(2019) 02 CAT CK 0110

In the Central Administrative Tribunal

Case No : Original Application No. 100, 2482 Of 2017

Master Sanjeev Mehra APPELLANT

Vs

Union Of India & Ors. RESPONDENT

Date of Decision : 14-02-2019

Acts Referred:

Citation : (2019) 02 CAT CK 0110

Hon'ble Judges : Sh. Mohd. Jamshed, J

Bench : Single Bench

Advocate : D.S. Mahendru, S.N. Verma

Final Decision : Dismissed

Judgement

1. The present OA has been filed by the applicants seeking the following reliefs:

"1. Allow the present OA in favour of the applicants and against the respondents and declare that the applicants are entitled to get equal share in the service benefits of the deceased government servant Late Shri Lovlin Mehra;

2. Direct the respondent No. 1 & 2 to disburse the terminal benefits of Late Lovlin Mehra (Ex-CMD) equally amongst the legal heirs;

3. Direct the respondents to disburse the pension benefits of Late Lovlin Mehra (Ex-CMD) equally amongst the legal heirs."

2. The facts of the case, as indicated in the OA, are as follows.

3. The applicants are minor and this OA has been filed on their behalf by their grandfather, who is the legal and lawful guardian of the applicants. It is submitted that late Shri Lovlin Mehra, father of the applicants, worked as Civilian Motor Driver (CMD) under the Commandant, Central Vehicle Depot, Delhi Cantt. Shri Lovlin Mehra died on 24.11.2016 while in service. It is also stated that the mother of the applicants and the first wife of Shri Lovlin Mehra had passed away on 8.01.2010. On 12.06.2011, Shri Lovlin Mehra, father of the applicants had

married respondent no.4. However, no issue was born out of the said wedlock. It is also mentioned that on 20.02.2017, their step mother i.e. respondent no.4 left her matrimonial home at her own will and is residing separately. She has no concern with the applicants or her deceased husband's family. On 6.05.2017, respondent no.2 paid a sum of Rs.76000/- to respondent no.4 after the death of her husband but no money was shared by respondent no.4 with the applicants. The legal guardian of the applicants i.e. their grandfather made a representation on 7.02.2017 to respondent no.2 informing that both the applicants are staying with him and he is looking after all their needs and meeting their expenses. Thereafter, the grandfather of the applicants made various other representations in this regard to respondent no.2. Finally respondent no.2, in response to representation dated 26.04.2017, advised him through letter dated 8.06.2017 that all terminal benefits will be given to the nominated "next of kin" of the deceased employee which is respondent no.4 and pension will be equally shared between respondent no.4 and applicant no.1, being the elder son of the deceased. The applicants have found the reasoning given by respondent no.2 to be arbitrary, illegal and against the precedents laid down on the subject. Aggrieved by the response of respondent no.2, the applicants have filed the present OA.

4. In the counter affidavit filed by the respondents, it is confirmed that as per records, Shri Lovlin Mehra has two sons (applicants) from his first wife who died on 8.01.2010. Thereafter, Shri Lovlin Mehra married respondent no.4 on 12.06.2011. However, no child was born out of this wedlock. After the death of Shri Lovlin Mehra, a sum of Rs.24000/- (by cash) and Rs.76000/- (by cheque) was provided to his legally wedded second wife i.e. respondent no.4 from Death Fund on 25.11.2016 and 6.05.2017 respectively. It is also submitted in counter affidavit that after the death of Shri Lovlin Mehra, the applicants through their grandfather, filed this OA seeking distribution of terminal benefits and pensionary benefits amongst all the three legal heirs in three equal shares i.e. both sons & their stepmother. Respondent No. 2 advised the applicant vide their letter dated 08.06.2017 as under;

"(i) All terminal benefits will be given to the nominated NOK (Next of kin) of the deceased employee and in this case Smt. Kamlesh Mehra being legally wedded second wife of Lat Sh. Lovlin Mehra and also nominated by the deceased as NOK.

(ii) Pension benefits will be equally shared between Smt. Kamlesh Me hra and elder son of the previous wife of Late Sh. Lovlin Mehra. After completing 25 years of age, second son of Sh. Lovlin Mehra will be eligible for family pension, also upto 25 years of his age.

(iii) Regarding employment relaxation to normal rules as per existing instructions on the subject living spouse is primarily eligible for employment, the name of the son from previous wife can only be considered if living spouse gives her written consent for the same."

5. In the counter affidavit, it has been mentioned that orders have already been passed to equally share the terminal benefits and pensionary benefits in terms of the extant rules. It is further mentioned that Death Fund amount has been paid to respondent no.4, who is legally wedded wife of Shri Lovlin Mehra, in terms of CCS (Pension) Rules 1972. Except this, no other payment has been made to anyone and as per rule position, all terminal benefits will be given to the nominated "next of kin" of the deceased who, in this case, is respondent no.4 and pensionary benefits will be equally shared between respondent no.4 and elder son of the former wife of the deceased.

6. In the rejoinder filed by the applicant, it is reiterated that the CCS (Pension) Rules 1972 should be read in conjunction with the statutory provision contained in the Hindu Succession Act 1956 according to which, the distribution of the property among heirs in Class-I of the Schedule, the widow and the surviving sons shall be on equal footing i.e. each of the legal heirs of the deceased shall be entitled to equal share in the service benefits of the deceased. It is also submitted that since respondent no.4 did not share any amount with the applicants and had left her matrimonial home after the death of Shri Lovlin Mehra, the applicants had to stay with their legal guardian. It is further submitted that "next of kin" had abandoned the children of the deceased and, therefore, under the peculiar facts and circumstances of the case, the distribution of money is to be done taking into account the provisions of Hindu Succession Act 1956.

7. Learned counsel for the applicants reiterated that the applicants are living with the legal guardian i.e. their grandfather, who is looking after them and meeting all their expenses. The amount received by respondent no.4 has not been shared with the applicants and similarly, the pensionary benefits have also not been shared with the applicants by respondent no.4. He further reiterated that it is the duty of the department to ensure that the distribution of such amount between the beneficiaries is done as per Hindu Succession Act 1956.

8. Learned counsel for the respondents mentioned that the amount of the Death Fund which is a contributory fund from the depot employees, has been given to respondent no.4 who is legally wedded wife of Shri Lovlin Mehra. This has been done in terms of CCS (Pension) Rules 1972, which very clearly indicate that terminal benefits will be given to the nominated "next of kin" of the deceased employee who was also nominated by the deceased as his "next of kin". It is also submitted that the pensionary benefits will be equally shared between respondent no.4 and the elder son of the previous wife of Shri Lovlin Mehra as per the extant rules.

9. Learned counsel for the respondents further drew the attention to the reply of respondent no.2 dated 8.06.2017 to the applicants' legal guardian, which clarifies the position that all terminal benefits will be given to the nominated "next of kin" of the deceased employee who is legally wedded wife of Shri Lovlin Mehra and she was also nominated by the deceased as his "next of kin". It s also

mentioned that pensionary benefits will be equally shared between respondent no.4 and elder son of the previous wife of Late Shri Lovlin Mehra. Not only this, the respondents have also mentioned that even for employment, the living spouse is primarily eligible as per existing instructions on the subject and the name of the son from previous wife can only be considered if living spouse gives her written consent for the same.

10. Heard the learned counsel for the parties and perused the record.

11. It is indicated that on 27.07.2017, the Tribunal while issuing notice to the respondents, had also ordered that the respondents are restrained from releasing all terminal benefits of the deceased until further orders. It is evident that the applicants are seeking relief in terms of getting equal share in the terminal benefits of the deceased government servant Late Shri Lovlin Mehra. Directions have also been sought from the Tribunal to respondents no.1 and 2 to disburse the terminal benefits of Late Lovlin Mehra equally amongst the legal heirs.

12. The applicants are sons of the first wife of the deceased, who had remarried after the death of his first wife to respondent no.4 and had also indicated her as "next of kin".The respondents, according to the extant rules, provided on amount from contributory Death Fund of Rs.24,000/- and Rs.76,000/- in two instalments to the legally wedded wife and "next of kin" of the deceased Shri Lovlin Mehra. The applicants are aggrieved by this action of the respondents and have sought direction for equal distribution of all the terminal benefits amongst three of them under the provisions of Hindu Succession Act 1956.

However, the respondents have clarified their position vide letter dated 8.06.2017 stating that in terms of the extant rules, terminal benefits will be given to the "next of kin" as nominated by the deceased, however the pensionary benefits will be equally shared between respondent no.4 and elder son of the previous wife of Late Shri Lovlin Mehra.

13. It is well settled that the "next of kin" is nominated by the employee and the department has the duty to pass on the dues of the deceased to the said "next of kin" so nominated. However, distribution of the amount in terms of Hindu Succession Act is neither within the purview of the respondents nor it is a matter that can be dealt with or decided by Administrative Tribunal.

14. In view of the above, order of this Tribunal dated 27.07.2017 restraining the respondents from releasing all death benefits of the deceased until further orders is hereby vacated. The O.A. is accordingly dismissed being devoid of merit. No order as to costs.

