

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 40/90

~~SECRET~~

DATE OF DECISION 09-08-1991

Shri Joseph Cyril Paul Petitioner

Mr. P.K. Handa Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. R.M. Vin Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. R.C. Bhatt : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

Joseph Cyril Paul,
S/o. Cyril Paul(deceased)
Deceased
Driver, Loco Shed,
Bilimora.
C/o.P.K.Handa, Advocate,
Opp. Apsara Talkies,
Above Pratapnagar Post Office,
Vadodara
(Advocate: Mr.P.K.Handa)

: Applicant

Versus

1. Union of India
Through:
The General Manager,
Western Railway,
Churchgate, Bombay.
2. General Manager,
Western Railway,
Churchgate, Bombay.
3. Divisional Railway Manager,
Western Railway,
Bombay Central,
Bombay.
4. Sr.Divisional Personal
Officer, Divisional
Railway Manager's Office,
Bombay Central,
Bombay.
5. Divisional Mechanical
Engineer, DRM's Office,
Bombay Central, Bombay.

: Respondents

(Advocate: Mr.R.M.Vin)

JUDGMENT

O.A./40/90

Date: 9-8-1991

Per: Hon'ble Mr. R.C.Bhatt

: Judicial Member

1. The applicant in this application under Section 19 of the Administrative Tribunals Act, 1985 has prayed that the respondents be directed to appoint him in service on compassionate ground.
2. The facts of the present application are briefly stated as under:

The applicant claims to be the son of one Cyril Paul, since deceased, who died in harness as an Engine Driver in

Loco Shed, BiliMora on 29.9.1977. The applicant's mother's name is Smt. Floria who has also expired. The applicant's father late Cyril Paul had executed nomination for payment of provident fund in the name of the applicant's mother Smt. Floria as wife. One Smt. Mardha filed Civil Suit No. 265/78 in the City Civil Court at Bombay against the respondents making an adverse claims to the said payment claiming herself as the first wife of Cyril Paul and obtained stay from the City Civil Court at Bombay. It appears from Annexure A/3 that the notice of Motion taken out in that Suit by Smt. Mardha was dismissed. The applicant in his application has mentioned that the Suit was dismissed on 2.11.1988 but the copy of that order of dismissal of the Suit is not produced and what has been produced at Annexure A/3 is only Roznama in that Suit of 265/78 which shows that the notice of Motion was dismissed. It is the case of the applicant that in January, 1986 learned advocate Mr. N. R. Bapat had advised the Divisional Superintendent (E), Bombay Central that a joint letter was sent by Smt. Mardha and Floria claiming to be entitled to the estate of the deceased and the same letter was delivered to the respondents on 27.7.1978. It is the case of the applicant that both Smt. Mardha and Floria have expired and Smt. Mardha has four daughters who have all married and ^{that} the applicant's mother has three children namely; two sons and one daughter and as the daughter is married and the elder son that is the brother of the applicant is employed and as the case has been settled by the Railways on 7.3.1989 produced at Annexure A/1, the applicant was entitled to be appointed in railways on compassionate ground. According to the applicant, he made first application on 18.3.1989 produced at Annexure A/4 to give him the appointment on compassionate ground, followed by another application dated 22.8.1989 produced at Annexure A/5 and again followed by another letter dated 12.9.1989 produced at Annexure A/6. It is the case of the applicant that finally

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he made such request by letter dated 28.11.1989 produced at Annexure A/7 that the suit which was filed by Smt. Mardha in the City Civil Court at Bombay was dismissed, and that his mother was legally weded wife of his father and the applicant being the son is entitled to the appointment on compassionate ground. In the letter Annexure A/6 dated 12.9.1989 the applicant had mentioned that he was enclosing the xerox copy of the decree/judgment given by the City Civil Court at Bombay.

3. The learned advocate for the applicant submitted that in view of the settlement in the suit, the respondents had issued the memorandum of payment Annexure A dated 7.3.1989 of the amount of Rs.3576 in the name of the applicant which shows that the applicant is the heir of his deceased father and therefore, the respondents ought to have considered the appointment of applicant in railways on compassionate ground being the son of this deceased father Mr.Cyril Paul. He submitted that the Railway Board's Annexure A-9 read as under letter E(NG) 11/78/RCI/I, dated 7.4.1983 / "in order to ensure welfare of the Railway Employees and their families, special provision to offer the dependents of railway employees appointments without going through any selection, have been made. 'Dependent' for this purpose means the same as under Pass Rules for a (i) below and in other cases only the son/daughter/wife." Persons eligible to be appointed on compassionate ground are son/daughter/widow/widower of the employees. He submitted that therefore, in view of this letter, the applicant ought to have/given the appointment by the railways on compassionate ground.

4. The learned advocate for the respondents submitted that the order dated 7.3.1989 produced at Annexure A/1 by applicant does not give any cause of action for the reliefs prayed by the applicant because it is the memorandum of payment issued in the name of the applicant as a result

of settlement dues of late Cyril Paul consequent upon the settlement term presented by the two wives of Cyril Paul on the withdrawal of the Suit No.263/78 filed by Smt. Mardha the first wife of Cyril Paul. He submitted that Smt. Mardha has produced the ^{marriage} certificate in support of her claim whereas smt. Floria, the mother had not produced any marriage certificate but had only produced the Baptisma certificate of her children. He, therefore, submitted that it is not decided by the Civil Court till today that Smt. Floria was legally weded wife of late Shri Cyril Paul. He, submitted that the relief claimed by the applicant involves the disputed question of facts which cannot be entertained by this Tribunal. He submitted that though both the wives of the late Shri Cyril Paul have expired, it is not decided who was the legal wife of the deceased and it was for that reason that the various representation made by the applicant were not replied in view of the fact that the legal status of the applicant is not yet decided.

5. In the instant case, the applicant has not produced the decree or the judgment of the Civil Suit No.265/78 filed by Smt. Mardha in the City Civil Court at Bombay. On one hand the applicant mentions in the application that the suit was dismissed while on the other hand he says that there was a settlement between the parties in that suit. The applicant ought to have produced the judgment of the said suit in order to know what was the decision in that suit. It would have enabled the Tribunal to consider the correct legal status of applicant. The Learned advocate for the respondents submitted that the notice of motion taken out by Smt. Mardha in Civil Suit No.265/78 was dismissed and then there was a settlement made by the two ~~s~~ wives of the deceased Cyril Paul and the claim in the suit was not pressed. He submitted that as the notice of motion in that suit was

dismissed and the stay order granted earlier against respondents stood vacated on the intimation from the advocate of Smt. Mardha that the two ladies have expired and as the request was made for payment of settlement dues as per consent terms to the children of the two ladies as per rule, the dues of the deceased railway servant as admissible to the widows as per rule was paid to their children after obtaining indemnity from them and the applicant's share was paid to him as per Annexure A dated 7.3.1989. He submitted that Smt. Floria the mother of the present applicant has failed to produce the marriage certificate that she was the legal married wife of the deceased railway servant and therefore till that question is decided, the applicant's appointment cannot be made on the ground that he is son of the deceased railway servant.

6. In the instant case, the legal status of the applicant is still in dispute, the applicant having not produced the satisfactory evidence that either the City Civil Court at Bombay had decided that point or that there was a marriage certificate of his mother showing that she had married the deceased Cyril Paul. In this view of the matter the applicant cannot succeed merely on the basis of the memorandum of payment issued to him dated 7.3.1989 Annexure A. We see no illegality committed by the respondents in not giving the appointment to the applicant on compassionate ground having regard to the facts of this case. The respondents may consider the case of applicant on production of reliable evidence by applicant in future.

7. The result is that the application stands dismissed. No orders as to costs.

R.C. Bhatt

(R.C. Bhatt)
Judicial Member

M. M. Singh
9/8/91

(M.M. Singh)
Administrative Member

M.A./369/90

in
O.A./40/90

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Coram : Hon'ble Mr.P.H.Trivedi : Vice Chairman
Hon'ble Mr.R.C.Bhatt : Judicial Member

15/02/1991

Heard Mr.P.K.Handa and Mr.R.M.Vin learned
advocates for the petitioner and the respondents.

M.A./369/90, for early hearing allowed. The case may be
placed for final hearing in the Month of April, 1991.

M.A./369/90, stands disposed of.

R.C.Bhatt
(R.C.Bhatt)
Judicial Member

P.H.Trivedi
(P.H.Trivedi)
Vice Chairman

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