

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

OA No. 192 of 2017

Present: Hon'ble Mr. Pradeep Kumar, Member (A)

Hon'ble Mr. Swarup Kumar Mishra, Member (J)

1. Maimum Begum, aged about 53 years, D/o - Late Abdul Aziz, Village: Danogahir, P.O. Danogahir, P. S. Pipli, Dist - Puri.

.....Applicant.

VERSUS

1. Union of India, represented through General Manager,
East Coast Railway, Rail Sadan, C.S. Pur,
Bhubaneswar, Dist – Khurda.

2. Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, Dist:-Khurda.

3. Divisional Railway Manager (P), East Coast Railway,
Khurda Road, At/P.O. – Jatni, Dist - Khurda

.....Respondents.

For the applicant : Mr. H. N. Mohapatra, Advocate.

For the respondents: Mr. T. Rath, Advocate.

Heard & reserved on : 15.01.2021 Order on : 15.02.2021

O R D E R

Per Mr. Swarup Kumar Mishra, Member (J)

The applicant by filing this OA, has prayed for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

- (i) *Let the aforesaid original application be admitted, notice be issued to the respondents and after hearing the parties concerned direct the respondents to sanction and disburse the family pension as entitled in favour of the applicant quashing the order under Annexure -15.*
- (ii) *And allow the aforesaid original application with cost.*

2. The case of the applicant as inter alia averred in OA is that she is the daughter of Late Abdul Aziz who is a retired Driver working under the East Coast Railway who retired from service on 31.07.1983 after attaining the age of superannuation and he expired on 14.07.2006. The mother of the applicant was getting family pension w.e.f. 15.07.2006 and she also expired on 02.05.2012. The applicant submitted that she was married to one Shri Hidayatulla Khan on 16.05.1990 (ShadiEkernama at Annexure A/1) according to Muslim Law and due to serious difference and family dispute, her husband divorced her by uttering the words “Talak TalakTalak” in presence of witness and the divorce was confirmed in a Panchayat meeting in presence of village elders of Bhandaghar and Danogahi on dated 26.05.1999 (Talaknama at Annexure A/2). The applicant submitted that thereafter she was

staying with her parents and is dependent on them for her survival. It was further pleaded that after death of her mother, she had applied for family pension in her favour being a divorced woman and dependent upon her parents. She had supplied all the documents with the application dated 06.08.2012 (Annexure A/6). Thereafter she was asked vide letter dated 12.09.2012 (Annexure A/7) by the respondents to submit original PPO of her deceased parents, original court affidavit, school certificate or any document in support of her date of birth, bank account copy and legal heir certificate which she submitted vide representation dated 18.12.2012 (Annexure A/8). Thereafter the respondents vide letter dated 31.12.2013 (Annexure A/9) asked her to submit copy of her Nikahnama as an evidence of her marriage and registered Talaknama bearing stamp and seal of the authority. The applicant thereafter submitted copy of Sadi Ekerarnama and Talaknama vide her representation dated 20.01.2014 (Annexure A/10) and she also intimated to the Railway Manager that the stamp and seal is not available on the Talaknama paper since it has been made in the intervention of the Gram Panchayat and which can be verified from the records in the village of her husband. The applicant thereafter was asked to submit her income from the year 2012 to ascertain dependency criteria by the respondents vide letter dated 25.02.2015 (Annexure A/11)

for which she submitted an affidavit along with application in the month of March, 2015 (Annexure A/12 series). The respondents then intimated her vide letter 27.05.2015 (Annexure A/13) to send the Talaknama to the office of Senior Divisional Personnel Officer. The applicant submitted the original Talaknama (Annexure A/15) vide application dated 29.06.2015 (Annexure A/14). Thereafter the Respondents vide letter dated 13.08.2015 that the case of the applicant cannot be processed further as per senior law officer opinion that on the examination of Talaknama, it could not be ascertained whether the necessary procedure of a valid talaq has been followed or not. Hence the OA.

3. The respondents in their counter inter alia averred that the case of the applicant was considered by them and as per the legal opinion of Sr. Law Officer/BBS vide 09.11.2015 (Annexure R/14) wherein it was stated that "The Talaknama, which was earlier sent to this office, is wanting. The remaining papers are examined in reference to the relevant legal position. The prescribed procedures of a valid 'Talak' could not be comprehended to have been followed. Hence this office cannot advise to accept the Talak". The talak was not accepted and hence the claim of the applicant for family pension was rejected.
4. In the rejoinder the applicant submitted that the Sr. Law Officer has not examined the documents submitted by the

applicant in proper manner and has not examined the Talaknama of the applicant as per Mohammadan law.

5. In their reply to rejoinder the respondents have inter alia submitted that few discrepancies were observed in the said Talaknama like anomaly in the date of execution i.e. 20.02.1999 and witness signed on 26.05.1999, LTI of the applicant appended in the deed is not certified by any one and the Talaknama does not mention about the pronouncement of Talaq by the husband which is mandatory as held by the Hon'ble Supreme Court in Shamim Ara vs. State of UP &Anr.

6. Learned counsel for the applicant has relied on few citations including the following:

(i) CAT, Jabalpur Bench order dated 22nd August, 2019 in OA No. 911/2018 (Rukhsana Begum versus Union of India and others).

(ii) Learned counsel for the respondents have relied on few citation including the following:

Hon'ble Supreme Court judgment dated 01.10.2002 in Appeal No. 465/1996 in Shamim Ara vs. State of Up & Another

7. We have carefully gone through the pleadings of learned counsel for both the sides and materials on record. The applicant claims that she is the divorced daughter of the deceased employee. It is submitted

that the concerned employee died on 14.07.2006 after having retired from service on attaining the age of superannuation on 31.07.1983. The widow of the deceased employee was receiving family pension and subsequently died on 02.05.2012. The present applicant has claimed for family pension in her capacity as divorced daughter of the deceased employee and being dependent on her parents. In support of her claim that she is divorced she has filed Talaqnama vide Annexure A/2. The same was not accepted by the respondents in spite of the application of the applicant vide Annexure A/6. The rejection order vide R/15 was communicated to the applicant after obtaining legal opinion vide Annexure R/7 from the concerned officer. In this regard they have made averment in paragraph 5 of the counter. It was submitted by learned counsel for the respondents by relying on the decision of the Hon'ble Supreme Court reported in 2002 (7) SCC 518 Shamim Ara versus State of UP that the cause/reason of divorce has not been mentioned in Annexure A/2. There has been no mention in Annexure A/2 that any attempts for reconciliation by any two arbitrators was ever undertaken before there was divorce between the applicant and her husband and the said two points have not at all been mentioned in the Talaqnama vide

Annexure A/2. It was further submitted by the learned counsel for the respondents that for the said reason respondents have not accepted the claim of the applicant for family pension.

8. Learned counsel for the applicant had relied on CAT, Jabalpur Bench order dated 22nd August, 2019 in OA No. 911/2018 (Rukhsana Begum versus Union of India and others), but it is seen from the said final order that the name of the applicant in the said case was entered in nomination papers prior to retirement of the deceased employee. But in the present case, the employee had not submitted name of the applicant as his dependent nominee. Besides that in view of the facts as mentioned in para 6 of the said order in the case before Hon'ble CAT, Jabalpur Bench, this Tribunal finds the said decision is not applicable to the facts and circumstances of the present case.
9. Hon'ble Supreme Court in its judgment dated 01.10.2002 in Shamim Ara vs. State of U.P. &Anr had referred to the judgement made in A. Yousuf Rawther Vs. Sowramma, AIR 1971 Kerala 261 wherein it was stated:

"(Para 13). In Rukia Khatun's case, the Division Bench stated that the correct law of talaq, as ordained by Holy Quran, is: (i) that 'talaq' must be for a reasonable cause; and (ii) that it must be preceded by an attempt of reconciliation between the husband and the wife by two arbiters, one chosen by the wife from her family and the other by the husband from his. If their attempts fail, 'talaq' may be effected."

Therefore, when the most relevant facts i.e. regarding cause/reason of divorce and as to whether any attempt for reconciliation between the parties by any two arbitrators was made preceding the talaq/divorce in question, have not been recorded in the Talaqnama, the respondents have rightly rejected the claim of the applicant for family pension on the basis of available materials.

10. In the above circumstances the applicant, if so advised, can take necessary steps so that she can file any authentic legally acceptable document before the respondents in support of her claim that she is the divorced and dependent daughter of the deceased employee in question. In case such documents are produced and further materials are produced before concerned official/authority of the respondents then they will be duty bound to consider the same in accordance with law and shall have to pass a reasoned and speaking order to be communicated to the applicant within a reasonable period.

11. With the said observation the OA is disposed of but in the circumstances without any order to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(PRADEEP KUMAR)
MEMBER (A)

(csk)