

LIBRARY

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

O.A. No.350/01370/2019.

Date of Hearing : 28.01.2020.

Date of order : This the 10th Day of February, 2020.

Hon'ble Mrs. Bidisha Banerjee, Judicial Member

Hon'ble -Dr.(Ms) Nandita Chatterjee, Administrative Member



Smt. Lichu Bala Ghosh
Widow of Late Kalipada Ghosh,
Village Paraj, P.O. Paraj,
Police Station Bud Bud,
District Burdwan, Pin – 713403.

.....Applicant

- Versus -

1. Union of India,
Service through the General Manager,
Eastern Railway, 17 N.S.Road,
Kolkata – 700001.
2. General Manager,
Eastern Railway, Fairly Place,
Kolkata – 700001.
3. Accounts Officer/Pension
Eastern Railway, Fairly Place,
Kolkata – 700001.
4. Treasury Officer, Treasury-I,
Purba Bardhaman, Post Office,
Police Station & District Purba Bardhaman,
Pin – 713101.
5. Addl. Treasury Officer, Treasury-I,
Purba Bardhaman, Post Office,
Police Station & District Purba Bardhaman,
Pin – 713101.
6. Collector, Office of the Collector,
Purba Bardhaman, R.N. Section, P.O.
& District Purba Bardhaman,

Pin 713101.

7. Smt. Sibani Bala Ghosh,
Widow of Late Kalipada Ghosh,
Village & P.O. Paraj,
Police Station Bud Bud,
District Purba Bardhaman
Pin - 713403.

.....Respondents



Advocate for the applicant : Mr M. Kundu & J. Mandal

Advocate for the respondents: Mr B.P.Manna & S.K.Ghosh

ORDER

MS BIDISHA BANERJEE, MEMBER(J)

The applicant is admittedly the 2nd wife of the deceased employee, Kalipada Ghosh, who expired on 28.05.1990 after his retirement in 1977, she has preferred this O.A to seek the following reliefs :

"a) A direction upon the Respondent Authority to pay family pension of Late Kalipada Ghosh in equal shares between Smt Lichubala Ghosh (wife), Smt. Shibani Bala Ghosh (wife), Smt Rajlaxmi Ghosh (unmarried daughter) and Sri Nandalal Ghosh (mentally deranged son) forthwith in accordance with law.

b) A direction upon the Respondent Authority to pay arrear family pension from 28.05.1990 to till date between legal heirs of Late Kalipada Ghosh as mentioned above with 9% interest.

c) A direction upon the Respondent Authority to call for the records of the case for the ends of justice.

d) To pass such other order or orders as this Hon'ble Tribunal may deem fit and proper.

e) To consider the prayers of the petitioner on humanitarian ground as she is now of 85 years old and may not survive for a long term and any delay, as done by Respondents, will make the payment infructuous."

Earlier, the present applicant had preferred O.A.972/2018 for family pension, which was disposed of on 09.08.2018 with the following order :

"Accordingly, the respondent No.2 i.e. The General Manager, Eastern Railway, Kolkata is directed to consider and dispose of the representation of the applicant dated

05.05.2018 (Annexure A/7), if it is still pending for consideration, as per rules and regulations governing the field within a period of six weeks from the date of receipt of a copy of this order and communicate the result to the applicant forthwith by way of a well reasoned order. After such consideration, if the grievance of the applicant is found to be genuine then the respondent authorities shall take expeditious steps to grant the consequential benefits to the applicant within a further period of six weeks from the date of taking decision in the matter.



It is made clear that this being a family pension matter I have not gone into the limitation of this case and all the points raised in the representation of the applicant are kept open for consideration by the respondent authorities as per rules and regulation in force.

With the above observations and directions, the O.A is disposed of. No orders as to costs."

The aforesaid order was assailed in W.P.C.T. 78 of 2018 by one Shibani Bala Ghosh, private respondent in the O.A, and was disposed of with the following order :

"This writ petition, at the instance of the private respondent in O.A./350/972/2018, is directed against an order dated 9th August, 2018 disposing of such original application.

The grievance expressed in this writ petition is that the tribunal disposed of the original application with a direction upon the General Manager, Eastern Railway, Kolkata to consider a representation dated 5th May, 2018 filed by the original applicant before the tribunal without the original application having been served on the writ petitioner.

According to Mr. Jaiswal, learned advocate for the writ petitioner, her presence is absolutely necessary before the general manager while he decides the grievance expressed in such representation by the original applicant and hence, he makes a prayer for a direction on the general manager to dispose of the original applicant's representation by granting her an opportunity of hearing.

Mr. Mondal, learned advocate appearing for the original applicant before the tribunal, respondent no. 1 herein, does not seriously oppose the prayer of Mr. Jaiswal.

Even otherwise, we are of the view that the tribunal should have directed the general manager to give an opportunity of hearing to the writ petitioner since she was

impleaded as a respondent in the original application. It appears to be an inadvertent slip on the part of the tribunal, which requires rectification.

This writ petition, accordingly, stands disposed of with a direction upon the general manager to put the original applicant as well as the writ petitioner on notice before he proceeds to dispose of the representation of the original applicant in the manner as directed by the tribunal.

There shall, however, be no order as to costs.

Needless to observe, the order passed by the general manager shall be communicated to both the parties.

No opinion is expressed on the merits of the rival claims.

Urgent Photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible."

Pursuant to the direction of the Hon'ble High Court the General Manager, Eastern Railway on 19.03.2019 passed a reasoned order, after according personal hearing to both Lichu Bala Ghosh and Shibani Bala Ghosh. The General Manager concluded as under :

"Eastern Railway

No.E.308/CC/HWH/Smt. L.B. Ghosh Kolkata, dated
19/03/2019

Reasoned Order

Hon'ble High Court/Calcutta under order dated 30.11.2018 in WPCT No. 78 of 2018, Smt. Shibani Bala Ghosh – vs- Lichu Bala Ghosh and ors has directed the General Manager, Eastern Railway, Kolkata to put the original applicant in the OA as well as the writ petitioner on notice before he proceeds to dispose of the representation of the original applicant in the manner as directed by the Tribunal. Accordingly, Smt. Lichu Bala Ghosh and Smt. Shibani Bala Ghosh were advised vide letter dated 27.02.19, to appear before the undersigned in his office on 18.03.2019 at 11.30 hours with all relevant documents.

The history of the case reveals that Lt. Kalipada Ghosh was Porter under Station Manager/Burdwan and retired from Railway service voluntarily in the year 1977. At the time of retirement Lt. Kalipada Ghosh indicated the name of Smt. Shibani Bala Ghosh as his wife in the settlement. Form No. 6



which an employee has to execute himself at the time of retirement mentioning the name of wife who will receive the family pension with signature by other Railway employee as witness. Lt. Kalipada Ghosh died in the year 1990 and payment of family pension was started by the Treasury Officer(1)/Burdwan in favour of Smt. Shibani Bala Ghosh as per the previous sanction which was done on the basis of details of family particulars mentioned in Form no. 6.



However, Treasury Officer (1)/Burdwan had apparently received some references and requested the Collector/Burdwan for investigation and thereafter a legal heir Memo was issued by Collector/BWN on 24.09.1992 wherein Smt. Lichu Bala Ghosh was mentioned as the widow of Lt. Kalipada Ghosh and Rajlaxmi Ghosh and Nandalal Ghosh as the daughter and son of 2nd wife. Treasury Officer(1)/Burdwan further withheld the family pension and referred the matter to Accounts Officer/Pension, Eastern Railway mentioning the Family pension in favour of Smt. Shibani Bala Ghosh up to the month of Oct/82 had been released and requested reply as Smt. Lichu Bala Ghosh had claimed her Family pension based on Collector's Memo dated 24/09/1992.

Smt. Shibani Bala Ghosh thereafter approached Hon'ble High Court, Calcutta by filing CO No. 3602(W)/1993 against withholding of family pension and the same was dismissed for default on 30.07.2002, and it is understood from her that a restoration petition had since been filed on 08.09.14, and that the same is pending. Smt. Lichu Bala Ghosh filed OA No. 350/972/2018 before the CAT/CAL which was disposed on 09.08.18. After disposal of OA No. 350/972/2018, Lichu Bala Ghosh Vs. Union of India & others, Smt. Shibani Bala Ghosh has filed WPCT No. 78/2018 challenging the order passed by CAT/CAL in OA No. 350/972/2018, Lichu Bala Ghosh Vs Union of India & Others. However in compliance of the Hon'ble Tribunal's order, the undersigned had considered the representation of Smt Lichu Bala Ghosh and passed a speaking order dated 09.11.18.

Thereafter on receipt of the copy of the order of the Hon'ble High Court in WPCT No. 78/2018, the undersigned advised both the original applicant in the OA as well as the writ petitioner to come for personal hearing, and the same was duly attended by both parties on 18.03.19. As both the parties were not conversant in either English or Hindi, they were allowed to speak in Bengali and DPO/I/HWH's services were used for translating in conducting the hearing. Detailed deliberations were made with both the applicant in the OA and the respondent of the WPCT on their claim & they were also requested to submit any supporting documents regarding their claim.



In course of the personal hearing with Smt. Lichu Bala Ghosh & Smt. Shibani Bala Ghosh i.e. the original applicant of the case of OA No. 350/972/2018, filed before Hon'ble CAT/CAL and the writ petitioner of WPCT No. 78 of 2018 filed before High Court Calcutta, respectively furnished the civil documents like AADHAR card, Voter I-Card wherein the name of husband of both of them is mentioned as Kalipada Ghosh. Smt. Lichu Bala Ghosh stated that, she was married with Late Kalipada Ghosh when she was about eight years of age and she has no proof for the same. She is having no issue born out of her wedlock with Late Kalipada Ghosh. She stated that after the marriage of Late Kalipada Ghosh and Smt. Shibani Bala Ghosh, three Bighas of landed property was gifted in favour of her by Late Kalipada Ghosh through gift deed. The copy of this land transfer deed submitted by her, does not however, clearly establish that it was gifted by Lt. Kalipada Ghosh.

Smt. Shibani Bala Ghosh also claimed to be the wife of Late Kalipada Ghosh, having married him sometime around 1973 but no papers related to registration of marriage could be produced by her. The civil documents like Voter I Cards, AADHAR cards etc only contain the name of Late Kalipada Ghosh as her husband. Her two children who are said to have been born out of this marriage are one son Pumendu / Nandalal (said to be mentally challenged) and one daughter.

Thus, while both Smt. Lichu Bala Ghosh and Smt. Shibani Bala Ghosh claimed to be the legal wife of Late Kalipada Ghosh, Ex-porter under Station Manager, Burdwan, no genuine document of marriage like marriage registration deed etc. could be produced by them. On going through the entire case file, I find that the Late Kalipada Ghosh mentioned the name of Smt. Shibani Bala Ghosh as his wife in settlement Form No. 6 at the time of his retirement, and only based on this nomination executed by him in his lifetime, family pension had been sanctioned in the name of Smt. Shibani Bala Ghosh, who accordingly drew family pension for couple of years. It is learnt that no claim was made by the applicant during the life time of the deceased employee as well as after the death of the employee. There are no Railway documents available indicating Smt. Lichu Bala Ghosh as the wife of the deceased employee at present.

Subsequently without any prior reference to the Railway Administration, it is seen that Collector/Burdwan issued a legal heir certificate of Late Kalipada Ghosh wherein it is mentioned that Smt. Lichu Bala Ghosh is the widow and Smt. Rajlaxmi Ghosh and Sri Nanda Lal Ghosh

are the daughter and son of the second wife of Late Kalipada Ghosh.

However, in the absence of any other railway records or any other conclusive documents, it is not possible for the Railway Administration to come to a decision on the eligible claimant for family pension in this case. Therefore, having heard both the parties and on the basis of the records and extant rules, it is concluded that as the available records cannot substantiate the claim of either of original applicant or the writ petitioner, the family pension can only be restarted on submission of the Succession Certificate from the competent Court of Law which may be obtained by the claimants, duly impleading each other.

Thus, this disposes of the order of Hon'ble High Court/Calcutta in WPCT 78/2018 & both the applicant and the petitioner may be accordingly advised.

Sd/-
General Manager
Eastern Railway"

3. Heard both the learned counsel and perused the records. Learned counsel for Shibani Bala Ghosh has submitted that she has been nominated to receive family pension and in support of her claim produced documents which records the following :

"Pensioner died on 28.5.90 as per death certificate. Family pension started from 29.5.90 in favour of Shibani Bala Ghosh as per P.P.O.

Addl.Treasury Officer,
Burdwan Treasury-I
BURDWAN"

On the contrary, learned counsel for the applicant had failed to produce any supporting documents which would prove that she has been nominated to receive family pension. However, it transpired at hearing that both of them have agreed to share family pension. We also note that apart from the two wives the son and unmarried daughter are also claimants. At hearing it was submitted that the unmarried daughter has since been married. Since a family pension can either be shared by two

wives or by one wife and legal heir of the other wife, we note that the claim of deranged son is not admissible. In this context it would be profitable to quote relevant portion of Rule 75 of RS (Pension) Rules, which reads as under :

" (7) (i) (a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full, to her.

(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she been alive at the time of the death of the railway servant or pensioner:

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares not lapse but shall be payable to the other widow or widows or the other child or children otherwise eligible in equal shares, or if there is only one widow or child, in full, to such widow or child.

(iii) Where the deceased railway servant or pensioner is survived by widow but has left behind child or children from a divorced wife or wives, such child or children if they satisfy other conditions of the eligibility for payment of family pension shall be entitled to the share of family pension which the mother would have received at the time of death of the railway servant or pensioner had she not been so divorced :

Provided on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows or to the child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child."



4. It was submitted by Ld. Counsel for both widows that the wives have happily agreed to share the family pension between themselves, and for the purpose to enter a compromise to that effect.

5. In order to give a quietus to the dispute, we dispose of the O.A with a direction upon the General Manager, Eastern Railway to act upon the compromise petition, if any is preferred by both the wives/widows, if such petition is produced before the General Manager by the two wives and to allow them to share the family pension as they would be entitled to in accordance with Rule 75 without insisting for a succession certificate since family pension being not a fixed asset, it would be highly unfair to insist a succession certificate for the purpose of family pension.

6. The O.A accordingly stands disposed of. No order as to costs.



(DR (MS) NANDITA CHATTERJEE)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

pg