

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/716/2019

Hyderabad, this the 7th day of January, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

G. Subbalakshmi,
W/o. late G. Ramesh,
(Ex. Travelling Ticket Inspector (Group C),
Guntakal Division, S.C. Railway)
Aged 33 years, R/o. H. No. 18/775-68 B,
Near Bank Colony, Guntakal,
Anantpur District – A.P.

... Applicant

(By Advocate Mr. K.R.K.V. Prasad)

Vs.

1. Union of India, Rep. by
The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Divisional Railway Manager,
South Central Railway,
Guntakal Division, Guntakal.
3. The Senior Divisional Personnel Officer,
South Central Railway,
Guntakal Division, Guntakal.

... Respondents

(By Advocates: Mr.M. Venkateswarlu, SC for Rlys)

ORDER (ORAL)

2. The OA is filed challenging the action of the respondents in not releasing the settlement benefits, granting family pension and not providing compassionate appointment to the applicant.



3. Brief facts of the case are that the applicant's husband while working in the Ticket Checking Cadre married the applicant after divorcing his first wife Smt. G. Nagamani. Applicant's husband died while in service and therefore, she sought service benefits due to her, but the same were not released by the respondents though she is the legally wedded wife of the deceased employee, as per the records of the respondents. Applicant submits that on seeking information under the RTI Act, she has come to know that due to rival claim/ court cases, her claim for service benefits is not being processed and decided. The claim made by the son of the first wife, who is a major, to the extent of $1/5^{\text{th}}$ share of the death benefits is invalid. Even family pension, which was to be granted to her immediately on the demise of her husband has not been processed though she has two minor children to be taken care of. Hence, applicant has approached this Tribunal by filing the instant OA seeking a direction to the respondents to release the service benefits due to her and compassionate appointment, as per the Rules on the subject.

4. The contentions of the applicant are that the applicant's husband obtained a decree of divorce from his first wife and got the marriage

dissolved on 17.08.2002 vide the Award passed by the Hon'ble Lok Adalath, at Gooty in OP No. 27/2002. While passing the Award, the applicant's husband was ordered to pay a sum of Rs.3,00,000/- towards permanent alimony to his first wife and her two children and also to make payment of Rs.1,00,000/- and 10 Tulas of gold to the daughter namely Sindhu at the time of her marriage. The deceased employee complied with all the conditions of the Award before marrying the applicant. Though the applicant's husband has obtained divorce, yet he was supporting the children of the first wife financially.

Applicant further contends that her husband has reported the marriage with the applicant to the respondents. Various documents like Family Composition, Privilege pass, Household Card, Family member certificate, Aadhar Card stand testimony to the relationship of the applicant as the wife of the deceased employee. The children of the deceased employee born through the applicant have also availed medical facilities from the Railway Hospital. She has to support her two minor children in terms of their education and health. Despite repeated representations, respondents have not granted the relief sought.

One another contention made is that the son of the first wife Sri G. Yashvanth filed OS No. 97/2017 on the file of the Court of Junior Civil Judge, Gooty seeking partition and separate possession of 1/5th share in the plaint A and B schedule properties appended to the said OS. Schedule B shows an amount of Rs.2,00,000/- to be received as death benefits from the respondents and hence, 1/5th share, which comes to Rs.40,000/- has been claimed. The first wife has not made any claim in view of the settlement





recorded in the Award of the Lok Adalat, at the time of granting divorce decree. The terms of settlement were judicially taken note of. The son of the first wife is not only a major, but is employed. Besides, he did not live with the deceased employee after her mother's divorce. A major son of the divorced wife has no right to claim the benefits of the deceased Railway employee. Applicant was married to the deceased employee for more than 15 years and has given birth to two children. Even the daughter of the first wife has not lived with the deceased Railway employee after her mother's divorce with the deceased employee. In fact, the daughter of the first wife is also married and hence, is ineligible to make any claim from the respondents. Applicant claims that the Hon'ble Court of Junior Civil Judge, Gooty, in OS No. 97/2017, has not passed any interim injunction restraining the respondents from releasing the settlement dues of the applicant's husband. The Welfare Officer working in the respondents organization did visit the applicant's residence and obtained her signatures on the relevant documents for processing release of pension and other benefits. Yet, not releasing the same is arbitrary and illegal.

5. The respondents have filed reply statement, wherein they contend that the age of the applicant was less than 18 years at the time of her marriage with the deceased employee and the marriage certificate was obtained by false declaration. Hence, the marriage itself is invalid. However, the respondents confirm that the deceased employee had declared the name of Smt. G. Subbalakshmi, G. Giridhar Goud and G. Bindu as family members for availing medical facilities. Accordingly, the benefits

were extended. There being a rival claim, it is the responsibility of the actual beneficiary to approach a competent civil court to obtain a valid decree in their favour. Till date, no such decree has been submitted by the applicant. The Hon'ble Court of Junior Civil Judge, Gooty passed an interim order on 17.04.2017 in IA No. 252/2017 in OS No. 97/2017, filed by the son of the first wife, directing the respondents to withhold Rs.40,000/- i.e. 1/5th share of the settlement dues of the deceased employee. Further, respondents state that they have received a legal notice dt. 01.02.2017 from Sri G. Yashwanth & others, claiming all the death benefits of his late father Sri G. Ramesh. In view of the pendency of the OS No. 97/2017, the respondents have withheld the entire settlement dues. Appointment on compassionate grounds shall be dealt with only after finalization of the issue as to the legal heirs of the deceased employee, by the competent civil court. Further, the respondents state that there is no nomination executed in favour of the applicant. In terms of Rule 71(1)(b) of the Railway Services (Pension) Rules, 1993, if there is no nomination, the death benefits shall be paid in equal shares to all family members as per Rule 70(5).

6. Heard both the counsel and perused the pleadings on record.

7(I) It is seen from the facts that the applicant Smt. G. Subbalakshmi has been married to the deceased employee for 15 years. Marriage certificate issued by Sri Mahanandeeswara Swamy Devasthanam, Mahanandi, Kurnool District, Andhra Pradesh bearing No. 001295, dated

20.03.2003 has been enclosed testifying the marriage, which took place on 20.03.2003. Respondents have also issued Identity cum Medical Card (Annexure A-3) to the deceased employee wherein the name of the applicant is included as his wife. Household Card issued by the Government also contains the name of the applicant as wife of Sri G. Ramesh. The other documents enclosed as Annexures A-7 & A-8, etc. also stand as proof in regard to the relationship of the applicant and her children with the deceased employee. The deceased employee has obtained divorce from his first wife Smt. G. Nagamani vide Award in OP No. 27/2002 dt. 17.08.2002 (Annexure A-1). Consequent to the divorce, the applicant's husband is reported to have complied with the requirements laid down for grant of divorce. The employee expired on 04.07.2016 and on his demise, the respondents dutifully sent a Welfare Officer to the residence of the applicant and got her signatures on the relevant documents. Thereafter, the applicant represented for release of terminal benefits, but the same has been withheld in view of the pendency of the OS No. 97/2017, filed by the son of the first wife, on the file of the court of the Junior Civil Judge, Gooty, wherein an interim order has been passed to withhold a sum of Rs.40,000/- of the settlement dues of the deceased employee.

II. Learned counsel for the applicant submits that the respondents can withhold a sum of Rs.40,000/- till the suit is decided and the rest of the amount can be released to enable the applicant to take care of her children and also herself. This is a fair submission since the order of the competent civil court is only to withhold Rs.40,000/- of the settlement dues of the



deceased employee. Therefore, there should not be any difficulty for the respondents to release the balance amount to the applicant whose relationship with the deceased employee is confirmed by different documents issued by the respondents themselves and also by the competent State Government authorities. Respondents taking a stand that nomination is not in favour of the applicant as is required under Rules 70(5) and 71(1)(b) after several years and that too, by issuing many official documents by them testifying the relationship of the applicant with the deceased employee, is unfair to say the least. Be it as it may, it is not understood as to what happens to the responsibility of the respondents to obtain nomination during periodic annual inspection/ audit done by different wings of the respondents. Therefore, in a way, blaming the applicant for the failure of the respondents is against the law laid down by the Hon'ble Apex Court in its judgments.

- (i) *The Apex Court in a case decided on 14.12.2007 (**Union of India vs. Sadhana Khanna**, C.A. No. 8208/01) held that the mistake of the department cannot recoil on employees.*
- (ii) *In yet another case of **M.V. Thimmaiah vs. UPSC**, C.A. No. 5883-5991 of 2007 decided on 13.12.2007, it has been observed that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.*
- (iii) *It has been held in the case of **Nirmal Chandra Bhattacharjee v. Union of India**, 1991 Supp (2) SCC 363 wherein the Apex Court has held “The mistake or delay on the part of the department should not be permitted to recoil on the appellants.”*

Learned counsel for the applicant has then argued that there is likelihood of further claim from the daughter of the first wife. However,



there is no court order in favour of the daughter and also the facts of the case indicate that she is also married and as per Rules of the respondents in regard to release of family pension, she would not be eligible.



III. The other objection taken by the respondents is that the applicant was a minor at the time of her marriage with the deceased employee. This objection appears to be without any basis. In the document at Annexure A-2, her age is declared to 23 years on the date of marriage. Further, in Annexure A-3 Identify cum Medical Card, the date of birth of applicant is shown as 15.06.1979 and even taking that date as her date of birth, the applicant would certainly be a major on the date of marriage that took place on 20.03.2003. In any case, this aspect should have been verified by the respondents 15 years ago and raising the objection, at this juncture is not reasonable. In fact, it was their mistake in not detecting the alleged discrepancy at the relevant point of time.

IV. There are no court orders prohibiting release of other benefits due to be extended to the applicant being the legally wedded wife of the deceased employee. This observation is reinforced by different documents issued by the respondents to the applicant over the years for availing different benefits extended to the respondents. The same have been stated in the aforesaid paras. The award issued by the Lok Adalat at Gooty in OP No. 27/2002 clearly emphasis the settlement and dissolution of marriage between the deceased employee and his first wife. After such a settlement, it is not known as to why the respondents are not releasing the benefits due

to the applicant as per her legitimate eligibility. In fact, the Hon'ble High Court of Judicature at Hyderabad in Writ Appeal No.1020 of 2017, vide order dated 13.11.2017, has held in a case, which has similar connotation as under:



“20. XXXX

Family pension, cannot by any stretch of imagination, be construed as property left behind by a deceased Government servant. If it is treated as a property left behind by a Government servant, then he would be entitled even to dispose of the same by way of a testamentary instrument. Alternatively, even if it is construed as a property by an imaginative interpretation, on account of the facility of nomination available to the Government servant, when he is alive, then the nomination would, by the same logic, become a kind of last wish (we are careful in not equating the nomination to the level of testamentary instrument). “

Thus, it is clear from the judgment that the family pension is not a property of the deceased employee to nominate someone to receive the same. Family pension, as per Rules, has to be granted to the legally wedded wife. In the present case, applicant was duly married and the same was informed to the respondents. Different documents issued by the respondents adequately evidence the same. Therefore, denying her family pension and other benefits under the pretext of pendency of a case filed by the son of the deceased employee, born through the first wife, is not a fair proposition. As per the directions of the Hon'ble Court, the respondents could have withheld a sum of Rs.40,000/- and released the rest since there is no other order from any court in regard to the issue in question.

V. The Hon'ble Supreme Court, *Violet Isaac (Smt) v. Union of India, (1991) 1 SCC 725*, has emphatically observed that the legally wedded wife is only eligible for family pension and the said observation is extracted as under:

“The Family Pension Scheme confers monetary benefit on the wife and children of the deceased Railway employee, but the employee

has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme framed by the Railway administration to provide relief to the widow and minor children of the deceased employee. Since, the Rules do not provide for nomination of any person by the deceased employee during his lifetime for the payment of family pension, he has no title to the same. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition.



5. **In Jodh Singh v. Union of India**, this Court on an elaborate discussion held that family pension is admissible on account of the status of a widow and not on account of the fact that there was some estate of the deceased which devolved on his death to the widow. The court observed:

“Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition.”

The court further held that what was not payable during the lifetime of the deceased over which he had no power of disposition could not form part of his estate. Since the qualifying event occurs on the death of the deceased for the payment of family pension, monetary benefit of family pension cannot form part of the estate of the deceased entitling him to dispose of the same by testamentary disposition.”

Based on the above judgment, the applicant has a legitimate right for receiving family pension of the deceased employee and other benefits to the extent permitted under law, as expounded in previous paras.

VI. Coming to the other relief sought by the applicant regarding compassionate appointment, this Tribunal is of the view that, the issue can be considered later after settlement of family pension and death benefits, as prayed by the learned counsel for the applicant. This Tribunal therefore, would prefer not to issue any direction at this juncture of time.

VII. Therefore, based on the aforesaid, the respondents are directed to grant family pension and release other pensionary benefits due to the applicant by withholding a sum of Rs.40,000/- as directed by the Hon'ble Court of Junior Civil Judge, Gooty in OS No. 97/2017. Time granted to implement the judgment is three months from the date of receipt of copy of this order.



The OA is allowed, to the extent of the above directions, with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

/evr/