

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BENGALURU**

ORIGINAL APPLICATION NO.170/00982/2019

DATED THIS THE 23RD DAY OF JANUARY, 2020

**HON'BLE DR.K.B.SURESH
HON'BLE SHRI C.V.SANKAR**

**...MEMBER(J)
...MEMBER(A)**

1.Smt Geetha Naik,
W/o Late K. Bheema Naik,
Aged about 59 years,
Residing at No.38, 1st Main,
4^h Cross, B.K. Nagar,
Yeshwanthpura,
Bengaluru-560 022.

2.Smt Girija Bai,
W/o Late K. Bheema Naik,
Aged about 62 years,
Residing at Vijayapura,
Kote Malluru Tanda,
Kasaba Hobli, Honnali Taluk,
Davangere District.

...Applicants

(By Advocate Shri N.R. Naik)

Vs.

1.The Union of India,
Represented by Railway Manager,
South Western Railways,
Hubli, Karnataka State.

2.The Divisional Manager,
Bengaluru Division,
South Western Railway,
City Railway Station,Bengaluru-560 023.

3. The Divisional Personnel Officer,
Bengaluru Division,
South Western Railway,
City Railway Station,Bengaluru-560 023.

3. The Divisional Accounts Officer,
Bengaluru Division,
South Western Railway,
City Railway Station,
Bengaluru-560 023.

...Respondents

(By Smt A.H. Sunitha, Railway Standing Counsel)

O R D E R (ORAL)**HON'BLE DR.K.B.SURESH ...MEMBER(J)**

Heard. This is a matter in which apparently the deceased Government employee took voluntary retirement in 1997. At that point of time he had Smt Girija Bai, as his wife. Later on, it appears that he has taken on another person, the first applicant herein as his wife. We find that in fact both these wives had filed application together, but somehow the Judicial Section of the Tribunal had taken out a legal amiss and on it being pointed out to the learned counsel for the applicant, he had cut off the name of the 2nd applicant, who is the first wife. There is no reason for us to impose our will on the applicant, as it is their power of choice to bring in any person as in the party array. Therefore, we have restored it, as the learned counsel has struck off that earlier striking and reinstated the 2nd applicant back.

2. It appears that they have filed joint application indicating the position of rules in the Railways with reference to Indian Railway Services (Pension) Explanation(7)(i)(a) 2011/F(E)III/1(1)9 dated 23.09.2013, therefore we quote Annexure A-4:

“To

The Divisional Personnel Officer(DPO),
South Western Railway,
Bengaluru.

Dear Sir,

Sub: Post demise Pension Claim of a deceased individual.

With reference to the above subject, we, Mrs.Girija Bai and Mrs.Geetha Naik, wife of late Mr. Bheema Naik.K, retired Railway School Head Master hereby declare that our Husband has succumbed to untimely death after prolonged Hospitalisation in Apollo Hospital, Bangalore on 3rd of November 2018. The death certificate is herewith produced for your kind reference (Annexure-1).

We further state that we had mutually accepted each other in sharing our lives with late Mr. Bheema Naik.K and have led our lives without any conflicts; although led our lives separately for our own person reasons.

Further, it is brought to our notice that, as per the Indian Railway Services (Pension) Explanation(7)(i)(a) 2011/F(E)III/1(1)9 dated 23.09.2013, both the wives are entitled for equitable distribution of the lawful pension of the deceased individual, for an individual with two wives (Copy of the same order Annexure-2)

Further I, Mrs.Girija Bai, being the first wife of late Mr.Bheema Naik.K have no objection in sharing the pension of the deceased with his 2nd wife Mrs.Geetha Naik and hence it is an humble request from our end to deposit 50% of the lawful pension amount in each of our respective accounts, the details of which are mentioned below.

DECLARATION

Both the undersigned have arrived at a decisive conclusion of sharing equally the lawful pension of the deceased individual.

Place: Bengaluru
Date:28.3.19

-sd/-
(Girija Bai)
Signature of 1st wife

-sd/-
(Geetha Naik)
Signature of 2nd wife

3. It appears that both wives therefore are eligible for apportionment of family pension, since it does not involve any prejudice to the Railways, there is no harm in granting it to them, but at the same time, as Shri Bhaskar Reddy, learned counsel for the respondents had pointed out, where is the proof of evidence for proving the genuineness of the signature as given in Annexure A-4. Even though the Vakalath is also seen filed in the name of Smt Girija Bai. The question, therefore is whether the 2nd wife is legally wedded wife or not. The Hon'ble Apex Court had made its point clear that the pre-colonial enactments may lack certain specificity in this matter. But then, even if they were living together, the status of wife is legally imposed on the 2nd wife also, there is the legal fiction, which cannot be denied at this juncture. Even though Paul Antony's case specifies the status involved for them, the Hon'ble Supreme Court has later clarified this point to include that actual relationship cannot be ignored. It is actual reality in all probability that the deceased Government employee may have been living together as husband and wife who is the first applicant. That must be the reason why the 2nd applicant had joined in the representation. Therefore, we hold that both of them are eligible for apportionment. But then, by way of abundant caution, we would grant an

opportunity of verification to the Railways. Let both of them be present before the concerned authority as specified by the learned counsel for the Railways, on 27.02.2020 at 10 AM. The concerned authority shall verify the issue and then if it is found that both have agreed that there are 2 wives, the family pension may be apportioned and it may be paid along with arrears, if any.

4. OA disposed off as above. No costs.

(C.V.SANKAR)
MEMBER(A)

(DR.K.B.SURESH)
MEMBER(J)

vmr

Annexures referred to by the Applicant in O.A. No. 170/00982/2019

Annexure-A1: Copy of pension payment order .

Annexure-A2: Copy of Death Certificate .

Annexure-A3: Copy of legal notice.

Annexure-A4: Copy of representation dated 28.3.2019.

Annexure-A5: Copy of order in WP.No.4467/2014 dated 20.11.2014
