

IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) No. 10165-66/2006

Date of Decision:22.04.2008

**#. Mrs. Sheela Devi & Anr Petitioners
! Through: Mr. M.K. Bhardwaj, Advocate**

Versus

**\$ Union of India & Ors Respondents
^ Through: Mr. J.P. Sharma, Advocate
for the Respondent No.1.
Mr. S.M. Arif, Advocate
for the Respondent Nos. 2 & 3.
Mr. S.P. Chopra, Advocate
for the Respondent No.4**

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?**
- 2.To be referred to the Reporter or not?**
- 3.Whether the judgment should be reported in the Digest?**

A.K. SIKRI, J.

:

1. The entire matter revolves around the issue as to the entitlement of retiral benefits accruing on to the death of Shri Ashok Kumar Patney (herein after referred to as "the deceased"). Certain background facts which may be necessary for the purpose of deliberating on the issue may be noted at this stage. The Respondent No. 4 is the son of the deceased and Petitioners

herein are the mother and sister of the deceased. The Deceased was appointed as Lower Divisional Clerk on compassionate ground on 09.02.1073 in the office of the Respondents No. 1-3 (herein after referred to as “the official Respondents”). At the time of his death, he was working as a Senior Administrative Officer with the official Respondents.

2. On the death of the deceased, the Respondent No. 4 filed O.A. No. 1195/2005 under Section 19 of the Administrative Tribunal Act, 1985 before the Central Administrative Tribunal (in short “the Tribunal”) seeking directions for payment of retirement benefits of the deceased. The said OA was allowed by the Tribunal vide its order dated 11.05.2006. The Petitioners feeling aggrieved by the orders of the Tribunal has moved this Court by way of Writ Petition under Article 226 of the Constitution.
3. The learned Tribunal held that the nomination given by the deceased was faulty and is not be acted upon. Para 10 & 11 of the impugned order dated 11.05.2006 of the Tribunal contains discussion on this aspect and reads as under :-

“10. The definition of 'family' is to be restricted to what has been envisaged under CCS (Pension) Rules. Rule 50 *ibid*, which defines that 'family' includes, son, legally divorced wife, but does not include the married sisters. The condition precedent for nomination is that the government servant should not have a family and in such an event, he can nominate any person but in case he has a family, the nomination necessarily has to be made in favour of one of the family members. In this conspectus, the contention raised by the applicant, by referring to Rule 53, is perfectly legal as the deceased had a son living, who was born out of the marriage, which stood dissolved later by a decree of the court of Additional District Judge, Delhi. It is no more *res integra* as to the judicial finding recorded into the said judgment/decreed that the deceased had made a

nomination despite the fact that his family was in existence. The aforesaid nomination is per se illegal and would not confer any legal right upon the married sister of the deceased to receive the retiral benefits.

11. In the result, I though do not find any delay attributable to the official respondents in releasing the retiral benefits as the rightful claimant was not clear and it is only after the implication of rules, yet on declaration of the Tribunal, the applicant has now become the rightful claimant for retiral benefits.

4. All the parties conceded that the aforesaid view taken by the Tribunal is correct. In these circumstances, we proceed on the basis that there was no nomination given by the deceased. The payments/terms used which are to be paid to the family members are the following:-

- (i) Death-cum-retirement gratuity;
- (ii) Family pension;
- (iii) Leave encashment;
- (iv) General Provident Fund & Deposit Linked Insurance Fund.

DEATH-CUM-RETIREMENT GRATUITY

5. Insofar as death-cum-retirement gratuity is concerned, it is payable to the persons mentioned in Rule 57 of the Pension Rules. It, inter alia, stipulates that when there is a valid nomination, gratuity is to be paid by means of nomination under Rule 53. However, in case there is no such nomination or if the nomination does not subsists, gratuity is to be paid to 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. In the definition of family, mother and son of the deceased are included. Therefore, gratuity shall be paid to the petitioner No.1 (mother) and respondent No.4 (son) in equal shares.

FAMILY PENSION

6. As per Rule 54(2) family pension is payable to only one member of the family in the following order:-

(1) Widow or widower up to the date of remarriage or death.

(2) When the person mentioned at (1) above one becomes ineligible, children below 25 years of age in order of their age, up to 25 years of age or till they are married or till they start earning Rs.2550/-, whichever is earlier.

7. It is admitted case that there was no widow of the deceased as the wife of the deceased had taken divorce from him during his lifetime. Therefore, the family pension would be payable to respondent No.4 till he attains the age of 25 years subject to fulfillment of the conditions mentioned above. The family pension shall accordingly be paid to respondent No.4 from the death of the deceased till he attains the age of 25 years and thereafter the employer shall start paying family pension to petitioner No.1.

LEAVE ENCASHMENT

8. This amount is to be paid to family members in equal shares. Therefore, leave encashment shall also be given to the petitioner No.1 and respondent No.4, equally.

GENERAL PROVIDENT FUND & DEPOSIT LINKED INSURANCE

9. General Provident Fund and Deposit Linked Insurance are to be given to the petitioner No.1 and respondent No.4, equally.

10. The official Respondents had deposited a sum of Rs.6,57,844/- in this Court, details of which are as under:-

S.No.	Nature of amount/payment	Demand Draft No. and date	Amount in Rs.
1	Leave Encashment	0524162568 17-10-2006	88,054/-
2	Central Govt. Employees Insurance Scheme	0519095838 3.10.2006	74,158/-
3	Deposit linked insurance scheme and GPF, balance	0524163286 4-11-2006	60,000/- and 88,835/- totaling for 1,48,835
4	Death cum retirement Gratuity	0524163839	3,46,979/-
			Rs.6,57,844/-

11. Since this amount is to be paid to petitioner No.1 and respondent No.4 equally, after completion of the necessary formalities, the Registry shall disburse the aforesaid amount along with interest which has accrued thereon in favour of petitioner No.1 and respondent No.4 in equal share.

12. The writ petition is disposed of in above terms.

(A.K. SIKRI)
JUDGE

April 22, 2008

(J.R. MIDHA)
JUDGE