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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 9761/2018 & C.M.No.38020/2018 (exemption)

SMT. LILA NISHA Petitioner

Through Ms.Puja Shrivastava, Adv.

versus

MINISTRY OF HOME AFFAIRS AND ORS. Respondent

Through Mr.Akshay Makhija, CGSC with
Ms.Kirti Awasthi, Adv for R-1.

Mr.Shrey Chathly proxy counsel for Ms.Lalita
Chaudhary, Adv for R-2 & 3.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR.JUSTICE V.KAMESWAR RAO

ORDER

% **17.09.2018**

1. The petitioner is aggrieved by the order dated 05.02.2018 passed by the Tribunal dismissing O.A.No.1023/2017 filed by her for seeking direction to the respondents to pay her interest @ 12% per annum on the delayed payment of retiral dues including the DCRG, arrears of pension, leave encashment, GPF etc from the date the said amount was due, till the date of actual payment. The petitioner has also assailed the order dated 22.03.2018, whereby the Tribunal rejected her review application.

2. The facts of the case are undisputed. Late Amir Khan, husband of the petitioner had joined the Delhi Police on the post of a Head

Constable (Driver) on 10.03.1968. He had solemnised his marriage thrice. Firstly, he was married to one Smt.Surya Begum. On the demise of Smt.Surya Begum, Late Amir Khan married Smt.Shamshed Begum. Smt.Shamshed Begum was suffering from cancer. On her demise, Late Amir Khan married the petitioner herein sometime in January, 1985 by exchange of garlands in the Sai Baba Mandir, Lodhi Road. Later on, the said marriage was solemnised as per the Muslim customs and ceremonies.

3. Admittedly, the deceased had three children from his first and second marriage (two sons and one daughter). He passed away while in service on 02.01.1998. Vide order dated 12.03.1998, followed by a reminder dated 14.05.1998, respondent no.1 called upon the petitioner to attend the office and fill-up the pensionary papers, which she finally did on 17.05.2000.

4. Vide letter dated 22.08.2000, the petitioner was called upon to submit a Succession Certificate in respect of all the legal heirs of Late Amir Khan so that the pension case could be finalised. The petitioner accordingly filed a petition before the Competent Court for grant of a Succession Certificate. On 07.08.2014, the Succession Certificate was granted in favour of the petitioner on the children of Late Amir Khan, giving an NOC in her favour. The petitioner submitted the said Succession Certificate dated 07.08.2014, to the respondents on 27.11.2014. Immediately on receiving the said Succession Certificate, the respondents processed the petitioner's case for release of the pensionary benefits, between July, 2015 to November, 2015.

5. The grievance of the petitioner is that while releasing the

pensionary benefits in her favour, the respondents did not pay her any interest on the said amount. As a result, she had served a legal notice dated 13.02.2017 on the respondents, claiming interest @ 12 % per annum from 02.01.1998, the date on which Late Amir Khan had expired, till the date of the actual payment.

6. The respondent no.1 refuted the claim of the petitioner by giving a reply on 22.02.2017, stating *inter alia* that on scrutiny of the service record of the deceased, it was found that Smt. Surya Begum's name was mentioned as the first wife and while the petitioner had been nominated for the benefits under the Delhi Police Mutual Welfare Scheme, no nomination was made by the deceased for payment of Death Cum Retiral Gratuity (DCRG) and nothing was found from the service record of the deceased in this regard at the time of the preparation of the pension case on 20.09.1998. The respondents further stated that none from the family of the deceased had stepped forward to submit the death certificate and the legal heir certificate to claim the pensionary benefits, despite, several letters dispatched through the postal authorities on the available address of the legal heirs calling upon them to submit the requisite documents. Later on, the petitioner and the two sons and one daughter of the deceased had stepped forward to seek pensionary benefits of the deceased by submitting a Succession Certificate dated 07.08.2014 issued in their favour by the SDM Vivek Vihar, Delhi. On examining the said certificate, the respondents obtained legal advice and decided to call upon the petitioner and the rest of the legal heirs to produce a Succession Certificate for release of the pensionary dues in terms of

their letter dated 09.01.2000.

7. In view of the aforesaid detailed reply received from the respondents, the petitioner applied to the Competent Court for obtaining a Succession Certificate, sometime in the year 2001. It appears that the said petition was dismissed on 14.02.2007. Subsequently, the petitioner approached the concerned Court for revival of the petition and finally vide order dated 07.08.2014, the Succession Certificate was granted in favour of the petitioner.

8. Summarising the aforesaid sequence of events, the respondents stated in their reply dated 22.02.2017 to the legal notice issued by the petitioner that the delay for disbursing the pensionary benefits to her was not on the part of the Department and it was a case where the matter had to be kept pending for want of a Succession Certificate. Immediately on receiving the Succession Certificate from the petitioner, the process was set into motion and the petitioner's case for release of family pension case/DCRG was finalised by the respondents on 20.07.2015.

9. Aggrieved by the reply received from the respondents, the petitioner approached the Tribunal by filing the captioned O.A.

10. After pleadings were completed, the Tribunal examined the pleas taken by the parties in their replies and particularly took note of the reply issued by the respondents on 22.02.2017, to the legal notice served by the petitioner on 13.02.2017. The said reply has been extracted in para 3 of the impugned order. The Tribunal also took note of the fact that after the demise of Late Amir Khan, the respondent no.1 had made efforts to contact the petitioner for

production of legal heir documents by sending several letters between March 1998 to December 1998, but all said letters had been returned by the post office as undelivered with the following remark: “*No one by this name resides at the given address*”. Subsequently, the respondent no.1 dispatched two letters dated 26.04.1999 and 09.06.1999 to Mr.Firoj Khan, one of the sons of the deceased, calling upon him to produce the legal heir documents and to complete all legal formalities. But even the said letters were returned undelivered by the concerned post office stating that the “*addressee is not available at the given address*”.

11. Taking note of the fact that the petitioner was able to submit a Succession Certificate dated 07.08.2014 alongwith the legal heir affidavit to the respondents only on 28.11.2014, for release of pensionary benefits of the deceased and the said benefits were paid by the respondents within few months reckoned therefrom between July 2015 to November 2015, the Tribunal dismissed the O.A. It was observed that the delay, if any, in release of the pensionary benefits to the petitioner was not attributable to the respondents and nor had the delay occurred on account of any administrative lapse. Rather, it was a case where the petitioner was unable to obtain a Succession Certificate on time as the same was applied for by her in the year 2000/2001 and was only obtained in the year 2014.

12. The submission made by learned counsel for the petitioner that the Tribunal had misdirected itself by ignoring the administrative lapses on the part of the respondents in failing to release the pensionary benefits to the petitioner within a reasonable time, is found

to be devoid of merits. Fact of the matter is that it took the petitioner almost a decade and a half to obtain the Succession Certificate, from the concerned Court. It is also noteworthy that the petitioner does not deny the fact that the petition filed by her before the Competent Court for issuing the Succession Certificate came to be dismissed sometime in the year 2007, which resulted in delaying the entire proceedings. Later on, the concerned Court, granted a Succession Certificate in the favour of the petitioner on 07.08.2014.

13. Further counsel for the petitioner cannot be permitted to take a plea at this belated stage that the petitioner was not required to obtain a Succession Certificate at all, when no such objection was raised by her, when the respondents had requested her to furnish a Succession Certificate, vide letter dated 09.01.2000. Having elected to comply with the said directions and approach the concerned Court by filing a petition for obtaining a Succession Certificate in respect of the estate of the deceased, it does not lie in the mouth of the petitioner to question the directions of the respondents of furnishing the said certificate. In any event, having regard to the fact that the service record of the deceased, Late Amir Khan did not mention the petitioner as a nominee, except for the benefits under Delhi Police Mutual Welfare Scheme and he had married thrice, leaving behind three children and the petitioner herein, the respondents cannot be faulted for taking necessary precautions and seeking a legal opinion before disbursement of the pensionary dues from the legal department and going by the advise received by calling upon the petitioner and the legal heirs of the deceased to furnish the Succession Certificate from

a Competent Court of law.

14. Given the aforesaid facts and circumstances, we are of the view that there is no error or infirmity in the impugned orders that warrants interference in judicial review.

15. Accordingly, the writ petition is dismissed in *limine* as being devoid of merits, alongwith the pending application.

HIMA KOHLI, J

V.KAMESWAR RAO, J

SEPTEMBER 17, 2018

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