

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/542/2017

Jabalpur, this Wednesday, the 09th day of October, 2019

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Gidiya Bai
 W/o Late Babu Lal
 Age about 74 years
 R/o House No.1321
 Behind Prem Sagar
 Police Chouki
 Radhakrishnan Ward
 Jabalpur (M.P.) 482001
 Mobile No.8236026713

-Applicant

(By Advocate –Shri Praveen Yadav)

V e r s u s

1. Union of India,
 Through its Secretary
 Ministry of Defence
 South Block
 New Delhi 110001

2. Chairman Ordnance Factory Board,
 Oak Land Road,
 Kolkata 700001

3. Chief C.D.A. (Pensions)
 Dropati Ghat
 Allahabad (U.P.) 211001

4. General Manager
 Gun Carriage Factory
 Jabalpur 482075 (MP)

- Respondents

(By Advocate –Shri P.K. Chourasia)

O R D E R (Oral)

This Original Application has been filed against the order dated 17.04.2017 (Annexure A/1) whereby the respondent No.4 declined to grant family pension to the applicant.

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

“8(i) Summon the entire relevant record from the respondents for its kind perusal;

8(ii) Set aside the order dated 17.04.2017 Annexure A/1 passed by Res. No.4.

8(iii) Direct the respondents to provide the family pension to the applicant with arrears.

8(iv) Any other order/orders, direction/directions may also be passed.

8(v) Award cost of the litigation to the applicant.”

3. Precisely the case of the applicant is that the husband of the applicant namely Shri Babu Lal was appointed on 06.03.1962 in respondent-department. The applicant's husband was initially married with Smt. Gangiya Bai who is the elder sister of the applicant. The respondent-department has issued pension payment order in favour of

the applicant's husband as well as elder sister of the applicant before retirement from the services. Copy of Pension Payment order is at Annexure A/2. The applicant's husband died on 11.04.2003. Copy of death certificate is at Annexure A/3. After death of Babu Lal, the elder sister Gangiya Bai was getting family pension. The applicant's elder sister submitted representation dated 10.09.2013 (Annexure A/4) to the respondents to provide the family pension to the applicant as her elder sister is ill frequently but the respondents has not paid any heed in favour of the applicant. The applicant thereafter sought information under Right to Information Act regarding grant of family pension. The Chief Public Information Officer supplied the family pension policy to the applicant on 17.02.2017. Copy of same is annexed at Annexure A/5. It has been submitted by the applicant that her elder sister has expired on 12.08.2016. The applicant preferred representation dated 30.03.2017 (Annexure A/7) to the respondents to provide family pension. The applicant

furnished all information regarding her family members as per Annexure A/8. The respondent-department has not considered the representation of the applicant and vide order dated 17.04.2017 (Annexure A/1) declined to grant family pension to the applicant. Hence this Original Application.

4. Respondents have filed their reply wherein it has been submitted in the preliminary submission that as per record Late Shri Babulal had nominated Smt. Gangiya Bai as his wife and S/Shri Dashrath, Umashanker, Bhagvat Prasad and Heeralal as son and Ku. Urmila as daughter, in nomination form filled by Babu Lal during his service period. Accordingly, pension was sanctioned in favour of Gangiya Bai. Copy of statement of family as on 25.04.1998 filled up by Late Babu Lal is annexed as Annexure R/1. It has been admitted by the respondents that the applicant has submitted an application dated 30.03.2017 stating therein that after the death of Babulal, Smt. Gangiya Bai was getting family pension and died on

12.08.2016. After the death of Smt. Gangiya Bai she being second wife of Babu Lal is entitled for family pension. It has been specifically submitted by the replying respondents that Late Shri Babu Lal had never mentioned the name of the applicant in any of the document submitted by him during his life time or at the time of retirement and in absence of any nomination in favour of the applicant, the official respondent cannot process the family pension on the basis of applicant claim to be the wife of Late Babulal. It has been further submitted by the respondents that Smt. Gidiya Bai is not a wedded wife of Late Babulal. As per available record, the deceased employee Late Bubulal had nominated Smt. Gangiya Bai as his wife. It has been submitted by the respondents that as per Central Civil Services (Pension) Rule, 1972 only first wife/legally wedded wife is entitled for family pension, no one other than first wife or legally wedded wife can get such benefit. Since, late Babulal had nominated Smt. Gangiya Bai as his wife in nomination

form filled up by him during his service period. Accordingly, pension was sanctioned in favour of Late Babulal and family pension was sanctioned in favour of Gangiya Bai. It has been submitted by the respondents that the applicant had submitted an application dated 30.03.2017. On receipt of the said application, official respondents vide letter dated 17.04.2017 and 09.09.2017 has replied to the applicant that in absence of any nomination in favour of her the official respondents cannot process the pension on the basis of her claim to be second wife of the Late Babulal. The letter dated 17.04.2017 and 09.09.2017 are annexed as Annexure R/2 and R/3. Therefore no relief is admissible to the applicant and application is liable to be dismissed.

5. The applicant has submitted rejoinder to the reply filed by the respondents. It has been submitted by the applicant that the first wife (sister of the applicant Smt. Gangiya Bai) has no child therefore she agreed to accept the second marriage of her husband with her

sister/applicant. Smt. Gangiya Bai has preferred a representation dated 10.09.2013 (Annexure A/4) to all the respondents to grant family pension in favour of the applicant during her lifetime. It has been submitted by the applicant that applicant belongs to Scheduled Caste community wherein custom is that when the person having first wife has no child then he has to marry with someone else. Therefore Babu Lal remarried with applicant in the presence of first wife/sister of the applicant Smt. Gangiya Bai. It has been further submitted that as per policy (Annexure A/5) filed by the applicant as well as Central Civil Services (Pension) Rules, 1972 provides the family pension to the second wife. The rule provide that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to other widow in equal share, or if there is only one such other widow, in full, to her.

6. The respondents have filed additional reply to the rejoinder filed by applicant. It has been reiterated by the

respondents that as per Rule 54 of the CCS (Pension) Rule, 1972, it is mentioned that second wife will not be entitled to family pension as legally wedded wife. The relevant page of the said provision is annexed as Annexure R/4.

7. I have heard the learned counsel for the parties and have also gone through the pleadings annexed with the Original Application.

8. From the pleadings it is crystal clear that the applicant is the second wife of Late Babu Lal. It is also admitted fact that Smt. Gangiya Bai was the first legally wedded wife of deceased employee Babu Lal. As no child was born from loin of the first wife, Smt. Gangiya Bai has permitted the applicant to get married with Babu Lal. It is also admitted fact that after the death of Shri Babu Lal, the family pension was given by the respondent-department to Smt. Gangiya Bai. The applicant made representation to the respondent-department for granting the family pension. The only question to determination is that whether the second wife is entitled for family pension. As per reply

filed by the replying respondents, the second wife is not entitled for family pension. The applicant has brought my attention to explanation 7 at Page 20 of the paper book whereby as per clause 7(a)(i), it is stated that where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares. In the instant case admittedly the applicant was remarried to Babu Lal. As per Rule 54 Explanation 7(a)(i) of the CCS (Pension) Rules, 1972 (Annexure R/4) is as under:

“(7)(a)(i) where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.”

If the argument of counsel for the applicant is believed then the cause of action for equal share in the family pension has arisen in the year 2003 and at this belated stage the applicant cannot raise the issue of equal share of family pension of Late Babu Lal. So, on this ground the applicant cannot raise the protection of Explanation 7 of Rule 54 of the CCS (Pension) Rules, 1972. Admittedly Smt. Gangiya Bai was given family pension in the year

2003 till her death in the year 2016. So the applicant is not entitled for family pension. Moreover, as per Annexure R/4 Rule 54 (13) of the CCS (Pension) Rules, 1972, the Second wife is not entitled for family pension which is as under:-

“54(13). When second wife not entitled to the family pension.- The Department of Pension and Pensioners’ Welfare have since clarified that the second wife will not be entitled to family pension as a legally wedded wife. A copy of their clarification is enclosed for information.”

9. In view of the above, this Original Application is dismissed. No costs.

**(Ramesh Singh Thakur)
Judicial Member**

kc