

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.7204 of 2013 (O&M)

Date of Decision:- 28.7.2016.

Nihal Kaur and another

.....Petitioners

Versus

Union of India and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. S.K. Yadav, Advocate for the petitioners.

Ms. Balwinder Kaur, Advocate for respondent Nos.1 to 3.

Mr. Zorawar Singh, Advocate for respondent No.4.

P.B. BAJANTHRI, J. (Oral)

1.) In the present petition, the petitioners have questioned the validity of the communication dated 25.2.2013 by which petitioners' claim for certain financial benefits on account of their son's death has been declined and further sought for a direction for payment of financial benefits.

2.) Petitioners' son was appointed as Constable in the BSF on 5.4.2007. While joining services, he had nominated petitioner No.2 as his nominee under the Central Civil Services (Pension) Rules, 1972. It is stated that deceased Constable married in the year

2009 to fourth respondent Neeraj Yadav. During the intervening period from 2009 to 14.1.2013, deceased Constable did not change the nomination from second petitioner to that of Neeraj Yadav – fourth respondent. Petitioners' son – Constable died while he was on duty on 14.1.2013. The petitioners approached respondent Nos.1 to 3 seeking to extend financial benefits on account of their son's death with reference to the fact that he had nominated petitioner No.2 as nominee for the purpose of financial benefits. The respondents have rejected the claim of the petitioner that they are not entitled since their son got married in the year 2009 to fourth respondent. The petitioners are aggrieved by the rejection of their claim. Hence, this petition.

3.) Learned counsel for the petitioners submitted that it is undisputed that second petitioner has been nominated as a nominee by the deceased Constable. Therefore, petitioners are entitled to all financial benefits on account of death of their son. On the other hand, learned counsel for Union of India submitted that nominee is entitled for Central Government Employees Group Insurance Scheme, DCRG and insofar as Seema Prahari Beema Yojana (LIC), legal heir (s) of the deceased Constable is/are entitled subject to production of succession certificate. Insofar as leave encashment is concerned under Rule 39-C of CCS (Leave) Rules, widow is entitled for leave encashment.

4.) Learned counsel for the fourth respondent submitted that

nomination made by the deceased Constable in respect of second petitioner – father of the deceased Constable would be deemed to have changed in the name of fourth respondent – Neeraj Yadav, wife of the deceased Constable from the date of marriage. In this regard, he has cited a decision of this Court passed in **Chander Kanta Vs. Monika 2000 (4) SCT 635** wherein it is held that nomination by the nominated Government servant will become invalid on his being married. The widow of Government servant would be entitled to receive family pension and gratuity on account of her husband's death. Hindu Succession Act is not applicable. In view of the said decision, the fourth respondent is entitled for family pension, gratuity etc. on account of her husband's death.

5.) Heard learned counsel for the parties.

6.) It is undisputed that deceased Constable nominated second petitioner as nominee for the purpose of financial benefits. Even though fourth respondent was married in the year 2009 to the deceased Constable, whereas till his death, he did not change the nomination from the second Petitioner to the fourth respondent. Union of India have filed statement of objections. Para 7 of the statement of objections reads as under:-

7. That as regard financial benefits of the deceased, the rule position are as under:-

i)	CGEGIS (Central Govt. Employee Group Insurance Scheme)	As per Para 19.3 of the CGEGIS 1980, a Central Govt. servant who was bachelor nominated his father/mother to receive the amount under the CGEGIS 1980 in the event of his death and subsequently he getting married, the nomination made by the Govt Servant in favour of his father / mother is valid if no submit a fresh nomination till his death.
ii)	DCRG (Death Retirement Gratuity) Cum	As per rule 51 (1) (a) read with rule 53 of CCS (Pension) Rule, DCRG may be released as per nomination made by deceased Govt. servant.
iii)	SPBY (LIC) (Seema Prahari Beema Yojna)	As per para 11 of HQ DG BSF (Adm Dte) letter No.34/511/SPBY/Adm-1/06/2692-967 dated 31 st Aug 2006, the claim amount is required to be paid to NOKs of deceased personnel. Succession certificate / legal heir ship from a court of law for release of SPBY amount have been asked, still awaited.
iv)	Leave encashment	As per rule 39 – C of CCS (Leave) Rule, widow is entitled for leave encashment.

7.) In view of the above provision of law as well as entitlement of various benefits, second petitioner is entitled for Central Government Employees Group Insurance Scheme, DCRG. Fourth respondent is entitled for leave encashment and insofar as Seema Prahari Beema Yojana (LIC) would be granted subject to production of succession certificate by the legal heir. In view of the stand taken by the respondents with reference to the Rules, the monetary benefits should be disbursed to the respective parties and in accordance with law. Learned counsel for the fourth respondent cited a decision (supra). The said decision is not applicable for the reasons that this Court has no occasion to peruse the provisions cited in Para 7 of the written statement filed by Union of India. Therefore, cited decision is distinguishable. The Apex Court in the

case of **Nair Service Society vs T. Beermasthan 2009 (2) SCT 625**

and others has held that before deciding a case, relevant rules are required to be examined. Para 45 reads as under:-

“45. Different State Governments in the country may have different methods for providing reservations, and these will be valid as long as the method adopted by a particular State Government does not violate any constitutional provision or statute. It is not for this Court to decide on the wisdom or otherwise of the said method of reservation. This Court should exercise judicial restraint and not interfere with the same unless there is some clear illegality. In our opinion the method prescribed by the Rules made by the State Government suffers from no infirmity or illegality, and hence the High Court acted wrongly in allowing the Writ Petition. We are clearly of the opinion that the High Court has placed a wrong interpretation on the relevant Rules.”

8.) In view of the Supreme Court decision read with the Rules stated in Para 7 of the written statement, contention of the fourth respondent's counsel that the matter is covered by decision of this Court is not tenable. In view of the above facts and circumstances read with provisions cited in Para 7 of the written statements Union of India-respondents No.1 to 3 are directed to disburse the amount to the second petitioner insofar as item No.1 refers to Central Govt. Employees Group Insurance Scheme and Item No.2 DCRG (Death-cum-Retirement Gratuity) (mentioned in Para 7) and Item No.4 is concerned leave encashment is to be disbursed to the fourth respondent. If the legal heir furnishes

succession certificate, the respondents are directed to disburse the Seema Prahari Beema Yojna (LIC).

9.) In view of above facts and circumstances, Annexure P-4 is set aside. Petition is allowed in part. The second Petitioner and fourth respondent are entitled for interest @ 9 % per annum on the amount in respect of DCRG and, Insurance and leave encashment. At this stage, learned counsel for the petitioners submitted that second petitioner is also entitled for Central Provident Fund amount. If the same has not been decided by the Union of India, the respondents No.1 to 3 are directed to decide the Central Provident Fund issue in accordance with law within a period of three months from today. Even on the said amount, the concerned party is entitled for interest @ 9 % per annum.

(P.B. BAJANTHRI)
JUDGE

July 28, 2016.

sandeep sethi

Whether speaking/reasoned:

Yes / No

Whether Reportable:

Yes / No.