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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2648/2003

New Delhi, this the 11th day of May, 2004

Hon'ble Shri S.K.Naik, Member(A)

Parminder Singh
1409 A/13, Gobindpuri
Kalkaji, New Delhi

.. Applicant

(Shri S.Bisaria, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Health & Family Welfare
Nirman Bhavan, New Delhi

2. Medical Superintendent
Safdarjung Hospital
New Delhi

.. Respondents

(Shri Surinder Kumar, Advocate, not present)

ORDER

When this case was taken up for hearing on 27.4.2004, nobody appeared on behalf of the respondents despite second call. However since the case had earlier been heard and judgement had been reserved but the Hon'ble Member of the Tribunal who had reserved the judgement meanwhile had demitted the office; I heard the matter on merit on behalf of the applicant and the case was kept on board as part-heard with the hope that the respondents or their counsel will be present on the next day. However, when the matter was taken up on the 28th of April, 2004 again no one has appeared on behalf of the respondents despite repeated calls. I therefore proceed to dispose of the matter under Rule 16 of CAT(Procedure) Rules, 1987.

For

2. By virtue of the present application, applicant seeks a direction to the respondents to pay to him all the terminal benefits on the death of his wife. According to the applicant, his wife Mrs. Parminder Kaur while working as staff nurse in the Safdarjung Hospital was suffering from TB and she died on 21.11.2001. Prior to that applicant had married her on 15.1.1997 and respondents have passed an order on 23.7.1997 to this effect. Applicant's name has been included in CGHS card as also the ration card. Thereafter applicant made a representation on 1.2.2002 requesting for payment of all the dues to him, upon which he was asked by the respondents on 4.3.2002 to produce documentary evidence. Applicant produced before the respondents the ration card, CGHS card as also order dated 23.7.1997 (supra), but despite this he has not received any payment due to the deceased Mrs. Kaur. Hence this application.

3. Respondents have contested the application. They have stated in their reply that there is no nomination available on the official record in favour of the applicant to claim the dues and that he can raise the claim only on production of succession certificate from the competent court. Citing CCS(Pension) Rules, 1972, they contend that in the absence of valid succession certificate, applicant is not entitled to get the dues. They further contend that the mother of Mrs. Kaur vide her letter dated 22.3.02 has requested that dues pertaining to her daughter may not be given to the applicant as he has re-married and that during the illness of Mrs. Kaur the applicant had not properly

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looked after her. By another letter dated 5.9.2002 the mother of the deceased has mentioned that Mrs. Kaur had given all the rights to her mother to claim the dues.

4. I have heard the learned counsel for the applicant and perused the records.

5. The main controversy surrounding this application concerns release of terminal benefits such as DCRG, CGEIS and other dues to the husband of the deceased in the absence of any valid nomination by the deceased.

6. As per facts of the case, it is not in dispute that the deceased had not given any nomination to receive the benefits in event of her death. In such circumstances therefore the provisions of the CCS(Pension) Rules, 1972 will be applicable. The said Rules state as under:

50. Retirement/Death Gratuity

- (1)(b) If a government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in sub-rule (1) of Rule 51 at the rates given in the Table below, namely:-

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

(i) ****

(ii) husband, including judicially separated husband in the case of a female Government servant,

(iii) sons including stepsons and adopted sons,

(iv) to

(xi) *****

51. Persons to whom gratuity is payable

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- (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) to (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) to (xi) of sub-rule (6) of Rule 50, to all such members in equal shares.


7. The aforesaid Rules positin clearly prescribe that in the absence of any noomination, the gratuity shall be paid in equal shares to one or more surviving members of the family. Further the family has been defined as above. Since in the case in hand, the deceased had expired without leaving behind any issue, the only surviving member of the family is her husband, namely the applicant. Undoubtedly he will be therefore eligible to receive the terminal benefits.

8. The respondents in this case have directed the applicant to obtain succession certificate from a court of competent jurisdiction, primarily on the ground that the mother of the deceased had objected to the payment of terminal benefits on the death of her daughter to the applicant on the ostensible ground that he had not looked after the deceased during her life time. There is also an averment that she had been nominated by the deceased to receive the terminal benefits but no supporting or corroborative evidence was produced. The averments of the mother of the deceased would have carried weight had she been nominated by her daughter during her life time to receive the terminal benefits or in the alternative if

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she had executed a 'will' in her favour. In the absence of any such evidence, the respondents have no choice but to follow the Rules on the subject and since the legally married husband is the lone survivor; he will be entitled to receive the terminal benefits including CGGEIS payment which is also regulated in the same manner. The demand by the respondent-department that the applicant should produce succession certificate, in my mind, is not justified as Rules position in the matter is quite clear and as has been contended by the learned counsel for the applicant, it would amount to unnecessarily subjecting the applicant to avoidable litigation and related expenses.

10. In this view of the matter, I allow the present OA. Respondents are directed to release the death gratuity and other terminal benefits including CGEIS, GPF amount etc. to the applicant within a period of three months from the date of receipt of a copy of this order. No costs.


(S.R. Naik)
Member(A)

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