

(Reserved on 22.01.2021)

Pronounced on 17.03.2021

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD**

Present:

Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/00142/2015

(U/S 19, Administrative Tribunal Act, 1985)

Smt. Preeti Singh, aged about 37 years Daughter of Sri Veer Singh Pawar, divorcee widow of Late Shri Rajpal Singh R/o 356, Karaiganj, Rajbun Bada Bazar, Meerut.

.....Applicant.

By Advocate –Shri S.K. Kushwaha.

V E R S U S

1. Union of India through General Manager, Northern Railway, Headquarter, Baroda House, New Delhi.
2. Chief Workshop Manager, Jagadhari Workshop, Northern Railway Jagadhari (Haryana).
3. Senior Personal Officer, in the office of C.W.M. Jagadhari, Works, Northern Railway, Jagadhari (Haryana).
4. Senior Accounts Officer, Jagadhari Workshop, Northern Railway, Jagadhari (Haryana).
5. Smt. Anita, So-called wife of Late Rajpal Singh through, Senior Welfare Labour Inspector, Jagadhari Workshop, Northern Railway, Jagadhari.

.....Respondents.

By Advocates: Shri Amit Kumar Rai, learned counsel for the Official Respondent Nos. 01 to 04, Shri Ashish Srivastava and Shri Avinash Kumar Sharma, learned counsel for the respondent No.5.

ORDER

Shri S.K. Kushwaha, learned counsel for the applicant, Shri Amit Kumar Rai, learned counsel for the official respondents No.1 to 4 and Shri Sunil proxy counsel to Shri Ashish Srivastava and Shri Avinash Kumar Sharma, learned counsels for the respondent No. 5, all are present.

2. The present original application (OA) has challenged the order dated 22.11.2014 (Annexure A-1) and has prayed for directions to the respondents to pay all the admissible terminal benefits including family pension accrued to her demised husband, the employee, Late Shri Rajpal Singh.

3. *Per* applicant, brief facts of the case are that the alleged husband of the applicant entered into service of the Northern Railways in 1992. That the applicant was married with him on 26.04.1999, but, that after the marriage there was marital discord and the employee Shri Rajpal was directed vide Court order dated 16.04.2009 to pay Rs 1lac as compensation and Rs 3000 per month as maintenance under the order of the competent court in a suit filed under Domestic Violence and Women Protection Act, 2005 (Annexure A2) (hereinafter referred to as 'Violence Act'). That thereafter, the two were divorced through a Divorce suit filed by the husband of the applicant under Section-13 of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Marriage Act') vide order

dated 25.05.2011 (Annexure A-3). That meanwhile an execution application was also got decreed vide order dt. 16.04.2009 qua the compensation ordered under the Violence Act. That the husband of the applicant demised later on 15.05.2014 following which the applicant filed representations claiming payment of terminal benefits on the basis of nomination made by the demised husband of the applicant prior to his death wherein the nominations were in favour of the applicant and have remained unchanged in official records till the death of the applicant's divorced husband. The respondents rejected the claim vide the impugned order dated 22.11.2014 stating that as she is no longer the wedded wife of the demised employee having obtained divorce from him before his death. Being aggrieved with the order the instant OA has been filed.

4. *Per Contra* the respondents have filed a detailed counter in which the claim is denied on grounds of:

- i. applicant no longer being the wife as required under rules as she got divorced from the demised employee
- ii. that the rightful claimant of the retiral benefits is now Respondent No-5 (R-5), viz Anita Singh, following the marriage of R-5 with the demised employee as per Marriage Certificate dt. 15.09.2013 issued by Vedic Dainik Arya Satsang, Saharanpur as also a Ration Card and LIC Policy in her favour as proof of being wife of the demised employee.

- iii. that as per Railway Pension Rules, 1993, the nomination in favour of the applicant cannot be sustained as her being part of family following the divorce terminating the marriage as per Section-13 of the Marriage Act which is different legally from 'judicial separation' under Section-10 of the Marriage Act and so the retiral benefits rights made at the time of nomination under the Railway Pension Rules(hereinafter referred to as 'Pension Rules') cannot be given to the applicant as she is a divorcee and not a mere judicially separated wife as provided for in the Pension Rules.
- iv. that as regards rights of maintenance under Section-125 of the CrPC the same is payable by the husband only till he is alive and no rights accrue under this section of the CrPC qua the retiral benefits

Therefore, the applicant has no rights left for claiming the retiral benefits and so the original application should be dismissed.

5. The applicant has also filed Rejoinder in which facts similar to those of the original application are reiterated. Additionally, the legality of the stated Vedic Dainik Arya Satsang certificate of marriage with R-5 has been challenged on grounds of not having any lawful force as a legally valid marriage certificate under the Hindu Marriage Act, 1955. Support has also been pleaded vide an order of the Hon High Court Andhra Pradesh in the case of Smt M Samathanamvs DRM Secunderabad where a similar issue had come up and it was held that the

retiral benefits are liable to be paid. It is further alleged that the respondents have acted illegally by settling the claim in favour of R-5 and denying the same to the applicant.

6. The counsels of both the parties have been heard at length and records filed perused carefully.

7. The key issues which fall for consideration are:

- i. whether the marriage of R-5 with the demised employee is a legally admissible marriage including under Hindu Marriage Act, 1955 leading to a lawful claim with regards to the retiral benefits and pension as per Railway Pension Rules, 1993
- ii. whether the applicant has rights under CrPC/ Hindu Marriage Act, 1955/Pension Rules of receiving the retiral benefits and pension claims.
- iii. Whether respondent-5 has claim even as a lawful wife in the absence of her name being nominated and specified in the designated records for grant of retiral benefits to a successor of the demised employee

8. As regards the **first issue** of the legality of the marriage of R-5 with the demised employee, this Tribunal does not have jurisdiction to adjudicate matters of Hindu Marriage Act, 1955 or a legally wedded wife as per law. Therefore, this Tribunal cannot hold R-5 as being

legally wedded wife or not under the law. This will have to be got decreed by R-5 from a competent court. The first issue accordingly rests with the competent court and not this Tribunal.

9. As regards the **second issue** it would be useful to systematically examine the grounds argued by the applicant qua her claim. It is submitted that the impugned order is illegal as it is:

- (i) against Section-125 of the Criminal Procedure Code, 1973 (Cr.P.C.) as per law laid down by the Hon Apex court in the matter of Vimala K vs Veeraswamy K wherein a 'wife' by definition includes a woman who has been divorced by a husband and has not remarried
- (ii) against Rule-75 of the Railway Services Pension Rules, 1993 (Annexure A-12/13) read along with Rules 941 and 943 of IRC Volume-1 (Annexure A-14) wherein Rule-75 of Pension Rules defines wife as a judicially separated wife also.

9.1 Firstly, it would be useful to deal with any rights including pension rights available to a divorced wife whose husband has demised under Section-125 of the CrPC. For this purpose, it would be useful to examine the section and the same is accordingly extracted below:

*"..125. Order for maintenance of wives, children and parents –
(1).....
Explanation – For the purposes of this Chapter –
(a)...*

(b) 'wife' includes a woman who has been divorced by, or has obtained a divorce from, her husband and has not remarried..."

It is quite clear from above that the rights concern maintenance rights from a husband to a wife living separately and while the Explanation to the section includes a divorced wife but the section does not mention anywhere with regards to **rights of maintenance** from a demised husband, that is whether any rights flow under the section when the husband has died. **In any case this matter of whether the section-125 does or does not give any property or any other legal rights of maintenance to a divorced wife of a demised husband cannot be lawfully decided by this Tribunal.** It has to be done by a competent court for which the applicant shall have to file an appropriate suit in an appropriate court. Only then can anything be legally said qua the retiral benefits rights being covered under the Section 125 of the CrPC.

9.2 Secondly, now let us examine the Rule-75 and Rule 941 and 943 of IRC. Relevant extracts of same are reproduced below for ready reference:

"..70. Retirement gratuity or death gratuity –

(1)

(2) If a railway servant, who has become eligible for a service gratuity or pension, dies within five years from the date of his retirement from service including compulsory retirement as penalty and the sums actually received by him at the time of his death on account of such gratuity or pension including ad-hoc increase, if any, together with the retirement gratuity admissible under sub-rule (1) and the commuted value of any portion of pension commuted by him are less than the amount equal to twelve times of his deficiency may be granted to his family in the manner indicated in sub-rule (1) of rule 71.

(3).....

(4) For the purpose of this rule, rules 71, 73, 74 “family”, in relation to railway servant, means –

- (i) Wife or wives including judicially separated wife or wives in the case of a male railway servant;**
- (ii) Husband including judicially separated husband in the case of a female railway servant**
- (iii)**
- (iv)**
- (v)**
- (vi)**
- (vii).....**
- (viii)**
- (ix)**
- (x) Children of pre-deceased son**

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;

(b) If there is no such nomination made does not subsist, the gratuity shall be paid in the manner indicated below: -

(i) If there are one or more surviving members of the family as in clauses (i), (ii), (iii),(iv) and (v) of sub-rule (5) of rule 70, to all such members in equal shares;

(Authority: Railway Board’s letter No. 2011/F (E) III/1(1) 9 dated 23.09.13)

(ii) If there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in clauses (vi), (vii), (ix), (x) and (xi) of sub-rule (5) of rule 70 to all such members in equal shares. **(Authority: Railway Board’s letter No. 2011/F (E) III/1(1)9 dated 23.09.13)**

(2) If a railway servant dies after retirement without receiving the gratuity admissible under sub-rule (1) of rule 70, the gratuity shall be disbursed to the family in the manner indicated in sub-rule (1).

(3) The right of a female member of the family, or that of a brother of a railway servant who dies while in service or after retirement, to receive the share of gratuity shall not be affected if the female member marries or re-marries or the brother attains the age of eighteen years, after the death of the railway servant and before receiving his or her share of gratuity.

(4) Where the gratuity is granted under rule 70 to a minor member of the family of the deceased railway servant, it shall be payable to the guardian on the behalf of the minor.

72. Debarring a person from receiving gratuity – (1) If a person, who in the event of death of a railway servant while in service is eligible to receive gratuity in terms of rule 71, is charged with the offence of murdering the railway servant or for abetting in the commission of such an offence, his claim to receive his share of gratuity shall remain suspended till the conclusion of the criminal proceedings instituted against him.

(2) *If on the conclusion of the criminal proceedings referred to in sub-rule (1), the person concerned –*

- (a) *is convicted for the murder or abetting in the murder of the railway servant, he shall be debarred from receiving his share of gratuity which shall be payable to other eligible members of the family, if any,*
- (b) *if acquitted of the charge of murdering or abetting in the murder of the railway servant, his share of gratuity shall be payable to him.*

(3) *The provisions of sub-rules (1) and (2) shall also apply to the undisbursed gratuity referred to in sub-rule (2) of rule 71.*

73. Lapse of death-cum-retirement gratuity –Where a railway servant dies while in service; or after retirement without receiving the amount of gratuity and leaves behind no family, and –

- (a) *has made no nomination or*
- (b) *the nomination made by him does not subsist the amount of death-cum-retirement gratuity payable in respect of such railway servant under rule 70 shall lapse to the Government;*

Provided that the amount of death gratuity or retirement gratuity shall be payable to the person in whose favour a succession certificate in respect of the gratuity has been granted by a Court of law.

74. Nomination – (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.*

(2) *If a railway servant nominates more than one person under sub-rule (1), he shall specify in the nomination the amount of share payable to each of the nominees in such manner as to cover the entire amount of gratuity.*

(3) *A railway servant may provide in the nomination –*

- (i) *that in respect of any specified nominee who pre-deceases the railway servant, or who dies after the death of the railway servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination;*

Provided that if at the time of making the nomination the railway servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family;

Provided further that where a railway servant has only one member in his family, and a nomination has been made in his favour, it is open to the railway servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not;

(ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by a railway servant who has no family at the time of making it, or the nomination made by a railway servant under the second proviso to clause (i) of sub-rule (3) where he has only one member of his family shall become invalid in the event of the railway servant subsequently acquiring a family, or an additional member in the family, as the case may be.

(5) A railway servant may, at any time, cancel nomination by sending a notice in writing to the authority mentioned in sub-rule (7):

Provided that he shall, alongwith such notice and a fresh nomination made in accordance with its rule.

(6) Immediately on the death of a nominee in aspect of whom no special provision has been made the nomination under clause (i) of sub-rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub-rule, the railway servant shall send to authority mentioned in sub-rule (7) a notice in writing cancelling the nomination together with a fresh nomination made in accordance with this rule.

(7(a) Every nomination made, and every notice of cancellation given by a railway servant under these rules, shall be sent by the railway servant to his Accounts Officer in the case of a gazetted railway servant and to the Head of his office in the case of non-gazetted railway servant.

(b) Immediately on receipt of a nomination from non-gazetted railway servant, the Head of Office shall countersign it indicating the date of receipt and keeping with him or other responsible officer nominated by him for this purpose, and a clear note made in the service record or service book, as the case may be, of the railway servant as to what nomination and related notices have been received from him and where they have been lodged for safe custody and an acknowledgement to the railway servant concerned confirming that the nominations made by him and the related notices have been duly received and placed on record shall invariably be sent to every railway servant making or cancelling a nomination, by the Accounts Officer in the case of gazetted railway servants and by the Head of Office in the case of non-gazetted railway servants.

Note: - *The power to countersign nominated form sent by non-gazetted railway servants may be delegated by the Head of Office to his subordinate gazetted officer.*

(8) Every nomination made, and every notice of cancellation given by a railway servant shall, to the extent that it is valid, take effect from the date on which it is received by the authority mentioned in sub-rule (7): -

75. Family Pension Scheme for railway servants, 1964: - *(1) The provisions of this rule shall apply: -*

(a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and

- (b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No. F (P) 63 PN-1/40 dated the 2nd January 1964 as in force immediately before the commencement of these rules.

Note: - The provisions of this rule have also been extended from 22nd September 1977, to railway servants on pensionable establishments who retired or died before the 31st December, 1963 and also to those who were alive on that date but had opted out of the 1964 Scheme.

(2) Subject to the provisions of sub-rule (18) and without prejudice to the provisions contained in sub-rule (4), where a railway servant dies,—
(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

(a) after completion of one year of continuous service; or

(b) before completion of one year of continuous service, provided the deceased railway servant concerned immediately prior to his appointment to the service or post was examined by the appropriate medical authority and declared fit by that authority for railway service; or

(c) after retirement from service and was on the date of death in receipt of a pension, or compassionate allowance, referred to in these rules, the family of the deceased shall be entitled to family pension (hereinafter in this rule referred to as family pension) under the Family Pension Scheme for Railway Servants, 1964, the amount of which shall be determined at a uniform rate of thirty per cent. of basic pay subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of twenty-seven thousand rupees per mensem.

Explanation. - The expression "one year of continuous service" wherever it occurs in this rule, shall be construed to include less than one year of continuous service, as provided in clause (b).";

(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

(3) The amount of family pension shall be fixed at monthly rates and expressed in whole rupees and where the family pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee:

Provided that in no case a family pension in excess of the maximum specified under this rule shall be allowed.

(7) (i) (a) 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.

(8) (i) Except as provided in clause (d) of sub-rule (6) and clause (I) of sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time.

(ii) *If a deceased railway servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child.*

(iii).....

(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

(12) Where a female railway servant or a male railway servant dies leaving behind a judicially separated husband or widow and no child or children, the family pension in respect of the deceased shall be payable to the person surviving:

Provided that where in a case the judicial separation is granted on the ground on the adultery and the death of the railway servant takes place during the period of such judicial separation, the family pension shall not be payable to the person surviving, if such person surviving was held guilty of committing adultery.

(13) (i) *Where a female railway servant or male railway servant dies leaving behind a judicially separated husband or widow with a child or children, such family pension shall be payable to the person who is the actual guardian of such child or children.*

(ii) *Where the surviving person has ceased to be the guardian of such child or children, such family pension shall be payable to the person who is the actual guardian of such child or children.*

(iii) *Subject to the proviso of sub-rule (12), after the child or children cease to be eligible for family pension under this rule, such family pension shall become payable to the surviving judicially separated spouse of the deceased railway servant till his or her death or remarriage, whichever is earlier.- (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)*

(15)(i) *As soon as a railway servant enters railway service, he shall furnish details of his family in Form 6 to the Head of Office and if the railway servant has no family, he shall furnish the details in Form 6 as soon as he acquires a family.*

(ii) *It shall be the duty of the railway servant to communicate forthwith to the Head of Office any subsequent change in the size of his family including the fact of marriage of his or her child.*

(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

(18) omitted ---

(19) *For the purpose of this rule – (a) “Continuous service” means service rendered in temporary or permanent capacity in a pensionable establishment and does not include –*

(i) *Period of suspension, if any, and*

(ii) *Period of service, if any, rendered before attaining the age of eighteen years;*

(b) “family”, in relation to railway servant, means –

(i) *wife in the case of a male railway servant or husband in the case of a female railway servant;*

(ii) *a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;*

(iii) *unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughter, including such son and daughter adopted legally;---*

(Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

It may be seen in the above Rules that a family includes a judicially separated wife who is eligible for receiving retiral benefits on demise of her husband. On this point the applicant has argued that a judicially separated wife is the same as a divorced wife and so the applicant is part of the family and hence within rights to receive the retiral benefits. But the respondents have argued that a judicially separated wife is not the same as a divorced wife and that this distinction is conclusively decided only as Hindu Marriage Act, 1955 which in Section 10 & 13 respectively lay down the distinction between both categories of wife or spouse which are not one and the same thing.

9.3 To settle this point, it is important that we examine prima facie the Hindu Marriage Act 1955. Relevant portions of the Hindu Marriage Act, 1955 (hereinafter referred to as 'Marriage Act') are extracted below:

"....8. Registration of Hindu marriages.-(1) For the purpose of facilitating the proof of Hindu marriages, the State Government may make rules providing that the parties to any such marriage may have the particulars relating to their marriage entered in such manner and subject to such conditions as may be prescribed in a Hindu Marriage Register kept for the purpose.

(2) Notwithstanding anything contained in sub-section (1), the State Government may, if it is of opinion that it is necessary or expedient so to do, provide that the entering of the particulars referred to in sub-section (1) shall be compulsory in the State or in any part thereof, whether in all cases or in such cases as may be specified, and where any such direction has been issued, any person contravening any rule made in this behalf shall be punishable with fine which may extend to twenty-five rupees.

(3) All rules made under this section shall be laid before the State Legislature, as soon as may be, after they are made.

(4) *The Hindu Marriage Register shall at all reasonable times be open for inspection, and shall be admissible as evidence of the statements therein contained and certified extracts therefrom shall, on application, be given by the Registrar on payment to him of the prescribed fee.*

Solemnisation of marriage.-Solemnisation of marriage if proved is sufficient to hold that there was proper marriage in accordance with section 7 (1) of the Act, A. Sankaranarayanan v. Mani, (2009) 81 AIC 894 (Mad).

10. Judicial separation.-¹⁵[(1) Either party to a marriage, whether solemnized before or after the commencement of this Act, may present a petition praying for a decree for judicial separation on any of the grounds specified in sub-section (1) of Section 13, and in the case of a wife also on any of the grounds specified in sub-section (2) thereof, as grounds on which a petition for divorce might have been presented.]

(2) Where a decree for judicial separation has been passed, it shall no longer be obligatory for the petitioner to cohabit with the respondent, but the court may, on the application by petition of either party and on being satisfied of the truth of the statements made in such petition, rescind the decree if it considers it just and reasonable to do so.

Judicial Separation- The judicial sanction of separation creates many rights and obligations. A decree or an order for judicial separation permits the parties to live apart. There would be no obligation for either party to cohabit with the other. Mutual rights and obligations arising out of a marriage are suspended. The decree, however, does not sever or dissolve the marriage. It affords an opportunity for reconciliation and adjustment. Though judicial separation after a certain period may become a ground for divorce, it is not necessary and the parties are not bound to have recourse to that remedy and the parties can live keeping their status as wife and husband till their lifetime, Jeet Singh v. State of U.P., (1993) 1 SCC 325.

Maintenance.- Grant of judicial separation and payment of maintenance, while reversing decree for divorce is impermissible, Trupti Das v. Rabindranath Mohapatra, (2005) 11 SCC 553.

Decree of judicial separation-The decree for judicial separation does not sever or dissolve the marriage tie which continues to subsist. It affords an opportunity to the spouse for reconciliation and readjustment, Hirachand Srinivas Managaonkar v. Sunanda, (2001) 4 SCC 125.

Decree for judicial separation cannot be granted by the Court when there exists no ground for divorce, Prabhakar v. Satyabhama, (2008) 3 Mah LJ 627.

Decree under Section 10 means a decree of judicial separation reached to its finality, Sunita Mishra v. Prashant Mishra, (2006) 37 AIC 719 (Chh).

13. Divorce.-(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

(i).....

.....

(ix).....

(1-A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree or divorce on the ground –

.....

(2) A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground ----

As we can *prima facie* clearly see above, a judicially separated wife is quite distinct from a divorced wife as per Section 10 and 13 above. **However what is more important is that for the purposes of this Tribunal, the Tribunal is not the competent authority to decide on the meaning and implications of the provisions in the Hindu Marriage Act, 1955 and adjudicate upon the differences between a judicially separated wife and a divorced wife and in specific with respect to the present case moreso when some allegations exist of an issue of adultery of the applicant deciding upon which is again not in the jurisdiction of this Tribunal.**

9.4 What is of key importance is that the respondents hold the applicant as a divorced wife under the provision of the Hindu Marriage Act, 1955 and the applicant claims that a judicially separated wife is the same as divorced wife under the Railway Services Pension Rules, 1993. In order to decide this knot, in the considered opinion of this Tribunal the correct way would be to:

- (i) Decide as per the Hindu Marriage Act, 1955 whether the applicant belongs to the category of a judicially separated wife or a divorced wife.

(ii) Then to decide undisputedly the claim of the applicant as per the Pension Rules.

Fact remains that the respondents in all their Rules have not used the word divorced wife as being a member of the family or specifically included anywhere as a category for claim on retiral benefits. In the absence of a clear provision to that extent it would be illegal for this Tribunal to read anything more in the Rules than is given and the Rules specify only and only 'judicially separated wife' and hence only a judicially separated wife has per se rightful claim of the retiral benefits and not a 'divorced' wife. In the even therefore when (i) part of the above dispute is got settled by a competent court then the resolution would be accordingly decided clearly and undisputedly. For this purpose the applicant would have to obtain an appropriate order from the competent court as to her specific category of being defined as a judicially separated wife or a divorced wife based on the facts of the case. Once this decision is declared by the competent court then the consequential next step shall have to be taken by the respondents. **Therefore, as regards the issue of the applicant being a judicially separated wife and so being covered under the Pension Rules the decree of the competent court shall have to be obtained by the applicant settling her position because the distinction seems to have been made in the Marriage Act and hence settlement of this issue undisputedly is the key to the next step of grant of the retiral benefit. The competent court would also go into the various citations of the**

Hon Apex Court cited by either side on the points concerned in the issue. Only then either of the claimants, viz the applicant or the Respondent -5 would have undisputed claim on the retiral benefits of the demised employee.

10. The third issue is whether the respondent-5 is legally liable to be granted retiral benefits on the grounds that even if lawfully married to the demised employee, but her name does not find mention in the legal records prescribed by the Pension Rules on nomination. In order to settle this issue Rule-74 and 71 of the Pension Rules are important and the same are again reproduced below:

74. Nomination – (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.*

(2) *If a railway servant nominates more than one person under sub-rule (1), he shall specify in the nomination the amount of share payable to each of the nominees in such manner as to cover the entire amount of gratuity.*

(3) *A railway servant may provide in the nomination –*

- (i) *that in respect of any specified nominee who pre-deceases the railway servant, or who dies after the death of the railway servant but before receiving the payment of gratuity, the right conferred on that nominee shall pass to such other person as may be specified in the nomination;*

Provided that if at the time of making the nomination the railway servant has a family consisting of more than one member, the person so specified shall not be a person other than a member of his family;

Provided further that where a railway servant has only one member in his family, and a nomination has been made in his favour, it is open to the railway servant to nominate alternate nominee or nominees in favour of any person or a body of individuals, whether incorporated or not;

(ii) that the nomination shall become invalid in the event of the happening of the contingency provided therein.

(4) The nomination made by a railway servant who has no family at the time of making it, or the nomination made by a railway servant under the second proviso to clause (i) of sub-rule (3) where he has only one member of his family shall become invalid in the event of the railway servant subsequently acquiring a family, or an additional member in the family, as the case may be.

(5) A railway servant may, at any time, cancel nomination by sending a notice in writing to the authority mentioned in sub-rule (7):

Provided that he shall, alongwith such notice and a fresh nomination made in accordance with its rule.

(6) Immediately on the death of a nominee in aspect of whom no special provision has been made the nomination under clause (i) of sub-rule (3) or on the occurrence of any event by reason of which the nomination becomes invalid in pursuance of clause (ii) of that sub-rule, the railway servant shall send to authority mentioned in sub-rule (7) a notice in writing cancelling the nomination together with a fresh nomination made in accordance with this rule.

(7 (a) Every nomination made, and every notice of cancellation given by a railway servant under these rules, shall be sent by the railway servant to his Accounts Officer in the case of a gazetted railway servant and to the Head of his office in the case of non-gazetted railway servant.

(b) Immediately on receipt of a nomination from non-gazetted railway servant, the Head of Office shall countersign it indicating the date of receipt and keeping with him or other responsible officer nominated by him for this purpose, and a clear note made in the service record or service book, as the case may be, of the railway servant as to what nomination and related notices have been received from him and where they have been lodged for safe custody and an acknowledgement to the railway servant concerned confirming that the nominations made by him and the related notices have been duly received and placed on record shall invariably be sent to every railway servant making or cancelling a nomination, by the Accounts Officer in the case of gazetted railway servants and by the Head of Office in the case of non-gazetted railway servants.

Note: - *The power to countersign nominated form sent by non-gazetted railway servants may be delegated by the Head of Office to his subordinate gazetted officer.*

(8) Every nomination made, and every notice of cancellation given by a railway servant shall, to the extent that it is valid, take effect from the date on which it is received by the authority mentioned in sub-rule (7): -

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;

(b) If there is no such nomination made does not subsist, the gratuity shall be paid in the manner indicated below: -

(i) If there are one or more surviving members of the family as in clauses (i), (ii), (iii), (iv) and (v) of sub-rule (5) of rule 70, to all such members in equal shares;

(Authority: Railway Board's letter No. 2011/F (E) III/1(1) 9 dated 23.09.13)

(ii) If there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in clauses (vi), (vii), (ix), (x) and (xi) of sub-rule (5) of rule 70 to all such members in equal shares. (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13)

(2) If a railway servant dies after retirement without receiving the gratuity admissible under sub-rule (1) of rule 70, the gratuity shall be disbursed to the family in the manner indicated in sub-rule (1).

(3) The right of a female member of the family, or that of a brother of a railway servant who dies while in service or after retirement, to receive the share of gratuity shall not be affected if the female member marries or re-marries or the brother attains the age of eighteen years, after the death of the railway servant and before receiving his or her share of gratuity.

(4) Where the gratuity is granted under rule 70 to a minor member of the family of the deceased railway servant, it shall be payable to the guardian on the behalf of the minor.

From the above it is clear that for claim of any retiral benefit, nomination is a must in the designated records. Absence of the same for whatever reason cannot give claim to any person with regards to the retiral benefits in the first instance. Moreso in the present case it is undisputed that the nomination in respect of applicant when she was a wife and not a divorced wife, **still exists and has not been cancelled and no fresh nomination was made after the divorce or the so called second marriage to the respondent-5 and so as per provisions of Rule-74(5), the applicant continues to have rightful claim over the retiral benefits in the first instance BUT THIS ALSO WILL**

BECOME NON-EST IF THE APPLICANT AS A DIVORCED WIFE IS NOT A MEMBER OF THE FAMILY AS DEFINED IN THE PENSION RULES - a matter which would be settled once the competent court distinguishes a 'judicially separated wife' and a 'divorced wife' which would appropriately entitle or disentitle the applicant to the rightful claim of the retiral benefits. Accordingly, on her own strength the Respondent-5's name NOT HAVING BEEN MENTIONED BY THE DEMISED EMPLOYEE IN ANY OF THE DESIGNATED RECORDS FOR WHATEVER REASONS therefore even if she is declared a lawful wife of the demised employee the settlement of the various disputes referred to above will have to be done. Once the disputes are settled in the competent court as above, the claim of the retiral benefits will have to be settled by the respondents to a member or members of the 'family' definition as specified in Rules 70, 71, 72, 73 and 74 read together and in consonance as well as jointly.

11. Thus, if we examine all the issue with the razor's edge of the law, then the dispute concerns the settlement of the definition of wife as per relevant laws including Code Criminal Procedure, 1973 and the Hindu Marriage Act, 1955. Once this is settled as per above the respondents can quickly proceed to disperse or even withhold the retiral benefits in favour of the government should none of the claimants have a lawful right. Hence the interest of justice demands that the disputes between

the applicant and private respondent number-5 with respect to being legally wedded wife and or part of family under relevant laws needs to be decided first and then the same would be made applicable to the relevant Railways Pension Rules, 1993 and only thereafter can steps be taken for final release of retiral benefits. Therefore, in sum, it would follow that given the dispute the retiral benefit of the pension cannot be given to either of the parties with the applicant or the responded number-5 unless the above analysed disputes are settled by a competent court.

12. It is therefore accordingly directed as follows:-

- i. the dispute as regards to the legal status of the Respondent - 5 being a legal wife as admissible under law including under Hindu Marriage Act, 1955 or otherwise shall have to be settled for which the Respondent-5 will have to file an appropriate suit in an appropriate court / forum;
- ii. the dispute regarding the claim of the applicant that the 'divorced wife' is same as 'judicially separated wife' has to be decided, for which the applicant will have to file a suit in a competent civil court under appropriate law; and
- iii. Once the above disputes are settled in the competent court, then the respondents shall render the retiral benefits to the rightful legally undisputed claimant or claimants or otherwise as prescribed in Rules 70 to 74 of the Railway Pension Rules, 1993.

- iv. Till such time steps (i) to (iii) above are completed, no pension or retiral benefits shall be paid to any of the parties in this OA.

Ordered accordingly.

13. No costs.

(Devendra Chaudhry)
Member (A)

/Shakuntala/