

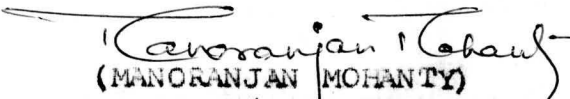
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 516 OF 1998
Cuttack, this the 4th day of July, 2002.

Smt. P. Sugunabati. Applicant.
Vrs.
Union of India & Ors. Respondents.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? Yes.
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 04.07.2002

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 516 OF 1998
Cuttack, this the 4th day of July, 2002.

C O R A M:

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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Smt. P. Sugunabati, aged about 39 years,
W/o. Late P. Ganapati Rao,
resident of Ganguli Street,
PO: Kashinagar, Dist. Gajapati. Applicant.

By legal practitioner: Mr. P.K. Tripathy (on behalf of
M/s. H.M. Dhal & P.K. Patnaik)
Advocate.

:Versus:

1. Union of India represented through
its General Manager, S.E. Railway,
Garden Reach, Calcutta-43 (W.B.).
2. Senior divisional Personnel Officer (Estt.),
S.E. Railway, Chakradharpur,
PO/PS: Chakradharpur (Bihar).
3. Senior divisional Accounts Officer,
S.E. Railway, Chakradharpur,
At/PO/PS: Chakradharpur (Bihar)
4. Sub-postmaster, Kashinagar,
At/PO: Kashinagar,
Dist.: Gajapati. Respondents.

By legal practitioner: Mr. A.K. Bose, Senior Standing Counsel
(Central) AND
Mr. S.R. Patnaik, Addl. Standing Counsel
for the Railways.

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Smt. P. Sugunabati (being the widow of late P.

Ganapati Rao, the deceased Railway employee) the Applicant.

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herein, was getting family pension. The said P. Ganapati Rao, while serving under the Railways died prematurely; as a consequence of which, the Applicant was getting family pension through the Kashinagar Sub Post Office in the District of Gajapati of Orissa. In the family Pension payment order it was made clear that the Applicant will continue to receive family pension benefits till her death or till her remarriage, whichever is earlier. Such a provision was given out in the family pension Payment order; because of the provisions contained in Rule-75(6) (1) of the Railway Servants (Pension) Rules, 1993; relevant portion of which is extracted below:-

* 75. Family Pension Scheme for railway servants, 1964:-

xx xx xx xx

(6) The period for which family pension is payable shall be as follows:-

(i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;"

On getting allegation that the Applicant has remarried to her brother-in-law, viz. Shri G. Mohana Rao (the younger brother of her husband); the Sub Postmaster of Kashinagar Sub post Office did not release family pension in favour of the Applicant from November, 1989. In the said premises the Applicant approached the Civil Court (Civil Judge, Junior Division, Paralakhemundi) in Title Suit No. 13/91. The said suit was held to be not maintainable for reason of Section 28 of the Administrative Tribunals Act, 1985 and Pension Rules under Sections 4 and 5 of Indian Pension Rules, 1971 and yet the said Civil Court proceeded to frame

an issue (as to whether the plaintiff has remarried to her brother in law ?) and answered the same with the following words:-

*It is admitted that late P. Ganapati Rao is the husband of the plaintiff and it has not been disputed that he was a Railway employee and, while in service, he died. The plaintiff's case is that she was getting pension regularly till November, 1989; when the pension was stopped. After enquiry she came to know that her pension was stopped on the allegation that she has remarried. In her evidence she has stated that she has not married and her pension was stopped without giving her scope to explain on the alleged allegation. It is further stated that she is Telenga by caste and the custom in her caste do not permit for second marriage. She has further stated that one R. Ram Prasad and G. Prasad Rao of Kasinagar have made false allegations against her as they do not pull on well with her. In the cross-examination, she has stated that even through widow in their caste do not wear glass bangles and never use vermillion, she is wearing glass bangles and using vermillion. She has not given any explanation as to why she has conducted herself in a manner beyond the caste customs. P.Ws 2 to 4 have denied that the plaintiff has remarried against after the death of her husband. D.W.1 is a Health worker, who attends delivery cases. She has specifically stated that she attended the delivery of the plaintiff and on 24.3.1993 she gave birth to a male child and proved the register Ext.A containing the entry and Ext.A/2 is the relevant entry dated 24.3.1993 showing that she has attended the delivery of the plaintiff. The entry Ext. A/2 reveals that name of the husband of the plaintiff as G. Mohana. Her evidence has been challenged with regard to the genuineness of the register, but nothing could be elicited to show that the register has been manufactured for the purpose of this case. From the evidence of D.W.1 it is clear that the plaintiff had given birth to a male child on 24.3.1993. It is admitted that the husband of the plaintiff died prior to 1989. Thus, the child borne to the plaintiff on 24.3.93 is definitely not through her husband and, therefore, the child borne to her may be illegitimate or through the husband to whom the plaintiff has married. Not a word of suggestion has been given

to this witness that no such child was born to the plaintiff and even though any such child was born, it is not through her second husband to whom she has remarried. The plaintiff has withdrawn the suit against the defendant No.4 after the plaintiff's case was closed and examination of P.W.1 and thereby deprived the defendants from challenging the evidence of the plaintiff adduced against defendant No.4. Thus, taking into consideration the factors as narrated above, that the plaintiff has acted beyond the caste customs and had given birth to a child after the death of her husband, it can safely be concluded that the plaintiff has remarried after the death of her first husband Ganapati Rao. Accordingly, this issue is answered against the plaintiff.

The suit in question of the Applicant having been dismissed she carried the matter unsuccessfully in Title Appeal No.21 of 1994; which was adjudicated by the Additional District Judge, Gajapati, Paralakhemundi and the Appellate Authority having held the suit to be not maintainable, the Applicant has approached this Tribunal in the present Original Application under section 19 of the Administrative Tribunals Act, 1985 for redressal of her grievances.

2. Heard Shri P.K.Tripathy, the learned Counsel appearing for the Advocates for the Applicant; Mr.A.K. Bose, learned Senior Standing Counsel appearing for the Government of India and Shri S.R.Patnaik, the learned Counsel appearing for the Railways and perused the records.

3. The rules governing the field of payment of Family Pension as extracted above, are very clear and, therefore, the family pension are only payable till death and/or remarriage of the family pension holder.



4. In the present case, question is as to whether the Applicant has remarried or not. Merely because she is using vermilion and glass bangles, it cannot be said that she has taken a remarriage; as has been held by the Civil Court. The evidence of the Health Worker, as given in the Civil Court, pertaining to the allegation that the Plaintiff had given birth a baby on 24.3.1993, cannot be accepted; unless the genuineness of the documents produced by the said witness is proved to the hilt. In any event, no legal presumption can be drawn to say that the Applicant had taken a second/remarriage; simply because she had given birth a child while continuing in the status of a widow. There may be several other reasons for the poor Applicant, who might have given birth to a child; even without being remarried and, therefore, it cannot be said that the findings arrived at by the Civil Court in that regard to be correct. All these questions ought to have raised in the mind of the authorities/Respondents; because, whether the Applicant has taken a remarriage or not is the essence of the issue to be answered before stopping and/or denying to pay her family pension.

5. As it appears, on the basis of a complaint only the authorities/respondents unilaterally stopped making payment of family pension to the Applicant. There are no materials on record to show that the authorities/respondents entered into an enquiry (by giving notice to the Applicant) with a view to ^{find} ~~finding~~ out the truth or otherwise of the

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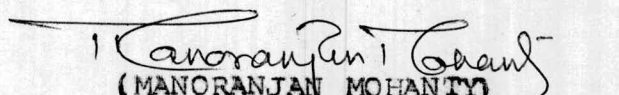
allegations raised before them. The authorities/Respondents ought to have entered into an enquiry (to come to a definite conclusion; as to whether the Applicant has really taken a remarriage) before stopping the payment of family pension to her. That having not been done, as it appears from the materials placed before me, I am inclined to hold that payment of family pension has been stopped in gross violation/disregard to the principles of natural justice/provisions of Article 14 of the Constitution of India, and as a consequence, Respondents are hereby directed to cause an enquiry, by giving due notice to the Applicant, in order to come to a satisfactory conclusion as to whether the Applicant has actually taken a remarriage or not. The exercise should be completed within a period of six months from the date of receipt of copies of this order and, in the event Respondents find the allegations to be incorrect, they shall continue to pay family pension to the Applicant as due and admissible under the rules. Since payment of family pension to the Applicant has been stopped merely on receipt of allegations, without following the principles of natural justice, she should be given all the up-to-date arrears (of family pension) from November, 1989 within a period of three months from the date of receipt of copies of this order; for which directions are hereby given to the Respondents. Current family pension should also be continued to be paid to the Applicant until orders are passed by the Competent Authorities of the Railways to stop payment of family pension; which can only be done after giving natural justice to the Applicant.

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6. While examining the instant case, one thing has bothered me: for which I am expressing my view here for consideration of the Government of India/ Railway administration/Respondents. It is well known that pension/ family pension are earned by Government servants in course of their employment; which is payable either to them on retirement or to their family members, in case of death of Government servants. For the reason of the provision that the family pension holders would not get the family pension on their remarriage; an widow of a deceased Government servant/Railway employee remains under compelling circumstances (virtually, amounting to prohibition) from getting remarried. Such an indirect compulsion (on widows of Government servants, who are family pension holders) in the Statute Book, apparently, is antithesis to social reform theory propounded in India right from the time of RAJA RAM MOHAN ROY; whose sole and sacred intention was to wipe out tears from the eyes of every young widow/all the social evils from the society with a view to establish a healthier society, free from all superstitions. In the said premises, while parting with the case, I hope and trust that the Government of India/railway administration will be well advised to give a re-thinking to this aspect of the matter and, instead of totally stopping the family pension, make necessary alternative/regulatory provision to see that the family pension is continued to be paid even after remarriage of

Widows holding family pension. That apart, they should keep in mind about the customs in certain community of our society, which recognises remarriage between ^{widow} ~~sons~~ of the elder brother with the younger brother; which appears to be a healthier one, and that no statutory provision should therefore, directly or indirectly, stand on the way of such marriage.

7. With the above observations and directions, this Original Application is allowed. However, there shall be no order as to costs. Apart from sending copies of this order to all the parties to this O.A., copies of this order be also sent to (a) D.O.P.T of Government of India; (b) Railway Board of Government of India, New Delhi and (c) National Commission for Women (India) at Deendayal Upadhyay Marg, New Delhi; so that they can give re-thinking in the matter.


(MANORANJAN MOHANTY)
MEMBER (JUDICIAL) 04/07/02

KNM/CM.