

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT SITTINGS : INDORE

Original Application No.201/01038/2017

Jabalpur, this Thursday, the 29th day of August, 2019

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Mrs. Sugileela Jeyraj W/o Late P. Jeyraj
Age 85 years Occu. Presently Nothing
R/o 7-E Meenakshipuram Lane, Old Mahalipatti Road,
Madurai (Tamil Nadu)
through power of attorney J. Rajan
S/o Late P. Jayaraj
age 53 years Occu-Business
R/o I-88 L.I.G. Colony
R.S.S. Nagar Indore M.P.
PIN 452001 Mob. No.7024077077

-Applicant

(By Advocate-Shri Shubham Vyas proxy counsel for
Shri Lokesh Mehta)

V e r s u s

1. Union of India,
Through the Divisional Railway
Manager Ratlam,
Division Western Railway Ratlam M.P.

2. The Sr. Divisional Accounts Manager,
Ratlam Division Western Railway
Ratlam M.P.

3. Smt. J. Annapushpam
W/o Late Shri O. Jeyraj
Age Major Occu-Presently Nothing
R/o 1/6 North East Street P. Kular
Dhamkari Tal
Dist. Tuticoran (Tamil Nadu)

- Respondents

(By Advocate-Shri Surendra Gupta)

O R D E R (Oral)

By Ramesh Singh Thakur, JM:-

This Original Application has been filed by the applicant against the illegal, malafide action of the respondents on not providing the entire amount of pension and other benefits to the applicant.

2. The applicant has prayed for the following reliefs:-

“8.a To call the relevant record pertinent to the present matter.

8.b To give the entire amount of 50% pension to the applicant from the date of its initial orders.

8.c Any other relief, which this Hon’ble Court may deem fit in favour of the applicant.”

3. The case of the applicant is that the applicant is the widow of P. Jayaraj was initially appointed with the respondents on 09.08.1974 as a Ticket Collector (T.C.) in respondent-department and was retired in the year 1995. PPO was prepared by respondents on 07.03.1995 and started the pension to the husband of the applicant. The applicant is 85 year old and has filed this application after

giving power of attorney to her son Shri J. Rajan. PPO dated 22.09.1995 is annexed as Annexure A/1. The husband of the applicant died on 20.12.1995 and therefore the pension of applicant was started by the respondents. The respondent started 50% pension to the respondent No.3 according to Rule 77(1)(a) (b) of the Pension Rules, 1993 vide letter dated 29.08.2005 (Annexure A/3). The respondents also directed the applicant as well as respondent No.3 to obtain succession certificate from the competent court. The applicant filed the application before the 5th Civil Judge, First Class Ujjain and vide order dated 23.12.2006 (Annexure A/4) granted the succession certificate in favour of the present applicant. The respondent No.3 also filed the civil suit before the court at Tuticorin and vide order dated 07.03.2007 (Annexure A/5) directed to respondents to pay the pension to respondent No.3. Against the said order dated 07.03.2007 the present applicant filed the appeal registered as Appeal Suit No.15/2009 before the appellate court and vide order dated

21.06.2011 (Annexure A/6) it is decided to get 50-50% pension to the applicant as well as respondent No.5. The applicant informed the same to the respondent-department on 20.06.2016 (Annexure A/7). The respondent No.2 started the 50% pension to the applicant after 2017 but no order was passed for earlier 50% pension. It is submitted by the applicant she is entitled to get 50% amount of family pension and respondents No.1 and 2 has never given any opportunity of hearing to the applicant, hence, has acted in a highly arbitrary and capricious manner.

4. The official respondents have filed their reply. It has been submitted by the replying respondents that the husband of the applicant was appointed as T.C. on 09.08.1974 in Mumbai Division and on his own request he was posted in Ujjain as T.C. from 30.09.1977. The husband of the applicant submitted an application dated 17.08.1975 informing the department that he has already married to applicant before joining the Railway services

and before marrying the applicant he was solemnized registered marriage with respondent No.3 on 08.02.1962. The respondent No.3 (Annupushpanm) on 25.04.1992 lodged a complaint with department that while joining the railway services P. Jayraj has furnished false information of marriage and has married with applicant though respondent No.3 was alive and she has not taken divorce. On information of respondent No.3, disciplinary proceedings were initiated against P. Jayraj and he was given compulsory retirement on 01.02.1995. P. Jayraj died on 20.12.1995 and according to the nomination of P. Jayraj applicant was given the benefit of family pension. On 27.05.2004 respondent No.3 submitted an application for grant of family pension claiming the wife of P. Jayraj by submitted the original certificate of marriage. Thereafter in compliance the order dated 28.06.2005 passed by Hon'ble High Court of Madurai directed to pay 50%-50% family pension to the applicant and respondent No.3. On receiving the order department directed applicant

and respondent No.3 to bring the succession certificate and department by giving a letter dated 20.09.2015 directed the State Bank of Madurai Branch to stop the pension of applicant. Applicant filed a succession case No.08/15 before the Fifth Civil Judge Class-I Ujjain (MP) impleading the respondent No.3 as a party. As respondent No.3 did not appear in the case, ex parte order was passed in favour of the applicant and issued the succession certificate. Respondent No.3 also filed a case for grant of family pension in the Hon'ble High Court at Madurai impleading the GM/CCG DRM/RTM as party. On 05.04.2005 letter was written to Senior DFM to stop the pension of applicant and after the order dated 06.11.2009 and proceeding to dispose the family pension, respondent No.3 was directed to submit the papers. In compliance of order dated 05.04.2006 of Hon'ble High Court a communication was sent to accounts department to start the pension of respondent No.3 from 02.09.2009 and vide PPO dated 20.04.2011 100% pension was granted to

respondent No.3. Thereafter vide order dated 26.06.2011 of Subordinate Court Tuticorin, family pension of P. Jayraj was equally divided into two parts and was allowed to applicant as well as respondent No.3 from 01.02.2016.

5. This Tribunal has issued notice to the respondents on 13.12.2017. But later on notice issue to respondent No.3 was returned unserved. Vide order dated 13.03.2018 this Tribunal had directed the counsel for the applicant to effect service dasti on private respondent No.3. Proof of service of notice to respondent No.3 was furnished in this Tribunal on 28.08.2019. So, we are satisfied that effect service of notice is deemed to be served to respondent No.3. However, respondent No.3 has not filed any reply.

6. We have heard the learned counsel for both the parties and have also perused the documents annexed with the pleadings.

7. From the pleadings putforth by both the parties it is clear that Late P. Jayrej was initially appointed as Ticket Collector (T.C) on 09.08.1974 in Mumbai Division. Thereafter on his own request he was posted in Ujjain as Ticket Collector w.e.f.30.09.1977. As per reply of the replying respondents that the husband of the applicant submitted an application dated 17.08.1975 informing the department that he has already married to applicant before joining the Railway services and before marrying the applicant he has solemnized registered marriage with respondent No.3 on 08.02.1962. It has further submitted that the respondent No.3 on 25.04.1992 lodged a complaint with department that while joining the railway services P. Jayraj has furnished false information of marriage and has married with applicant, though respondent No.3 was alive and she has not taken divorce. The respondent-department has specifically submitted that disciplinary proceedings were initiated against P. Jayraj and he was given compulsory retirement on 01.02.1995. P.

Jayraj died on 20.12.1995 and according to the nomination of P. Jayraj, applicant was given the benefit of family pension. Respondent No.3 submitted an application dated 27.05.2004 for grant of family pension claiming the wife of P. Jayraj by submitted the original certificate of marriage. It has also come from the pleadings that respondent No.3 had filed civil suit before the court at Tuticorin and vide order dated 07.03.2007 (Annexure A/5) directed to respondents to pay the pension to respondent No.3. Against this order, the present applicant filed the appeal registered as Appeal Suit No.15/2009 before the appellate court and vide order dated 21.06.2011 (Annexure A/6) it is decided to get 50-50% pension to the applicant as well as respondent No.5. It is the case of the applicant that the respondent-department has been informed about the same on 20.06.2016 (Annexure A/7). The respondent No.2 started the 50% pension to the applicant after 2017 but no order was passed for earlier 50% pension. The only reason for granting 50% pension to the applicant after

2017 is that the applicant has informed the department on 20.06.2016.

8. The only dispute which remains to be adjudicated in this case is that why the respondent-department has not paid 50% pension to the applicant from the due date. It is admitted that respondent No.3 had filed civil suit before the court at Tuticorin and vide order dated 07.03.2007 (Annexure A/5) directed to respondents to pay the pension to respondent No.3. It is further admitted fact that against this order the present applicant has filed the appeal registered as Appeal Suit No.15/2009 before the appellate court and vide order dated 21.06.2011 (Annexure A/6) it is decided to get 50-50% pension to the applicant as well as respondent No.5 in the appeal. So both applicant and respondent No.3 are granted 50-50% pension. It is clear from Annexure A/5 that department was made party in the said suit. It is also clear from Annexure A/7 that the respondent-department was also made party to the suit before the appellate court, whereby both applicant and

respondent No.3 (in the instant case) were granted 50-50% family pension. At this stage though the respondent department has submitted that the applicant has intimated the department quite late, is not sustainable due to the fact that the department itself was made party in the civil suit as well as first appellate court. The legal position is quite clear that the order of the subordinate court merges with the order passed by the appellate court. So the order of the appellate court granting of 50-50% pension to both the applicant as well as respondent No.3 merges and is a final verdict of the court. But the respondent-department has paid 50% pension to the applicant w.e.f.01.02.2016. So there is a fault/mistake on the part of the respondent-department. Therefore the applicant is entitled for family pension w.e.f.26.06.2011 to 31.01.2016 as both the applicant as well as respondent No.3 are old aged ladies, who are entitled for 50-50% family pension. But looking to the facts and circumstances we direct the respondent-department to deduct from the family pension of

respondent No.3 in easy installments and pay excess amount to the applicant which has already been paid to respondent No.3 w.e.f.26.06.2011 to 31.01.2016. The sustainability of respondent No.3 shall also be taken into account as per pension rules.

9. In view of the above terms, this Original Application is allowed. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

(Navin Tandon)
Administrative Member

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