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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1375/2000

New Delhi this the 15th day of December, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN

Smt. Bhanumati Mandal,
Widow of late Sh. Nirmal Kumar Mondal,
R/o 3/6, A-I, Veena Enclave,
Nangloi,
New Delhi.

...Applicant

(By Advocate Shri Yogesh Sharma)

-VERSUS-

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station,
New Delhi.
3. Ms. Sunita Devi,
184/A-I, Basant Lane Railway Colony,
Pharganj,
New Delhi.

...Respondents

(By Advocates Shri R.L. Dhawan and Shri G.D. Bhandari)

O R D E R

By Justice V. Rajagopala Reddy, Vice-Chairman (J):

The applicant submits that she is the widow of late Shri Nirmal Kumar, a railway employee who died in harness on 10.2.2000. She made a representation for family pension and other benefits, including the appointment on compassionate grounds but they were not granted on the ground that the third respondent Ms Sunita Devi, claiming herself to be the widow of late Sh. Nirmal Kumar, already made an application for family pension and other benefits which was under consideration. The applicant submits that she is the only legally wedded widow and that her husband has not re-married at any time during his life time. She married him on 13.6.78 and out of the wedlock one male child was born on 1.5.1985.

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2. The case of the official respondents is that as per the declaration of the employee regarding his family members he showed the name of his wife as Smt. Sunwati Devi (Sunita Devi) (R-3). He also made a request during 1982 that his wife has undergone "Tubectomy operation" on 23.2.82 and requested for incentive increments. Accordingly the incentive increment was granted. After his death R-3 filed an application for appointment on compassionate grounds for his son. Compassionate appointment was considered for her son. The pension and other benefits have not yet been released in favour of R-3 in view of the directions given by the Tribunal. The learned counsel for the respondents contends that the applicant is not entitled for any benefit as R-3 was the legally wedded wife.

3. R-3 also filed reply stating that she was the legally wedded wife. She supported the averments made by the official respondents and that as a nominee she was entitled to receive the PF and other retiral benefits.

4. I have heard both the sides and carefully considered the arguments. The payment of gratuity, family pension etc. on the death of an employee is governed by Rules 71, 74 and 75 of the Railway Servants (Pension) Rules, 1973. Rule 71 reads as follows:

"71. Persons to whom gratuity is payable.--(1)(a) The gratuity payable under rule 70 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by making a nomination under rule 74;...."

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5. Thus the gratuity shall be paid to the person who was nominated by the employee under Rule 74. Rule 74 provides that:

"74. **Nominations.**-- (1) A railway servant shall, on his initial confirmation in a service or post, make a nomination in Form 4 or Form 5, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under rule 70.

Provided that if at the time of making the nomination--

- (i) the railway servant has a family, the nomination shall not be in a favour of any person or persons other than the members of his family; or
- (ii) the railway servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not."

6. It provides that on the confirmation of the Railway servants he has to make nomination in the prescribed form showing on whom the right to receive the death-cum-retirement gratuity was conferred. In the instant case the employee made a nomination in 1982 nominating his wife R-3 to receive the retiral benefits. Under the proviso (1) to Rule 74 the nomination shall not be made in favour of any person other than the members of his family. Wife being a family member the nomination in this case was a valid nomination. Rule 75 deals with family pension and under this rule the family of the deceased was entitled to the family pension. Thus, a combind reading of the above provisions goes to show that the pensionary and other benefits shall be paid only to the persons who are nominated by the railway servant, conferring the right to receive such benefits. The applicant was clearly not one of the members in the nomination. It is also seen that the son of R-3 was considered for compassionate appointment. Even in

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the medical identity card given to her husband who was a Staff Car Driver, his photo was attached and the details of his family members were shown which was dated 5.12.87 by which date the other members of the family, viz. the children were also born and in that R-3's name was shown as his wife. No material is placed by the applicant to show that she was one of the members of the family.

7. Law is well settled that it is a valid discharge for the employer if the pension and other benefits are released to the member/members who are nominated by the deceased railway servant. If there is any dispute between such a member and other person, the aggrieved person can file a suit before a Civil Court and seek for determination of her rights to receive the payments of the deceased and the nominee to whom the amount was paid will hold the same as a trustee subject to the decision of the Civil Court.

8. The O.A., therefore, fails and is accordingly dismissed, with costs of Rs.500/- (Rupees five hundred only).

Om Rajagopal Reddy
(V. Rajagopal Reddy)
Vice-Chairman (J)

"San."