

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 10th day of **JANUARY 2012**.

Present:

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

ORIGINAL APPLICATION NO. 543 OF 2007

Nazaroon Nisha W/o Late Munaur Hashmi, Resident of Village Bandhwa Bazar, Post Barwa, P.S. Meerganj, District Jaunpur, presently residing Guarav Nagar, Post Chopan, District Sonebhadra.

.....Applicant.
VE R S U S

1. Union of India through General Manager, East Central Railway, Hazipur.
2. Divisional Railway Manager East Central Railway, Dhanbad.
3. Senior D.P.O. E.C. Railway, Dhanbad.
4. P.A. Sajid, Welfare Inspector through the Divisional Railway Manager, East Central Railway, Dhanbad (Jharkhand).
5. Kamroo Hashmi son of late Modin Khan, resident of Village Supai, Post office Niman (Sher Ghat) District Gaya (Bihar).

.....Respondents

Advocate for the applicant:

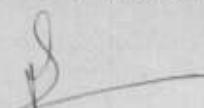
Sri D.S. Singh
Shri G.C. Dwivedi

Advocate for the Respondents :

Sri Sharad S. Srivastava

OR D E R

The facts of the case are that husband of the applicant had died on 13.12.2003 while in service whereafter the applicant had applied for settlement dues. However, her case was kept pending for number of years. Finally by order dated 30.6.2004, 50% of pension was given to the applicant while 50% pension was given to respondent No. 4, the son of first wife, even though



the 1st wife had remarried. Applicant had also applied for compassionate appointment, the same was rejected on 23.12.2005 (page 92) on the ground that children of second wife are not entitled for appointment so long first wife is alive. Applicant has not submitted any documents to demonstrate that proper divorce was given to the first wife and no objection was not annexed from the son of 1st wife.

2. It is submitted by the counsel for the applicant that the son of first wife had admitted in the letter that his mother had already remarried her cousin, moreover her son was not even living with the deceased employee. There was a settlement also arrived at between the deceased and the 1st wife to the effect that they would have no claim against the deceased but these things were not looked into by the respondents, therefore, 50% pension was wrongly given to the son of 1st wife.

3. In any case, in the counter affidavit, respondents have themselves stated as follows:-

"On scrutiny of the relevant papers and according to Railway Services (Pension) Rules, 1993 50% family pension was sanctioned in favour of Shri Qamru Hashmi up to 4.2.2007 (i.e. up to attaining the age of 25 years) and 50% family pension was sanctioned in favour of Smt. Nazaroon Nisha and from 5.2.2007 to till death or remarriage. After crossing 25 years of age by Sri Qamru Hashmi, now 100% family pension has been sanctioned in r/o Smt. Nazaroon Nisha. Form No. 20 showing sanction of 100% family pension in favour of the applicant"

Yet till date, applicant has not received the same, which is evident from the letter dated 07.08.2008 written by the respondents to Shri Kamroo Hashmi, which reads as under:-

“पत्रांक 47 / पेशन / घनवाद / वैक 98-135 / 08
दिनांक 07.08.2008

सेवा में
श्री कमरु हाशमी
गाम सुपाई



पै0 श्यामनगर निमा, आगरा
जिला गया बिहार

विषय पी0 पी0 ओ0 संख्या 02039818504 पेशन ग्राम भाग
वापस करने के सम्बन्ध में

इस कार्यालय के पत्र संख्या 47/पेशन/धनबाद/बैंक
98-185/08 दिनांक 16.05.2008 के द्वारा पी0पी0ओ0 का पेशन
भाग हमजापुर शाखा में जमा करने के लिए सुचित किया गया था
बैंक ऑफ बडौदा शाखा हगजापुर से पी 0 पी0 ओ का संवितरक
भाग वापस कर दिया गया है।

आप आपना पेंशनर भाग पी0 पी0 ओ0 इस कार्यालय में
यथा शीघ्र जमा करें। क्योंकि पेशनर भाग के बिना श्रीमती नजरुन
निशा के नाम से 100% पारिवारिक पेशन स्वीकृत करना संभव
नहीं है।

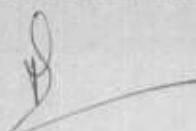
वरीय मंडल वित्त प्रबन्धक
पूर्व मध्य रेल धनबाद”

4. Learned counsel for the applicant has thus submitted that
as per respondents' own showing, since the son of first wife had
attained the age of 25 years on 4.2.2007, he was not entitled to
get any pension and 100% pension was payable to the applicant
at least from the said date. However, till date she has not
received 100% pension from the Bank, only because Kamroo
Hashmi has not returned the part of P.P.O. issued to him to the
extent of 50% pension granted to him earlier.

5. Learned counsel for the respondents, on the other hand,
submitted that they had rejected the request of the applicant for
compassionate appointment way back in the year 2005 vide
letter dated 23.12.2005 (page 92). The said letter has not been
challenged by the applicant. Similarly her request to grant 100%
settlement dues to her was also rejected on 07.08.2008 but the
same has not been challenged by the applicant, therefore, she is
not entitled for grant of any relief. In any case P.P.O. for granting
100% pension has already been issued to the applicant,
therefore, O.A. may be dismissed.

6. I have heard Shri G.C. Dwivedi, learned counsel for the applicant and Shri Sharad S. Srivastava, learned counsel for the respondents and perused the record. As far as request of the applicant for compassionate appointment is concerned, respondents had informed the applicant vide letter dated 23.12.2005 that the daughter of second wife is not entitled for appointment so long first wife is alive moreover son of first wife has not given no objection. This letter has not been challenged by the applicant ~~to~~ ^{even if} this O.A. which was filed on 21.5.2007, therefore unless she challenged the order of rejection, this relief cannot be granted. The only relief claimed by the applicant in this case is to direct to the respondents to give full amount of settlement due including pension to her or give appointment to one member of family ^{the B} including daughter. With regard to second prayer, admittedly applicant was the second wife of the deceased employee. Though first wife had remarried, as is clear from the letter written by the son of first wife itself but nonetheless son of first wife is very much in existence, therefore, it was necessary to take 'no objection from the son of first wife moreover counsel for the applicant could not show us any provision under which the daughter of second wife could be considered for compassionate appointment.

7. The only contention raised by the counsel for the applicant was that since son of first wife was not living with the deceased employee, he was not entitled to any benefit. I cannot accept this contention because law is very clear even if first wife had remarried, that would disentitle the 1st wife from getting the settlement dues but son of first wife would still be entitled for grant of settlement dues, therefore, this contention is rejected.



8. There is one aspect which requires consideration i.e. with regard to the family pension. The respondents have themselves admitted in the Counter affidavit that since son of first wife had attained the age of 25 years on 4.2.2007 he was not entitled to grant of family pension. Thereafter naturally applicant would be entitled to get 100% family pension w.e.f. 5.2.2007. Respondents have stated in the counter affidavit that they have issued P.P.O. in favour of the applicant granting 100% family pension in 2007 but in 2008 they have themselves written another letter to the son of first wife calling upon him to return the part P.P.O. issued to him, without which 100% family pension cannot be paid to the second wife meaning thereby no purpose is served by issuing P.P.O so long 1st PPO issued to Kamroo Hashmi is not returned.

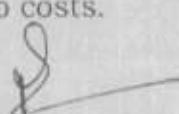
9. I do not appreciate this ~~action~~ on the part of respondents. Issuance of PPO is not sufficient unless applicant gets the actual benefits.

10. In these circumstances, O.A. is partly allowed by directing the respondents to either get the PPO back from Kamroo Hashmi immediately. In case respondents fail to get the PPO issued to Kamroo Hashmi ^{back,} they shall cancel the P.P.O order issued in favour of Kamroo Hashmi earlier, within two weeks under intimation to the Bank, the applicant and Kamroo Hashmi as well and give instructions to the Bank that they should release 100% family pension in favour of the applicant w.e.f. 5.2.2007. Any amount of pension that has been paid to the applicant shall be adjusted while giving arrears to the applicant. It goes without saying that respondents shall issue due drawn statement to the



applicant within 2 months. In case respondents fail to carry out the direction as given by the Court within 2 months, the applicant would be entitled to 6% interest on the amount, which shall be payable to her on account of this calculation because once applicant had became entitled to draw the family pension @ 100% instead of 50%, it should have been paid to her. Since it has not been paid to her because of inaction on the part of officers concerned, applicant cannot be made to suffer for it.

11. With above directions, O.A. stands disposed of. No costs.



Member (J)

Manish/-