

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH**

**OA No. 889 of 2016**

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)**

Sri Lachaman Aantal, aged about 28 years, S/o Late Govind Aantal, permanent resident of Kanheiput, PO/PS-Kanheiput, Dist.-Koraput.

.....Applicant

VERSUS

1. Union of India, represented through the General Manager, East Coast Railway, 2<sup>nd</sup> Floor, South Block, Rail Sadan, Samanta Vihar, Bhubaneswar, Dist.-Khurda.
2. The Divisional Railway Manager (P), East Coast Railway, Waltair Division, Dandaparthi, Visakhapatnam, Andhra Pradesh.
3. Sr.Section Engineers (P.Way), East Coast Railway, Koraput, At/PO/Dist.-Koraput.

.....Respondents

For the applicant : Mr.G.R.Tripathy, counsel

For the respondents: Mr.M.B.K.Rao, counsel

Heard & reserved on : 13.10.2020

Order on : 20.10.2020

**O R D E R**

**Per Mr. Gokul Chandra Pati, Member (A)**

The applicant has prayed for the following reliefs in the present OA :

“In view of the facts mentioned in Paragraphs 4 & 5 above, the Applicant pray for the following relief(s) :-

- (i) To admit the Original Application;
- (ii) To quash the communications made vide letter dtd. 22.04.2015 (Annex. A/7);
- (iii) To direct the Respondents more particularly the Resp. No.1 to pay the settlement dues of Late M.Pratima to the applicant within a stipulated period to save the distress family.
- (iv) To pass any other order/orders as deemed fit and proper in the circumstances of the case and for ends of justice.”

2. The facts of the case as per the OA are that the applicant's mother late M. Pratima expired on 20.8.1995, while working as a Trackwoman under the Respondent No.2 and leaving one minor son (applicant) and a minor daughter. After death of applicant's mother, both the applicant and his sister being minor, remained with their relatives and could not apply to the authorities for the settlement dues of their mother. The applicant, after he became a major, collected the death certificate of his mother (Annexure-A/2) and got the legal

heir certificate on 10.4.2013 from Tahsildar, Nandapur (Annexure-A/3) and then applied for release of settlement benefits in respect of his mother before the Respondent No.2. He also submitted a representation dated 12.2.2014 (Annexure-A/4) to Respondent No.2 for consideration of his case. Some other documents required by the Respondent No.2 were also submitted by the applicant. When no action was taken, the applicant submitted a grievance before the Respondent No.1 on 24.9.2014, who rejected the claim of the applicant for compassionate appointment in his order dated 22.4.2015 (Annexure-A/7) on the ground that the applicant is a child out of illegal relationship and asked him to submit the succession certificate for settlement benefits of his mother. The order dated 22.4.2015 is impugned in this OA.

3. It is averred by the applicant in the OA that the order dated 22.4.2015 has been passed without going through his representation and without checking service records of applicant's mother. It was the duty of the Respondent No.1 to consider the claim of the applicant on merit. Instead, the claim has been rejected on ground which is defamatory for his deceased mother.

4. The OA has been filed with the MA No. 800/2016 for condoning the delay in filing the OA on the ground the death benefits of his mother is a recurring cause of action and hence, there is no delay.

5. The Respondents filed Counter stating that after expiry of late M. Pratima, the death benefits could not be paid due to non-traceability of her family members. After more than 17 years after her death, the applicant submitted representation in 2013 claiming the death benefit of late M. Pratima identifying him to be the son of late M. Pratima and enclosing the death certificate and legal heir certificate. He mentioned his father's name to be late Govind Anchhal. It is also stated in the Counter that late M. Pratima had submitted a declaration about his family disclosing the applicant with date of birth 16.3.1985 to be her son and Rukmini with date of birth to be 7.2.1988 to be her daughter. But the name of her husband was not disclosed in the said declaration. Late Govind Anchhal expired on 12.12.2012 while in service and his death benefits have been released to his family as per his legal heir certificate at Annexure-R/1 of the Counter which included the name of his wife i.e. Smt. Raila Anthal.

6. In the Counter, the respondents justified issuing the impugned order dated 22.4.2015 by advancing the following reasons:-

*(i) The legal heir certificate submitted by the applicant did not include any of the legal heir of late Govind Anchhal.*

(ii) *In the affidavits submitted by the applicant in 2014 (Annexure-R/2 series) it was mentioned that his mother had an illegal relation with late Govind Anchal.*

(iii) *In the Service sheet of late M. Pratima, the husband's name was initially written as Govind Anchal, but it was struck off subsequently reflecting the name of the mother of late M. Pratima. But in the legal heir certificate submitted by the applicant, late M. Pratima has been shown as W/o of late Govind Anchal.*

(iv) *The date of birth of the applicant has been different in different documents. In legal heir certificate dated 10.4.2013, his age has been shown as 26 years where as in Adhar Card his date of birth was shown as 1986. As per the applicant's affidavit, his date of birth has been declared to be 15.3.1987. As per the pass declaration his date of birth is shown as 16.3.1985 and in School Leaving certificate his date of birth is 15.3.1983.*

7. Rejoinder has been filed by the applicant stating that the fact that he is the son of late M. Pratima has not been disputed. Regarding discrepancies in the date of birth, it is stated that in the legal heir certificate issued by Tahsildar, his age has been mentioned to be 26 years while declaring him to be the son of late M. Pratima. In absence of any appeal, the said certificate is a legally valid document. It is further stated that in his school leaving certificate (Annexure-A/8 of Rejoinder), his date of birth is 15.3.1987 and not 15.3.1983 as stated in Counter. Regarding Adhar Card, it is stated that the name and date of birth of the applicant was wrongly shown in that document, for which the applicant has taken steps for necessary correction, but the corrected copy of Adhar Card has not been received by him. Regarding the date of birth in the pass declaration at Annexure-R/3, it is stated that his mother was an illiterate lady who could not read Odia or English and she had put her thumb impression. The applicant was asked by the respondents to file affidavits at different times and he filed 7 affidavits which were not essential. It is also stated that the date of birth is not essential for release of the death benefits of his mother. It is further stated in Rejoinder that the order dated 22.4.2015 did not disclose the reason for rejecting the applicant's claims.

8. The applicant has cited the judgment of Hon'ble High Court of Orissa in the case of **Smt. Rajani Bahinipati vs. Chief Manager (Funds) OPTCL and others**, reported in 2012 (1) OLR 300 and another judgment reported in 122 (2016) CLT 1, in which it was held that asking for production of succession certificate is contrary to the statutory requirements for sanction of family pension, gratuity and other claims. Judgment of the Tribunal (Calcutta Bench) in the case of **Smt. Gopa Majumdar vs. Union of India**, reported in 1999 (3) CAT 10 to fortify his stand that succession certificate is not necessary for sanction of death benefits of his mother. It is also stated that the respondents, while rejecting the claim did not take into consideration the distressed condition of the applicant and his sister and it was rejected for vague reasons.

9. Learned counsel for the applicant was heard in the matter. He questioned the validity of the order at Annexure-A/7 by which the applicant was asked to submit the succession certificate because of discrepancies in applicant's date of birth and age. Learned counsel also relied on the judgments referred in the Rejoinder to challenge the impugned order dated 22.4.2015 (A/7).

10. Learned counsel for the respondents was heard and opposing the OA, he submitted that the OA is barred by limitation since the applicant filed his claim for death benefits in 2013 i.e. after more than 17 years from the death of his mother. Even if the period is counted after the applicant became a major in 2005, still no action was taken by the applicant till 2013. He reiterated the justifications given in the Counter for insisting on production of succession certificate for sanction of the settlement benefits in respect of late M. Pratima.

11. Regarding the issue of delay, the applicant has filed the MA No. 800/2016 filed after about one month of filing of the OA. The Tribunal, vide order dated 2.1.2017 admitted the OA while issuing notice to the respondents to file Counter. There is nothing on record to show that the respondents had objected to admission of the OA on the ground of delay. No step was also taken to challenge in accordance with law, the order dated 2.1.2017 of the Tribunal by which the OA was admitted. Further, while communicating the order dated 22.4.2015 (Annexure-A/7), the claim for the settlement benefits was not rejected because of delay. It is also seen from the letter dated 27.8.2014 (Annexure-R/4 of the Counter) in which it was stated that there is doubt about the genuine family members, for which the applicant was advised to submit the succession certificate and till submission of the said certificate, the case will be kept pending. The said letter referred to the report of SWI, but his report of inquiry into the matter was not furnished by the respondents.

12. It was the duty of the respondents to trace out the family of late M. Pratima after her death when her declaration regarding her family was very much available in her service record as stated in para 2 of the Counter. The only reason mentioned in the Counter for not disbursing the death benefits of late M. Pratima is that her family is "due to non-traceability of the family members". There is nothing in the Counter if any step was taken to trace out the family members of late M. Pratima since as per the declaration of family members by late M. Pratima read with the Railway Servants (Pension) Rules, 1993, the family of the deceased employee was prima facie eligible for the family pension and since the children of the deceased employee as per the declaration were minor.

13. In the circumstances as discussed above and taking into account the fact that the claim of the applicant for death benefits has not been rejected because of delay vide the order dated 22.4.2015 (Annexure-A/7) and the letter dated 27.8.2014 (Annexure-R/4 of the Counter), the ground of delay raised by the respondents in the Counter and at the time of hearing is not tenable and it is held that the present OA is not barred by limitation.

14. Regarding merit of the OA, the respondents by the order dated 22.4.2015 have asked the applicant to submit the succession certificate for the settlement dues in respect of the applicant's mother. One of the justification for insisting on the succession certificate as stated in the Counter is due to discrepancies in the date of birth of the applicant. The applicant, on the other hand states that his date of birth is 15.3.1987 as recorded in his school leaving certificate and there is some error in his Adhar Card for which the steps have been taken to correct the mistake. About a different date of birth in the service record at Annexure-R/3, it is stated by the applicant that his mother was an illiterate lady who did not know how to read English. The legal heir certificate dated 10.4.2013 at Annexure-A/3 states the age of the applicant to be 26 years, which is as per the date of birth of 15.3.1987 as per the applicant's affidavit and his school leaving certificate and there is no discrepancy.

15. The applicant's counsel has relied on the judgment of Hon'ble High Court of Orissa in the case of Smt. Rajani Bahinipati (supra) in which the appellant had applied for family pension by enclosing the required documents including the legal heir certificate after death of her husband. But the authorities asked her to produce succession certificate because of some doubts about her. The said decision was first challenged unsuccessfully before the learned single judge of Hon'ble High Court. In the Writ Appeal, Hon'ble High Court examined the provisions of the applicable rules and it was held as under:-

“The list of enclosure required to be submitted along with the application Form-16 which provides for necessary documents to grant family pension. Item No.6 of the forms refers to attested copy of the LR certificate sought where no valid nomination subsists. The Form 16 containing list of enclosures to the Form clearly provides for issuing LR certificate. It does not contemplate to produce the succession certificate & therefore the actions of the opposite parties insisting to produce the Succession Certificate for the reason mentioned in the impugned letter is contrary to the aforesaid statutory form. Therefore, insisting upon producing the succession certificate is an arbitrary, unreasonable action on the part of the opposite parties in issuing Annexure-6. This aspect of the matter has not been taken into consideration by the learned Single Judge while examining the claim of the appellant. Therefore, the impugned order is vitiated in law. Hence, non-consideration of the relevant statutory provisions of the Pension Rules & action of the opposite parties insisting the appellant to produce the Succession Certificate for sanction of pension in favour of the appellant is contrary to the requirement as provided in the Form 16, therefore the action of the opposite parties is arbitrary, unreasonable & that has made the appellant to suffer for the last two years from the date of submitting the application along with necessary enclosures. Thereby she has been

deprived of getting the pension amount as per the Pension Rules for which she is legally entitled to.....”

16. In the case of Gopa Majumdar (supra) before the Principal Bench of the Tribunal in OA No. 1164 of 1997, the dispute pertained to the rival claim of the widow and mother of the deceased railway servant and the authorities asked the widow to produce succession certificate. Taking note of the fact that under the rules relating to family pension the definition of ‘family’ does not include father or mother of the deceased employee, Tribunal held as under:-

“So in view of the aforesaid circumstances, it can be safely said that the applicant, Gopa Majumdar, being a widow and having no issue till the death of the deceased employee, Ashoke Kumar Majumdar, is entitled to get family pension without obtaining and producing any succession certificate asked for notwithstanding the fact that the mother of the deceased has raised a claim for payment of family pension to her. Family Pension is not an inheritance and the estate of the deceased. It is a statutory benefit which is to be given to the widow and the children in case of death of an employee by way of compensation. Hence, entitlement of family pension under the scheme is not covered by the Hindu Succession Act.”

17. There is nothing in the pleadings of the respondents to show that the succession certificate is required to be furnished for sanction of death benefit in respect of the deceased railway servant as per any applicable statutory rules. On the other hand, applying the judgment of the Tribunal in the case of Gopa Majumdar (supra) and of Hon’ble High Court in the case of Smt. Rajani Bahinipati (supra) to the present case, when there is no requirement of the rules for submission of the succession certificate by the applicant for sanction of family pension and death benefits, asking for submission of the said certificate is not tenable. It is noted that in the present OA, there is nothing on record to contradict the legal heir certificate issued by Tahsildar showing the applicant to be the son of late M. Pratima and there is no other claimant for death benefit of the deceased employee. Just because there are some discrepancies in his date of birth, which could have been decided by the authorities in accordance with law, it was arbitrary on the part of the respondents to ask for succession certificate. Other reasons and justifications mentioned in the Counter will not negate the requirement of the statutory rules that the death benefit can be considered in favour of the applicant on the basis of legal heir certificate and other documents submitted by him without insisting for submission of succession certificate for that purpose.

18. In view of the above discussions, this OA is allowed with a direction to the Respondent No.1/competent authority to consider sanction of the settlement benefits in respect of late M. Pratima in favour of the applicant on the basis of the documents furnished by him and pass a speaking and reasoned order in accordance with law and keeping in mind the observations in this order and communicate a copy of such order to the applicant within three months from

the date of receipt of a copy of this order. The applicant will have the liberty to submit a copy of his corrected Adhar Card to Respondent No.1 if it is received in the meantime, since it is stated in para 4 of the Rejoinder that the applicant had applied for corrected Adhar Card. It is further clarified that failure to submit the corrected copy of Adhar Card will not disentitle the applicant for the settlement benefits of his mother in accordance with the provisions of the rules. There will be no order as to cost.

(GOKUL CHANDRA PATI)  
MEMBER (A)

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