

(2018) 11 CAT CK 0124

In the Central Administrative Tribunal

Case No : Original Application No. 3790 Of 2015

Meena Bajaj

APPELLANT

Vs

Union Of India Through And Anr

RESPONDENT

Date of Decision : 02-11-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 18, 54

Citation : (2018) 11 CAT CK 0124

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : R.K. Shukla, Rajiv R. Raj

Final Decision : Allowed

Judgement

1. Briefly stated, the facts of the current O.A. are that the applicant is the widow of late Sh. O.P. Bajaj (now deceased), who was working with the respondents. He retired from service as an Assistant on 31.03.1987. The applicant was issued Pension Payment Order by the Competent Authority and ordered grant of pension w.e.f. 01.04.1987. The applicant submits that her husband late Sh. O.P. Bajaj was married to Smt. Prem Bajaj. After the death of Smt. Prem Bajaj on 19.10.1995, the applicant married late Sh. O.P. Bajaj on 21.12.2007 and a marriage certificate to this effect was issued by Arya Samaj Mandir, Harit Vihar, Delhi, on 21.12.2007.

2. It is submitted by the applicant that her late husband submitted a representation on 14.05.2010 for incorporating her name in the Pension Account. In response to this representation, a letter dated 13.09.2010 was sent by the respondents asking him to submit a marriage certificate issued from Registrar/Gram Panchayat/District Magistrate.

3. After the death of applicant's husband on 31.08.2010, the applicant requested for grant of family pension. She was advised to submit a marriage certificate issued by GNCTD vide letter dated 20.11.2013 of the respondents. Thereupon,

the applicant served a legal notice dated 03.06.2014 to the respondents for sanction of family pension. Despite the fact that her name was incorporated in a CGHS Card issued by the respondents, the claim of the applicant for grant of family pension has been rejected by the respondents on 26.06.2014 on the ground of non following of procedures prescribed for grant of family pension to post retiral spouses.

4. The applicant filed a Civil Suit No. 136/2014 before the Senior Civil Judge, Rohini Court, Delhi, which was dismissed on 02.06.2015 for want of jurisdiction specifying that the grievance of the applicant falls within the ambit of Central Administrative Tribunal.

5. Aggrieved, the applicant has filed this O.A. seeking the following relief:-

"To quash and set aside the impugned order dated 26.06.2014 and order dated 20.11.2013 directing the respondents to consider the claim of the applicant for grant of family pension we.f. 01-09-2010 and arrears of pension may ordered to be paid to the applicant alongwith interest admissible in terms of Rules, without insisting to the applicant to produce marriage certificate issued by the GNCTD. Further it is prayed that considering the facts and circumstances of the case i.e. representation dated 14.05.2010, marriage certificate dated 21.12.2007 and CGHS Card which specifies the name of the applicant in the year 2008 to exempt for producing marriage certificate, treating as a very peculiar case."

6. In their counter affidavit, the respondents state that the applicant has failed to submit the marriage certificate showing that she was married to late Sh. O.P. Bajaj as per the conditions stipulated in CCS (Pension) Rules, 1972. As far as issuance of CGHS Card is concerned, it is mentioned that the authorities might have issued it inadvertently, based on misrepresentation of facts. In any case, CGHS Card is not one of the listed documents to be considered for post retirement benefits to be granted to the spouse under the Pension Rules. As per Rule 54 of the CCS (Pension) Rules, 1972, if a pensioner remarries after retirement, he has to intimate the same to the Head of Office, who will process the pension papers at the time of retirement in the prescribed proforma. In the instant case, neither the pensioner nor the applicant submitted the requisite proforma and documents as prescribed in the Pension Rules. PPO issued by the department is in the name of late Sh. O.P. Bajaj and there is no legal proof available to show that the applicant is entitled for grant of family pension. In support, the respondents have relied upon the decision of Hon'ble Supreme Court in the case of Ekta Shakti Foundation Vs. Govt. of NCT of Delhi, AIR 2006 SC 2609 to justify their stand.

7. During the course of hearing, learned counsel for the applicant Sh. R.K. Shukla took the Bench through the facts of the case. He forcefully argued that there is sufficient proof to establish that the applicant is the legally wedded wife (now widow) of the deceased employee. Sh. Shukla submitted that the applicant is unnecessarily being denied her legal rights by the respondents. He drew my

attention to the CGHS Card issued in her favour, the marriage certificate issued by Arya Samaj Mandir, as well as the deed of will executed by late Sh. O.P. Bajaj reflecting the name of the applicant as his legally wedded wife and a consequential beneficiary in case of his death.

7.1 Per contra, the learned counsel for the respondents Sh. Rajiv R. Raj stated that there are no legal documents to substantiate the claim of the applicant that she is the legally wedded wife of late Sh. O.P. Bajaj. He argued that the applicant has failed to submit the requisite marriage certificate as stipulated in CCS (Pension) Rules, 1972 (Department of Pension and Pensioner's Welfare O.M. No. 1(23)-P.W./91-E dated 04.11.1992). A marriage certificate issued by Arya Samaj Mandir is not a recognized/prescribed document under law, nor are other evidences like the CGHS Card or the deed of will relied upon by the applicant, hence the same cannot be taken cognizance of by the respondents for the purpose of grant of family pension to her.

8. I have gone through the facts of the case and find that the applicant's request for grant of family pension has been denied on the one ground that she has not furnished the marriage certificate issued by Registrar/Gram Panchayat or District Magistrate as laid down in the Rules. Copy of extract of GOI Decision No.18, below 54 of CCS (Pension) Rules, 1972 in O.M. dated 04.11.1992 reads as under:-

"(18) Endorsement of family pension entitlement of post-retiral spouses in the PPO - procedure for.-The question of laying down the procedure for endorsement of family pension entitlement of post-retiral spouse in the Pension Payment Order of the pensioner has been under consideration of this Department. It has now been decided that the following procedure may be followed for endorsement of family pension entitlement of post-retiral spouse in the Pension Payment Order of Central Government Civil Pensioners:-

(i)As and when a pensioner marries or re-marries after retirement, he shall intimate the event to the Head of Office who processed his pension papers at the time of his retirement. He shall also furnish along with his application an attested copy of the marriage certificate from Registrar/Gram Panchayat/District Magistrate in respect of his post-retirement marriage.

xxx"

The respondents have held that since marriage certificate is not as per Rule-18 and has not been attested by Gram Panchayat/District Magistrate, hence the applicant cannot be granted family pension.

9. It is true that this technical formality has not been complied with by the applicant, but other proofs in support of her claim cannot be brushed aside, unless it can be proved that the same are false. The applicant has enclosed the CGHS Card issued by the respondents where the name of Smt. Meena Bajaj (the applicant in OA) has been reflected as wife of the applicant on 08.03.2008.

Secondly, the deed of will executed by the late husband of the applicant again shows the name of the applicant as his wife leaving little room for any doubt. Finally, the applicant has also produced a marriage certificate from Arya Samaj Mandir, Harit Vihar, Delhi showing her proof of marriage to the deceased Sh. O.P. Bajaj.

10. The Late husband of the applicant himself had applied for incorporation of name of the applicant in his pension account. He made this application in May 2010 but expired shortly thereafter on 13.08.2010. The said letter reads as under:-

"Sub: Request for entering the name of my present wife "Meena Bajaj" for Family Pension against the name of my Ex-wife (late Smt. Prem Bajaj) who has since expired.

Ref: Pension Pay Order No. 359-R. (Photo Copy enclosed)

Sir,

After the death of my wife, late Smt. Prem Bajaj about 10 years ago, I have married Smt. Meena Bajaj on 21-12-2007 who has been looking after me and taking full care of my falling health at this old age. My marriage with Smt. Meena Bajaj, has been duly performed by the Arya Samaj Priest and a photo copy of my Marriage Certificate issued by Arya Samaj, is being enclosed for your record and necessary action. The name of my wife Meena Bajaj has already been entered in the records of Central Govt. Health Scheme vide ID Card No. 1204216 issued in her favour, a photo copy of which is also being enclosed herewith.

In view of above it is requested that the name of my present wife Smt. Meena Bajaj may be entered in the office records against PPO No.20872, so that she should not face any problem in drawing the family pension after me. Photo copies of my PPO and Superannuation letter are also enclosed for necessary action in the matter. After doing the needful in this regard, an intimation may please be sent to me at my above address as also to my Banker, viz. Punjab & Sind Bank, B-2 Block, Paschim Vihar, New Delhi-110063 where my pension Account No. 20872 is being maintained.

The specimen signature of my wife, Meena Bajaj, is being attested below:-

Specimen Signature of Mrs. Meena Bajaj is attested."

The letter of the respondents advising him to furnish the prescribed marriage certificate seems to have been sent/received after his death and is dated 13.09.2010. In view of these facts, I am convinced that there is thus no ambiguity that the applicant in OA had married late Sh. O.P. Bajaj and is entitled to family pension as per law. The judgment relied upon by the respondents is distinguishable on facts and not relevant to the facts of the case in hand.

11. There is no other claimant to this pension and sufficient evidence has been produced to show that applicant is the legally wedded widow of the deceased

employee (Sh. O.P. Bajaj). The applicant has a right under law to avail of the benefit of family pension and other retiral benefits, which cannot be denied to her on the grounds of a technicality. In view of the aforesaid facts, the O.A. filed by the applicant is allowed. Respondents are directed to grant family pension and other benefits to the applicant as per her entitlement, under law. No costs.