

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

Original Application No.448 of 1991

Date of Decision: 13.10.1992

Smt. Halima Bibi

Applicant

Versus

Union of India & Others Respondents

For the applicant

M/s. Akhil Mohapatra
G.C. Patnaik &
H.N. Mall, Advocates

For the respondents

Mr.D.N.Mishra
Standing Counsel
(Rly. Administration)

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C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

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1. Whether the reporters of local newspapers may be allowed to see the judgment ? Yes
2. To be referred to reporters or not ?
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes

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JUDGMENT

K.P. ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to be issued to the respondents to give the entire family pension to the applicant and a sum of Rs.2500/- which has accrued towards the Railway Employees Insurance Scheme, leave encashment, retirement gratuity, Provident Fund etc.

2. Shortly stated, the case of the applicant is that she is the widow of late Alijan Khan who was serving under the South Eastern Railway as a Class IV employee posted to Santragachi. Alijan Khan died on 15.12.1978 leaving behind two widows namely, the applicant Haliman Bibi and Soni Bibi. While making contributions to the Provident Fund Alijan had nominated both the wives to receive the G.P.F. money. Applicant Haliman not having been granted the family pension had moved this Bench in O.A.195 of 1990 for a direction to the respondents to grant family pension and payment of requisite amount. By judgment dated 25.7.1991 the Hon'ble Judicial Member held that the applicant Haliman Bibi should be paid family pension from April, 1990 and ~~as~~ ^{as} 50 per cent of the total amount towards her share ^{because} as Alijan had left behind another widow. In the present original application, it is maintained by the applicant that her co-widow Soni Bibi is not to be heard for more than 7 years and therefore, according to the provisions contained in the Evidence Act it should be presumed that Soni Bibi is dead and the entire amount

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of pension determined after the death of Alijan should be paid to the present applicant. The case is confined to payment of entire amount of pension and prayer No.(ii) is not pressed.

3. In their counter, the respondents maintained that they are bound by the judgment of the Hon'ble Member(J) dated 25.7.1991. It is further maintained by the respondents that since the applicant by virtue of the judgment has been made entitled to 50 per cent of the amount, it is inconceivable as to how she is claiming the total amount especially when there is absolutely no evidence as to ^{whether} ~~why~~ Soni is not to be heard for more than 7 years. In the circumstances stated above, it is maintained that the case being devoid of merit is liable to be dismissed.

4. I have heard Mr. Akhil Mohapatra, learned counsel for the applicant and Mr.D.N.Misra, learned Standing Counsel(Railways) on the merits of the case. Mr.Mohapatra invited my attention to the judgment of the Hon'ble Member(Judicial) wherein it has been categorically held that the applicant is entitled to 50 per cent of the total amount of pension. I cannot sit over the judgment of the Hon'ble Member(Judicial). Mr.Mohapatra has no dispute with the direction ~~is~~ by the Hon'ble Member but Mr.Mohapatra contended that in view of the changed circumstances namely Soni not having been heard for more than 7 years she should be presumed to have been dead and therefore, the entire amount towards family pension should be paid to the applicant. Mr.Mohapatra
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relied upon a judgment of the Ahmedabad Bench reported in 1991 (2) SLJ(CAT)83 (Smt. Jhulke Kumari versus Union of India and others). In the case decided by the Ahmedabad Bench one of the co-widows was not to be heard. Therefore, the Bench directed that the family pension amount should be given to the applicant before that Bench and accordingly Mr. Mohapatra submitted that this Bench should follow the same view. On the other hand, Mr. D. N. Misra contended that for very many reasons the particular lady may not be coming to receive the pension money and if she subsequently comes up, the Railway Administration would be in a very great difficulty to realise the amount from the present applicant, Haliman Bibi in order to pay to the widow, Soni Bibi and therefore, it was contended by Mr. D. N. Misra that the matter should be left to the competent authority so as to make payment to Soni Bibi whenever she comes ^{up} otherwise it should be left with the Department.

5. After giving my anxious consideration to the arguments advanced by learned counsel for both sides I am of opinion that the applicant would be well advised to obtain a succession certificate from the competent civil court which would ^{accordingly} invite objections and thereafter the civil court would pass necessary orders relating to which the authorities in Railway Administration would be following. So in order to safeguard the interest of the present applicant and Soni Bibi (if alive) the applicant should approach the

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court competent to issue ^{concession} certificate.

6. It was told to me by the counsel for the applicant that even though the judgment has been passed by the Hon'ble Member in July, 1991 as yet the pension has not been paid to the applicant.

7. Mr.D.N.Misra submitted that since the applicant has not complied with the direction given in the judgment ^{by} in depositing the special contribution amount for which the matter has been delayed. During the course of argument Mr.Mohapatra, learned counsel for the applicant submitted on behalf of the applicant that the applicant has no objection if the departmental authority deducts the special contributory provident fund amount from the total pension payable to the applicant. On the concession made by learned counsel for the applicant on behalf of the applicant, it is directed that the total amount to which the applicant is entitled to as per the judgment of Hon'ble Member (Judicial) in O.A.195 of 1990 be calculated and the total amount drawn by the applicant in regard to special contributory provident fund be deducted from the said amount and the balance amount be sent in the shape of bank draft to the address of the applicant i.e. village Baramachhapur, P.O.Renchale, Via-Pipli, District.Puri within 60 days from the date of receipt of a copy of this judgment failing which the defaulting Officer/Officers would be liable to pay interest at the rate of 12 percent per annum on the amount due out of his/their own pocket.

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8. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.



Central Administrative Tribunal,
Cuttack Bench, Cuttack.
October 13, 1992/Sarangi.

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VICE-CHAIRMAN

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