

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

Original Application No. 040/00244/2016

Date of Order: This the Day of August 2016

HON'BLE MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER

Smt. Papia Dey,
W/O Late Sambhunath Dey
Resident of Ichapore, P.O.:Nawabganj
Under P.S: Noapara
District: North 24 Paraganas,
West Bengal.

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Applicant

By Advocate Mr.M.U.Mahmud

-Versus-

1. The Union of India,
represented by the General Manager,
North East Frontier Railways,
Maligaon, Guwahati, PIN:781011
2. The Divisional Railway Manager,
North East Frontier Railways,
Lumding Division,
District: Nagaon, Assam,
PIN:782447
3. The Divisional Finance Manager,
North East Frontier
Railways, Lumding,
District:Nagaon, Assam
PIN:782447
4. Smt. Moutushi Dey
D/O Late Dulal Biswas and
Namita Biswas
Resident of Bidhyak Pally,
Morulongper, P.O.& P.S. Lumding
District:Nagaon, Assam,
PIN:782447

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Respondents

Mr.M.K.Mazumdar, Railway Standing Counsel

ORDER

Per MOHD HALEEM KHAN, ADMINISTRATIVE MEMBER:

The learned counsel for the applicant submitted that this Application is being filed under Section 19 of the Central Administrative Tribunal Act 1985, seeking following reliefs:-

8. i. To admit this petition, call for records, issue notices upon the respondents, to show cause as to why the following reliefs shall not be provided to the applicant directing the Railway Authorities.

ii. Not to disburse any pensionary benefits to Smt.Moutushi Dey, the so-called widow of Late Sambhunath Dey, and also not to provide any job to Smt. Moutushi Dey on compassionate ground on account of her claim to be the widow of Late Sambhunath Dey.

iii. To provide family pension to the applicant who is the only legally married wife of the deceased, Late Sambhunath Dey, and

iv. For a direction to the DRM, N.F.Railways, Lumding, Assam, to provide job to her as per her qualification on compassionate ground, for which separate applications have been filed by the applicant on 28.6.2016, being the legally married wife/widow of Late Sambhunath Dey.

v. To Set aside the Orders of the Ld. C.A.T dated 25.02.2016 and 01.04.2016, passed in O.A.No.040/00049 of 2016 and O.A.No.040/00107 of 2016, respectively.

vi. To declare that the claim of Smt.Moutushi Dey, the Respondent No.4, that she is the legally married wife of Late Sambhunath Dey is totally

illegal, malafide, false and fabricated and made for the purpose of unlawful gain causing unlawful losses to the applicant more so when she is the own niece of Late Sambhunath Dey.

vii. To declare that the Certificate, dated 10.12.2000, written by the so-called Government Gaonbuda in Railway Pad is totally illegal, null and void.

Learned counsel also sought the following interim order:-

“Pending disposal of this application, the Hon’ble Tribunal may be pleased to direct the Railway Authorities not to disburse any pensionary benefits or compassionate appointment to Smt. Moutushi Dey, the Respondent No.4, till disposal of this Application in the interest of justice.”

2. The applicant’s case is that she is legally wedded wife of Late Sambhunath Dey, who was Railway Employee, under the control of the Divisional Railway Manager, N.F.Railway, Lumding Assam. He has committed suicide at the house of his elder sister and niece, namely, Namita Biswas, W/O Late Dulal Biswas and Smti Moutushi Dey, D/O Late Dulal Biswas, on 12.06.2015. According to the applicant she contacted the respondent authorities seeking family pension and appointment on compassionate ground. The respondent authority informed her that vide two (2) orders of Hon’ble C.A.T, Guwahati Bench dated 25.2.2016 and 01.04.2016 they have received the claim of another lady, namely, Moutushi Dey for the same.

3. According to the applicant, the Late Sambhunath Dey died on 12.06.2015, at the house of his elder sister, Namita Biswas, at Lumding, Assam. The applicant came to know about the false claim of Respondent No.4, who claimed to be the widow of Late Sambhunath Dey on 12.08.2015, at DRM Office, Lumding, hence the application being filed on 3rd July 2016 be deemed filed within the period of limitation.

4. According to the applicant her marriage was solemnized on 23.4.1997, at Halisahar, New Baruipara, P.O.-Halisahar, under P.S. Bizpore District: North 24 Paraganas, West Bengal, PIN:743134, as per Hindu Law and Customs. According to the applicant in the marriage the Respondent No.4, i.e Smti Moutushi Dey was also present. In support of her contention the applicant filed a Xerox copy of the marriage ceremony photo in which according to her contention the bride in picture is the applicant. The applicant also gave the names of some persons who were present during marriage ceremony as well as the name of the priest, namely, Sri Dipankar Chakraborty. According to the applicant after the marriage, she left her place with her husband and lived together as husband and wife for a period of nearly one(1) month, at Halisahar and thereafter, they came to Lumding, Assam, where he

served as a Railway Employee, under the Divisional Railway Manager, North East Frontier Railway, Lumding, Assam. According to the contention of the applicant they stayed at the house of the applicant's sister-in-law, namely Namita Biswas, as husband and wife, and during this period she conceived. After that, the applicant went to her matrimonial house at Ichapore and stayed there with her widowed mother-in-law and elder brother-in-law, namely, Sri Santi Ranjan Dey, along with other family members. She also gave birth to one female child namely, Sumana Dey alias Priya Dey, on 17.06.1999, at Central Nursing Home. Smti Sumana Dey @ Priya Dey is aged about 17 years and she has passed H.S.L.C Examination in the year 2016, under West Bengal Board of H.S.L.C Education, Salt Lake, Kolkata-700091.

5. According to the applicant after birth of the female child, the deceased, Late Sambhunath Dey, did not keep much relation with the applicant and stopped providing maintenance to her and their child. The applicant therefore, filed a maintenance case against her husband vide Misc.Case No.160/2004, in the Court of Ld. Judicial Magistrate First Class, Fourth Court, At Barrackpore, in North 24 Paraganas, West Bengal, claiming maintenance of Rs.1500/-(Rupees

one thousand Five hundred) only per month for herself and another Rs. 1500/-(Rupees One Thousand Five Hundred) only per month for her minor daughter, totalling to Rs. 3,000/- (Rupees Three Thousand) only per month. The Ld.Court granted a sum of Rs.1500/-(Rupees One Thousand Five Hundred) only per month in total from the day of 15.10.2004, as maintenance. According to the applicant, the same is available in the record of Railways, DRM, Lumding, Assam. According to the applicant though the order for payment of Maintenance was passed by the Id. Court but for a considerable period, the applicant's husband did not pay the maintenance. The applicant also filed an Enhancement Petition for enhancing maintenance. But the deceased, again did not pay the maintenance for which warrant of arrest was issued against Shri Sambhunath Dey through the Superintendent of Police, District: N. C. Hills, on 30.9.2008. After that by way of negotiation, Late Sambhunath Dey paid a sum of Rs. 10,000/-(Ten Thousand) only in one instalment and got the warrant of arrest recalled. As per the demand of the situation, and as advised by the applicant's advocate, their marriage was registered before the Hindu Marriage Registrar at Halisahar on 02.12.2008, under the provisions of

Hindu Marriage Act, 1955. Thereafter, the deceased Late Sambhunath Dey, continued to pay the amount regularly as ordered by the Ld.Court, sometimes in Court and sometimes through her Bank Account. According to the applicant, Late Sambhunath Dey, remained out of service for nearly six(6) months for defying the order of Departmental Authority and came back to Ichapore at his parental address and stayed with the applicant and his family members for a period of forty-five(45) days. After that he came back to Lumding, Assam, After a few days of his return to Lumding, suddenly, the applicant came to know that her husband Sambhunath Dey, has committed suicide at the house of his elder sister and niece, namely, Namita Biswas, and Smti Moutushi Dey Biswas on 12.6.2015. Subsequently, the applicant came to Lumding, for collecting necessary documents. On 12.08.2015 the applicant submitted an application for seeking funeral assistance, which was duly received by the Sectional Manager, D.R.M office Lumding. Thereafter, the applicant filed application seeking family pension and for compassionate appointment but the Railway Respondents told her that another woman, namely, Moutushi Dey, has also claimed that she is the legally married wife of the deceased, late Sambhunath Dey, and she

has claimed the family pension and appointment on compassionate ground and in support of her claim Submitted two orders of C.A.T, dated 25.02.2016 and 01.04.2016. According to the applicant the Railway respondents are not processing her request of Family Pension and compassionate appointment because of the Respondent No.4 having obtained Hon'ble CAT's order in her favour.

6. In Support of her contention, the applicant has filed the photocopy of a photograph in which the learned counsel for the applicant claimed that the bride in the photograph is the present applicant. The applicant also filed Birth Certificate of Sumana Dey issued by the Kalyani Municipality's authority on 20.07.2011 showing date of registration as 02.8.1999 in which Sri Sambhunath Dey has been shown as father of Smti Sumana Dey and Papiya Dey has been shown as mother. The applicant also filed the order of the Judicial Magistrate, 1st Class, 4th Court at Barrackpore, Dist.North 24 Parganas, dated 12.3.2010. Her Petition before the Sub Judicial Magistrate, Barrackpore dated 10th June 2004, the copy of the money receipt Rs. 10,000/-, the copy of the Marriage Registration Certificate dated 2nd

December 2008 and copy of the warrant of Arrest dated 6.8.2008 for production before the Court on 30.9.2008. The copies of the orders of this Tribunal in O.A.No.49 of 2016 and O.A.No. 107 of 2016 have also been filed.

Both the applications 49 of 2016 and 107 of 2016 were disposed of with the following orders. The Paras 3, 4 & 5 of the orders in O.A.No.49 of 2016 dated 25.02.2016 are reproduced below:-

“3. Mr.M.K.Mazumdar, learned Standing Counsel for the Railways, who is present in Court, agreed to the fair submission of the learned counsel for the applicant that if the applicant is recorded as the legally married wife of the deceased Railway employee then there should be legally no objection on the part of the Railways to provide provisional pension. However, in case the matter is disputed, it will take time.

4. If, for some reason, the Railway authorities want to take more time to make the final settlement even if there is no doubt that applicant's name appears in the Service Records of the Railways, then they can issue immediately the order for payment of provisional pension.

5. With the above observation and direction, the O.A. stands disposed of at the admission stage with direction to the respondents to finalize the

pending pension matter within three months from the date of receipt of the order.”

The Paras 5 and 6 of the order in O.A.No.107 of 2016 dated 01.04.2016 are also reproduced below:-

“5. It is also noted that only the husband was the bread earner of the family and to save the family from starvation, monetary assistance in terms of appointment commensurate to her (applicant) qualification is very much required. Accordingly, in the interest of justice, we direct the respondent authorities to constitute a Board of officers Meeting and consider the case of the applicant keeping into vacancy position. The Board of Officers Meeting should be held within a period of three months from the date of receipt of a copy of this order and the decision thereof shall be communicated to the applicant forthwith by passing a reasoned and speaking order.

6. With the above observations and directions, O.A. is disposed of accordingly at the admission stage itself. However, there shall be no order as to cost.”

7. Both the orders of this Court are in the nature of directions that in case the name of Smti Mautushi Dey appears in the Service Records of Sri Sambhunath Dey, available with the Railway Respondents her application for Family Pension as well as compassionate appointment should be disposed of and in case final settlement is likely to take time, provisional pension may be granted to

the applicant. This Court has no locus standi to decide who is the legally married wife.

8. This Court has only issued direction to the Railway respondents to act as per rules and service records available with them. The Court therefore, does not find any justification to interfere with the orders issued on 25.02.2016 in O.A.No.49 of 2016 as well as the order dated 1st April 2016 in O.A.No.107 of 2016.

9. The applicant has not filed any document to substantiate her claim that her name appears in the Family Declaration filed by the deceased employee and available with the Railway respondents and therefore, this Court cannot give any relief. The Court is fully confident that in case her name appears in the service records of the deceased employee the Railway authority will be duty bound to entertain her application for Family Pension and appointment on compassionate ground. However, since the applicant has not filed any document in this regard, this Court is handicapped in issuing any direction to the Railway authority.

10. Accordingly, application is dismissed at the admission stage.

No order as to costs.

(MOHD HALEEM KHAN)
ADMINISTRATIVE MEMBER

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