

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI.

(22)

DA.2690/91

Date of Decision: 15-7-93

Shri Mahesh Kumar Ratilal Mehta Applicant  
Versus  
Union of India and others Respondents

Shri B.B. Raval Counsel for the applicant

Shri B.K. Aggarwal Counsel for the respondents

CORAM:

The Hon. Member Shri C.J. Roy (2).

JUDGEMENT

(delivered by Hon. Member Shri C.J. ROY)

The applicant in this DA has filed this case under Section 25 of the Administrative Tribunal's Act, 1985. He has stated that he is the husband of late Smt. Anjuben, who was working in the Railways at Bhavnagar as Peon. On her death, he is seeking appointment on compassionate ground. He has filed this application in the Principal Bench because the learned counsel for the applicant Shri B.B.Raval has agreed to render free legal aid, ~~but~~ as he cannot afford to engage another counsel. The learned counsel has also stated in the petition that he will give legal aid if the petition is filed in the Principal Bench. For the above reasons mentioned in the MP3582/91, the case was allowed to be taken up in the Principal Bench on 15.11.91.

2. According to the applicant, one Shri Manu Govind, a Scheduled Tribe employee was employed as a Group 'D' Khalasi under DRM Bhavnagar, Western Railway. His wife died leaving behind a daughter Savita. Thereafter, Shri Manu Govind remarried Smt. Anjuben from whom he had no children. He subsequently died in harness on 4.10.1983. As per the nomination, his wife Smt. Anjuben was given all the settlement dues and was also given an appointment as Khalasi on compassionate ground under ACOS, Bhavnagar Para under DRM Bhavnagar on 9.3.1984. One Shri Oghad Govind, brother of late Shri Manu Govind took away all the settlement amount of late Shri Manu Govind from his wife Anjuben and she was turned out from him, who is a her house. She then married / casual cook living in the same

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area and an orphan on 10.3.1985 according to Hindu rites. A copy of a declaration of marriage in Gujarati along with an English Translation is at Annexure A-1. During his wed lock with Smt. Anjuben, four children were born, the eldest daughter named Vaishali is 6 years old. Prior to the marriage of Mrs. Anjuben with him, she had given only one name of K. Savita, D/O Late Shri Manu Govind as a dependent family member at the time of joining duty on compassionate grounds on 9.3.1984. He being an illiterate, sent a representation to the respondents requesting for settling the dues of his late wife in favour of her minor daughter Vaishali, whose name was entered in the nomination column of the service documents after her remarriage with him. He also prayed for / compassionate appointment on any Group 'D' post under DRM Bhavnagarpara. He also gave a sworn affidavit dated 11.10.90 to the respondents giving details of his marriage with Smt. Anjuben, widow of late Shri Manu Govind, while working as Peon in the Stores of DRM Office, Bhavnagarpara, leaving behind her four children who are her direct heirs. The affidavit also mentioned that the name of the eldest daughter Vaishali was entered as her nominee, but as she is only six years old, he (the applicant) was the only natural and legal guardian being a father, and therefore, the only person entitled to get the post-death benefit of his late wife and her nominee Vaishali, who is a minor. A copy of this affidavit in gujarati along with an English Translation is at Annexure A-2. Vide letter dated 30.4.91, the respondents informed him that Shri Manu Govind while in service had executed a nomination in favour of his wife Smt. Anjuben and on death, Kumari Savitaben his daughter from previous marriage and Shri Praveenbhai, son (Original son of his elder brother). Accordingly, Smt. Anjuben was paid all settlement dues and was also given compassionate appointment. The letter further states that Km. Vaishali was born in the 7th month after the marriage and that kumari Vaishali cannot be taken as his legal daughter, being born after six months of the marriage and therefore, cannot be considered as a guardian nominee of

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Kumari Vaishali. Therefore all the settlement dues goes to the children of Shri Manu Govind with Smt. Anjuben and not him. A copy of this letter dated 30.4.91 is at Annexure 'A'. He has prayed that the impugned order dated 30.4.91 be quashed and the respondents be directed to get all the settlement dues in favour of Kumari Vaishali, the only nominee and to appoint him in any Group 'D' posts on compassionate grounds.

3. The respondents have stated in their counter affidavit that the application is time barred as the same has been moved after the expiry of 30 days from the date of judgement dated 21.12.92. There is no application for condonation of delay giving sufficient reason for getting the delay condoned. The application is in the form of a representation to the Hon'ble Chairman and not by way of Misc. application. The application is neither supported with any affidavit nor there is any verification done. The OA was dismissed on 21.12.92, and therefore, the present application is not maintainable for direction after dismissal of the main application as no matter has been pending before this Hon. Court and this miscellaneous petition is not maintainable. They have denied that this case was adjourned several times in order to enable him to get the succession certificate. They were bound to settle the dues in accordance with the official record maintained by them. Smt Anjuben never gen in writing to them that she had married to any other person after the death of her first husband or during the course of employment with them. She got appointment after the death of her husband on compassionate ground. She also never wrote and informed them that she got any child from the second husband. There is nothing as such in the records of them. Hence the OA be dismissed.

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4. I have heard the learned counsel for both parties and perused the documents on record.

5. On 21.12.1992, this OA was dismissed for default and was subsequently restored to its original position vide order dated 3.3.93. Therefore the question raised by the respondents about the maintainability of this OA is negatived. In view of the fact I am convinced of this case because of the order, so if there is any delay in filing this OA, it is condoned.

6. As regards the complication involved as to who is the successor of Smt. Anjuben, a certificate to this effect has been granted by the Court of the First Joint Civil Judge (Jr.Dn.) at Bhavnagar in lieu of the Misc.Civil Application No.162/1992, delivered on 22.3.1993. This certificate is granted after the issue of public notice in the news paper of a local Gujarati daily 'Lok-Raj' published daily at Bhavnagar. Therefore, it is now clear from the declaration issued by the Civil Court that Shri Mahesh Kumar Ratilal Mehta is the successor of Smt. Anjuben having married Smt. Anjuben. Smt. Anjuben has already nominated her daughter Vaishaliben as her heir prior to her death in harness. Therefore, according to the Succession Certificate, Shri Mahesh Kumar Ratilal Mehta is the guardian of the girl Ms. Vaishali and all the benefits accrued therein, in lieu of the death of Smt. Anjuben and in view of the declaration given by Smt. Anjuben nominating Ms. Vaishali as her heir prior to her death, should be given to the legal guardian of Vaishali Shri Mahesh Kumar Ratilal Mehta. So the question of Vaishali being born a daughter is no mystery to determine, in view of the Succession Certificate.

7. As regards the prayer for compassionate appointment of the applicant, who is an illiterate and a casual cook, looking after the four surviving minor children ranging from 1½ to 6 years, I would like to refer to the case of Sushma Gosain (AIR 1989 SC 1976 and in 1991 Lab.I.C. 392 SC: Smt. Phoolwati Vs. Union of India and others, the Hon. Supreme observed that even supernumerary post should be created for compassionate appointment and no delay should be made and these two judgements were followed with approval in the case of Smt. Asha Devi Srivastava vs. Union of India (AISLJ 1992(1) CAT 38.

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8. In view of the above mentioned facts and in the interest of justice, taking into consideration of the pathetic situation of the applicant, the respondents are directed to consider the case of the applicant for compassionate appointment for any group 'D' posts and release the benefits as prayed for, in the declared application to the/guardian of Ms. Vaishali, <sup>ie</sup> Shri Mahesh Kumar Ratilal Mehta, so that he can administer the Estate as a guardian.
9. The above orders shall be complied with, preferably and expeditiously, within a period of three months from the date of communication of this order.

There will be no order as to costs.

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(C.J. ROY),  
MEMBER(J) 15/7/93