secondary family pension would be granted only when both the parents are dead.

6. Heard both the counsel and perused the pleadings on record.

7. I) Applicant claims that her mother separated from them in 1990 i.e. 2 years before the retirement of the ex- employee. However, while submitting pension papers, ex-employee has submitted a joint photograph with the mother of the applicant and indicated her name in the pension booklets, thereby family pension was sanctioned in the name of the mother of the applicant. Respondents have stated that the mother of the applicant has complained on 10.8.1992, just a few days before retirement of the applicant's father, to stop the release of terminal benefits but the respondents proceeded with the release of benefits due to the ex-employee and the same was informed to her vide letter dt. 25.08.1992 (Annexure R-III). This complaint is an indication of the marital dispute between the mother of the applicant and the ex-employee,

which cannot be glossed over. True, the ex-employee has enclosed the joint photograph of his wife in the pension booklets with the fond hope that she may return one day. He has followed the Dharma of discharging his responsibility as a husband. Even the issue of the Medical identity card in 2002-03 with the details of the mother in the cited card is a continuation of the hope that the family will unite. Hence, expecting a representation from the ex-employee that his wife has deserted him is far-fetched in the context of the facts expounded. Moreover, it is a social stigma for employees to reveal their marital issues to the employers and that invariably leads to legal issues later, as seen in the present case. The ex-employee has passed away on 19.6.2016 and thereafter the issue of secondary family pension cropped up. Applicant's brother has complained to the police on 22.08.2017 that his mother is missing since 28 years. Police after making a search for 10 months have reported vide letter dated 22.6.2018 (Annexure R-V) as under:

*“As she left the house about 28 years back, it is not possible to trace out the missing woman Smt. P.Padmavathi. **“There is no evidence showing that she died.”**”*

The Police report confirms that she has left 28 years back. The respondents received a complaint from the mother of the complainant in 1992, just a few days before the retirement of the ex-employee to stop terminal benefits. The respondents have not heard from the mother of the applicant thereafter. Therefore, these facts do establish that the mother of the applicant has separated from the family due to marital issues. As was adduced earlier, submission of joint photographs for pension and medical

identity card, noting mother's name in the pension booklets etc are with the hope that someday she would return and that there should not be any administrative issues to receive the benefits due, on her reuniting with the family. Employee too is a human being who lives with the hope of doing his best to his family and the organisation he serves. Hence, the action of the ex-employee in entering his wife name in records referred to. Applicant asserts that they have not heard about her for the last 28 years. The respondents have stated that this assertion of the applicant is false. If so, then the onus of responsibility lies on the respondents to prove that the mother of the applicant is alive as per Section 108 of the Indian Evidence Act, which reads as under.

“Section 108 - Burden of proving that person is alive who has not been heard of for seven years

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”

Respondents have not submitted any document claiming that she is alive. Therefore, their stand that the mother was with the family does not bear much credence.

II) Moreover, Hon'ble Supreme Court in ***Rubabbuddin Sheik v State of Gujarat, (2007) 4 SCC 404*** has held that if the dead body is not found or the person is not found for a period of 7 years, then the said person can be presumed to be dead. In regard to the mother of the applicant, she is not found for more than 7 years and neither her dead body. Hence she has to be presumed to be dead in legal parlance.

III) Besides, Dept. of Pension and Pensioners Welfare (DOP&PW) vide memo No 4-52/86-Pen dtd. 24.6.2013, has presented the methodology in dealing with the issues pertaining to family pension of missing employees as under:

“4. In the case of a missing employee/pensioner/family pensioner, the family can apply for the grant of family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever has not already been received) to the Head of office of the organisation where the employee/pensioner had last served, six months after lodging of Police report. The family pension and/or retirement gratuity may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report from the Police, that the employee/pensioner/ family pensioner has not been traced despite efforts made by them. The report may be a First Information Report or any other report such as a Daily Diary/General Diary Entry

ii) An Indemnity Bond should be taken from the nominee/dependants of the employee/pensioner/ family pensioner that all payments will be adjusted against the payments due to the employee/pensioner/ family pensioner in case she/he appears on the scene and makes any claim.

5. In the case of a missing employee, the family pension, at the ordinary or enhanced rate, as applicable, will accrue from the expiry of leave or the date up to which pay and allowances have been paid or the date of the police report, whichever is later. In the case of a missing pensioner/ family 'pensioner, it will accrue from the date of the police report or from the date immediately succeeding the date till which pension/family pension had been paid, whichever is later.

6. The retirement gratuity will be paid to the family within three months of the date of application. In case of any delay, the interest shall be paid at the applicable rates and responsibility for delay shall be fixed. The difference between the death gratuity and retirement gratuity shall be payable after the death of the employee is conclusively established or on the expiry of the period of seven years from the date of the police report.”

The respondents need to grant family pension from the date of the police report i.e. 22.06.2018 after obtaining the indemnity bond as specified in the OM cited. Indemnity bond is a safety clause which safeguards the interests of the respondents. Railways, though independent, do follow the DOP&PW OM's to regulate pension related issues and hence the modus operandi prescribed in the OM has to be followed.

IV) In fact, legal sanctity to the OM of DOP&PW referred to has been provided for by the Hon'ble High Court of Andhra Pradesh while adjudicating a similar issue in Writ Petition No 34859 of 2016 dated 30.1.2017 where in it was held as under:

“41. The above circular clinches the issue with respect to the claim of the respondent. Therefore, irrespective of our decision on the purport of Section 108 of the Evidence Act, 1872, the respondent is entitled to all the benefits as per the aforesaid decision of the Government of India under the Circular Letter No.4-52/86-Pen., dated 3-3-1989.

42. Hence, the writ petition is disposed of modifying the order of the Tribunal and directing the petitioners to grant all the benefits applicable to the respondent under the Circular VRS, J. & GSP, J. wp_34859_2016 26 Letter No.4-52/86-Pen., dated 3-3-1989 within a period of four (4) weeks.”

The OM referred in the Hon'ble High Court judgment is based on the DoP & PW Memos issued on the subject. Hence, the request of the applicant is fully covered by the judgment of the Hon'ble High Court which is binding.

V) It is not out of place to adduce that the applicant has submitted a certificate issued by the Tahsildar, Tirumalagiri, Hyderabad vouching that the applicant is the unmarried, unemployed daughter of the deceased employee. It was also certified in the said certificate that she has no source of income. This certificate sets at rest the doubts of the respondents about the status of the applicant. Even the Mother of the applicant has not claimed family pension till date. In the absence of such a claim, it is not known as to why the respondents did not take the initiative to find out as to the circumstances in which the family of the deceased employee is placed, to take a decision in the matter, as is expected of a model employer.

VI) In addition, the case of the applicant is further fortified by the OM No.1/19/03-P&PW (E) dated 6.9.2007 of DOP&PW wherein it was indicated that unmarried; daughters are eligible for family pension even if they are beyond 25 years of age.

“The undersigned is directed to say that as per existing provisions under clauses (ii) and (iii) of sub-rule (6) of Rule 54 of the C.C. S. (Pension) Rules, 1972, read with of para 7.2 (b) of this Department’s O.M. No. 45/86/97-P&PW (A)-Part I dated the 27th October 1997, son/daughter including widowed/ divorced daughter is eligible for grant of family pension till he/ she attains the age of 25 years or upto the date of his / her marriage/ remarriage, whichever is earlier subject to income criterion laid down in this Department’s O.M. No. 45/51/97-P&PW(E) dated the 5th March 1998 which stipulates that a son/ daughter, including widowed/ divorced daughter, shall not have an income exceeding Rs. 2550/- per month from employment in Government, the private sector and self employment, etc., to be eligible for family pension. Orders were also issued vide this Department’s O.M. No. 45/51/97-P&PW (E)(Vol.II) dated 25th July 2001 regarding eligibility of disabled divorced/ widowed daughter for family pension for life subject to conditions mentioned therein. Further, orders were issued

for making the widowed/ divorced daughter eligible for family pension vide this Department's O.M. of even number dated 25th August, 2004.

2. The Staff Side of National Council (JCM) had raised the issue of extension of scope of family pension to unmarried daughters of the Government servants/ Pensioners even after attaining the age of 25 years at par with the widowed/ divorced daughters, which has been agreed to in principle. It has, accordingly, been decided that the unmarried daughters beyond 25 years of age shall also be eligible for family pension at par with the widowed/ divorced daughters subject to other conditions being fulfilled. Grant of family pension to unmarried/ widowed/ divorced daughters shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above her has become ineligible for grant of family pension. It is further clarified that family pension to unmarried/ widowed/ divorced daughters above the age of 25 years shall be payable only after the other eligible children below the age of 25 years have ceased to be eligible to receive family pension and that there is no disabled child to receive the family pension.

3. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O. No. 380/E.V/2006 dated 05.01.2007."

Subsequently, DoP & PW issued Notification No. 38/80/2008-P. & P.W.

(A) (Part II), dated 8th June, 2011, published as GSR 176 in Gazette of India, dated the 8th June 2011, substituting Sub-Rule 6 of Rule 54 of CCS (Pension) Rules, 1972. Relevant portion of the said provision is as under:

"6. The period for which family pension is payable shall be as follows:-

(i) xxxx

(ii) xxxx

(iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier; "

VII) Thus the applicant has submitted the police report in regard to her missing mother, Tahsildar certificate about her status, no objection certificate from the other family members vide affidavit dated 8.8.2017 and other relevant documents sought by the respondents. As per the legal principles laid down by the Hon'ble Supreme Court and the Hon'ble High Court, Section 108 of the Evidence Act and as well as the DOP &PW OM/ Notification referred to, applicant is comprehensibly eligible to be granted secondary family pension. Besides, her father is dead and her mother is no more in the context of the legal principles explained in paras supra. Respondents cannot dither from granting family pension to the eligible family member after requisite documents have been submitted. This Tribunal in a more or less similar issue in OA 499/2019 dated 18.6.2019 has directed the release of family pension.

VIII) Besides, though the applicant has been representing that she is the eligible family member to be granted secondary family pension, respondents have procrastinated the same by referring to issues which had no intrinsic bearing on the issue at hand. Hence respondents are liable to pay interest on the secondary family pension amount held over by them from the date due. Tribunal relies on the observation of the Hon'ble Supreme Court observation, reproduced hereunder, in S.K. Dua v State of Haryana, (2008) 3SCC 44 at page 47, which enjoins upon the respondents the responsibility to pay interest;

“If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of

statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of “bounty” is, in our opinion, well founded and needs no authority in support thereof.”

IX) Thus, in view of the aforesaid facts, OA fully succeeds. The action of the respondents is against rules, arbitrary and contrary to the legal principals laid down by the superior judicial forums. Consequently, respondents are directed to consider as under:

- i) To grant eligible secondary family pension to the applicant from the date of police report i.e. 22.6.2018 in accordance with the DOP&PW Memo cited supra.
- ii) Arrears of family pension be worked out and prevailing GPF rate of interest be paid from the date due till the date of payment.
- iii) Time allowed to implement the order is 3 months from the date of receipt of this order.
- iv) With the above directions, the OA is allowed. There shall be no order as to costs.

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

Dated, the 15th day of July, 2019

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