

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

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No. O.A. 320 of 2016

Order dated: 08.04.2016

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

PRIYANKA SIL

VS.

UNION OF INDIA & ORS. (Defence)

For the Applicant : Mr. T. Ray, Counsel

For the Respondents : Mr. A. Mondal, Counsel

ORDER

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This application has been filed seeking the following reliefs:

- "(i) Direct the Respondent No.1 to 5 to show cause as to why the entire amount of gratuity, leave salary, OGEIS, GPF, Accident Claim benefit, Death relief Fund (DRF), Night allowance, last salary have been paid to the private respondent, Smt. China Sil without giving the said amount also to the applicant being the only daughter of Late Ranjit Kumar Sil.
- (ii) Director the concerned respondent to pay the retiral benefit such as gratuity, leave salary, OGEIS and GPF, Accident Claim Benefit, Death Relief Fund (DRF) and Night Allowance, Last salary to the applicant forthwith alongwith the interest thereof.
- (iii) Any other relief or reliefs as this Hon'ble Tribunal may deem fit and proper."

3. The applicant would claim herself to be the unmarried daughter of the deceased employee Ranjit Kumar Sil who died while in harness on 14.1.15. She was born on 4.5.1990, out of the wedlock of the employee with Sitashree Thakur in 1989. She is aggrieved as the respondents have disbursed the settlement dues to one China Sil the respondent No.7 who was already a married woman and so was living with her father without a valid marriage. Her mother Sitashree Thakur divorced her father in 2000. However she was being

maintained by her father. She cleared Madhyamik in 2006, Higher Secondary in 2008 and passed Bachelor of Hospital Management in the year 2011 from West Bengal University of Technology and also obtained certificate of merit in Computer training in the year 2007.

4. The settlement dues were paid as under:

"Gratuity	Rs. 846030/-
Leave Salary	Rs. 161687/-
CGEGIS	: Rs. 50214/-
GPF	: Rs. 161368/-
Family Pension	: Smt. Chaina Sil – Rs. 3310/- w.e.f. 15-01-2015 to 14-11-2025 and Rs. 1986/- w.e.f. 15-01-2025 till death or remarriage.
	Priyanka Sil – Rs.3310/- w.e.f. 15-01-2015 to 03-05-2015."

5. It would be evident from the materials on record that the said China Sil was nominated by the employee only for DGRG and GIS in 100% share (A-5/1) as wife and upon contingencies of her Divorce/Insanity/death to Priyanka Sil daughter in 100% share. Why the other dues were released exclusively to her is not clear.

6. No certificate of Dissolution of marriage of the employee with China Sil or any earlier marriage certificate of China Sil was brought on record to substantiate the fact of her remarriage with the employee while her first marriage was subsisting or that she had no her right to the dues or that her marriage with the employee was declared as null and void by a competent Court of Law without which no third party could treat it as a nullity in the eye of law.

7. Be that as it may, the Pension rules governing the employee lay down the following:

"Rule 50, lays down:

50. Retirement / Death Gratuity

(1) (a) A Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 4, shall, on his retirement, be granted 1. Substituted vide G.I., Dept. of P. & P.W., Notification No. 2/18/87-P & P.W. (PIC), dated the 20th July, 1988,

published in the Gazette of India as S.O. No. 2388, dated the 6th August, 1988 and takes effect from the 1st January, 1986. [retirement gratuity] equal to one-fourth of his emoluments for each completed six monthly period of qualifying service, subject to a maximum of 16 ½ times the emoluments.

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(6) for the purposes of this rule and Rules 51, 52 and 53, 'family' in relation to a Government servant, means-

- (i) Wife or wives including judicially separated wife or wives in the case of a male Government servant,
- (ii) husband, including judicially separated husband in the case of a female Government servant,
- (iii) sons including stepsons and adopted sons,
- (iv) unmarried daughters including stepdaughters and adopted daughters,
- (v) widowed daughters including stepdaughters and adopted daughters,
- (vi) father, including adoptive parents in the case of individuals whose personal law permits adoption.
- (vii) mother, including adoptive parents in the case of individuals whose personal law permits adoption.
- (viii) brothers below the age of eighteen years including stepbrothers,
- (ix) unmarried sisters and widowed sisters including stepsisters,
- (x) married daughters, and
- (xi) children of pre-deceased son.

Rule 51. Further lays down "Persons to whom gratuity is payable" and stipulates:

- (1) (a) The gratuity payable under Rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53;
- (b) If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below-
 - (i) if there are one or more surviving members of the family as in Clauses (i), (ii), (iii) and (iv) of sub-rule (6) of Rule 50, to all such members in equal shares;
 - (ii) if there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in Clauses (v), (vi), (vii), (viii), (ix), (x) and (xi) of sub-rule (6) of Rule 50, to all such members in equal shares."

Rule 54 *ibid* further stipulates the following :

- (6) The period for which family pension is payable shall be as follows:-
 - (i) subject to first proviso, in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

(ii) subject to second proviso, in the case of an unmarried son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest;

(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;

(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.

(ii) On the death of a widow, her share of the family pension shall become payable to her eligible child :

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(b) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the Government servant or pensioner.

(c) Where the deceased Government servant or pensioner is survived by a widow but has left behind eligible child or children from a divorced wife or wives the eligible child or children shall be entitled to the share of family pension which the mother would have received at the time of the death of the Government servant or pensioner had she not been so divorced.

8. The Rule 53(1) of CCS (Pension) further lays down that none except the family Members can be nominated for the purpose of gratuity or pension. It reads as under :

"53. Nominations

(1) A Government servant shall, on his initial confirmation in a service or post, make a nomination in Form 1 or 2, as may be, as appropriate in the circumstances of the case, conferring on one or more persons the right to receive the ³[retirement gratuity/death gratuity] payable under Rule 50 :

Provided that if at the time of making the nomination -

(i) the Government servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family ; or

(ii) the Government servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not."

9. By way of a circular dated 30.8.2004 and clarificatory circular dt. 11.9.13 the right to receive family pension has been bestowed upon unmarried

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daughters of deceased employee for life or till their remarriage or till they start earning livelihood. The circulars are extracted hereinbelow for clarity :

- (i) On 30.8.04 Ministry of Personnel, Public Grievances and Pensions, Dept. Of Pension and Pensioners Welfare issued an OM on "Eligibility of divorced/widowed daughter for grant of family pension"

It envisaged infra :

"The undersigned is directed to say that as per clauses (ii) and (iii) of sub-rule (6) of Rule 54 of the C.C.S. (Pension) Rules, 1972 read with clause (b) of Para 7.2 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 shall be eligible for grant of family pension till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier (subject to income criterion to be notified separately). The income criterion has been laid down in this Department's O.M. No.45/51/97-P&PW (E) dated the 5th March 1998 according to which, to be eligible for family pension, a son/daughter (including widowed/divorced daughter) shall not have an income exceeding Rs.2550 per month from employment in Government, the private sector, self employment etc. Further orders were 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 specified therein.

- (ii) Further on 11.9.13 a clarificatory OM was introduced which clarified who a dependent child would be. It reads as under :

"As indicated in Rule 54(8) of the CCS (Pension) Rules, 1972, the turn of unmarried children below 25 years of age comes after the death or remarriage of their mother/father, i.e. the pensioner and his/her spouse - Thereafter, the family pension is payable to the disabled children for life and then to the unmarried/widowed/divorced daughters above the age of 25 years.

4. It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family "pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family Pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes. Similarly, family pension to a widowed/divorced daughter is payable provided she fulfills all eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes.

5. As regards opening of old cases, a daughter if eligible, as explained in the preceding paragraph, may be granted family pension with effect from 30th August, 2004. The position is illustrated through an example. Shri A, a pensioner, died in 1986. He was survived by his wife, Smt. B, a son Shri C and a daughter, Kumari D, the daughter being the younger. Kumari D married in 1990 and got widowed in 1996.

Smt. B died in' 2001. Thereafter, Shri C was getting family pension, being disabled, and died in 2003. Thereafter, the family pension was stopped as Kumari D was not eligible for it at that time. She applied for family pension on the basis of O.M., dated 30'h August, 2004. Since she was a widow and had no independent source of income at the time of death of her mother and on the date her turn came, she may be granted family pension. The family pension will continue only till she remarries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon.

6. This is only a clarification and the entitlement of widowed/divorced daughters would continue to be determined in terms of OM, dated 25/30th August, 2004, read with OM, dated 28.4.2011."

A bare perusal of the circular would reveal that any daughter (unmarried/divorced/widowed), not earning more than the minimum of family pension and DR is considered to be dependent of her parents for the purpose of family pension and is eligible for family pension even above the age of 25 years.

10. As evident from the records, admittedly and without any iota of doubt, Priyanka Sil, the applicant, is the unmarried daughter of deceased from his first wife and as such inarguably and irrefutably she would be entitled to the following: (i) her share of DCRG in accordance with Rule 51(1)(b)(i) and in terms of 50(6)(iv) *ibid*, (ii) right to share family pension with China Sil in terms of Rule 54(7)(c) *ibid*, so long she remained unmarried, or failed to earn minimum of family pension and DCRG, even above 25 years of age.

11. If the second marriage of employee with China Sil was a valid marriage the nomination for DCRG and GIS in favour of China Sil, the second wife, could not be questioned in view of Rule 53(1) *ibid*. However, it is trite, axiomatic and settled law that a nominee would only have the right to hold the money and not to have it.

12. It would seem that the authorities have acted in accordance with the nomination and disbursed entire DCRG to China Sil, and so the applicant would get her share of the DCRG from China Sil either peacefully and amicably or by way of an appropriate Civil Suit.

13. Therefore, ultimately China Sil, the second wife of the deceased employee would have to share the DCRG money with the applicant, the daughter of the

deceased employee from his first wife, as she would get her mother's share in terms of Rule 50(6)(iv) and 51(1)(b)(i) supra.

14. In regard to dues for which no nomination exists, if disbursed exclusively to China Sil thereby totally ignoring the applicant and acting contrary to the Pension Rules, the respondents would get that refunded by China Sil and disburse it to the legal heirs of deceased (the applicant herein) in accordance with law within three months.

15. Be that as it may, in terms of Rule 54(7)(c) ibid and circular cited supra the applicant would inarguably have a right to family pension as an unmarried daughter out of the first wife, so long she remains unmarried. Therefore there was no apparent reason available with the respondents to stop her family pension w.e.f. 3.5.15, unless the authorities could satisfy themselves that she incurred ineligibility due to her marriage or earning livelihood, which they have miserably failed to demonstrate.

16. Therefore the authorities are directed to disburse family pension to the applicant as they were disbursing prior to 3.5.15, in accordance with law as enumerated hereinabove with an interest @ 8% p.a. on arrears to be released within two months from the date of receipt of a copy of this order with costs for unnecessary harassments and dragging the applicant to litigations, assessed at Rs. 25,000/-.

(BIDISHA BANERJEE)
Member (J)

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