

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

1. Rejoinder to counter
of R-1 has not filed.

2. Counter not filed
by R-4.

De
3/1/02

Bench

1. Rejoinder to deptl.
counter not filed.
2. Counter not filed
by R-4

De
3/1/02

Bench

for Admission

De
17/1/02

Bench

J.W.M.

Order dated 18.1.2002

None appeared for the applicant when called. There has been no request made on behalf of the learned counsel for the applicant seeking adjournment. Learned counsel for Res.4 is also not present nor any request has been made on his behalf seeking adjournment. As this matter relates to pensionary benefits the matter cannot be allowed to drag on indefinitely, more so when the pleadings have been completed long since. In view of this I have heard Shri P.K.Mishra, learned Addl. Standing Counsel for the departmental respondents and perused the pleadings.

In this O.A. the petitioner has prayed for direction to the departmental authorities to allow her half of the family pension from 28.10.1998 onwards as also half of the pensionary benefits.

The case of the applicant is that she married one Sk.Sattar on 15.6.1992. Applicant was the second wife of Sk.Sattar, who took voluntary retirement from Railway service as Switchman in 1993. Applicant has stated that she lived with her husband till he passed away on 28.10.1998. It is stated that through this marriage, applicant was blessed with two children, i.e. one daughter and a son. It is further stated that after the death of her husband she sent Lawyer's Notice on 8.2.1999 to Personnel Officer, S.E.Railway, Khurda Road. This Notice is at Annexure-A/4. But there was no response. In the context of the above applicant has come up in this petition with the prayers referred to earlier. Departmental

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respondents have filed their counter opposing the prayer of the applicant. No rejoinder has been filed.

For the purpose of considering this petition it is not necessary to refer to all the averments made by the Department in their counter as these will be taken into account while considering the prayers of the applicant. It is also to be noted that Private Respondent No.4, in spite of appearance through counsels did not file any counter. It is submitted by Shri P.K. Mishra, learned Addl. Standing Counsel that during the life time and after his retirement the deceased railway employee submitted an affidavit on 1.3.1993, which has been annexed to the counter by the Department at Annexure-R/1. It is further submitted by Shri Mishra that in this Annexure the deceased railway employee included the name of only 1st wife, the present Respondent No.4 and did not include the name of the 2nd wife, the present petitioner in the O.A. He, however, included the name of the children born through the 2nd wife. It is submitted by Shri Mishra and this has been averred by the Department in their counter that as the legal status of the present applicant as legally wedded second wife of the deceased railway employee is a disputed question of law, the Tribunal should not embark into the enquiry and it is for the applicant to establish her right before the competent Court of Law.

I have considered the above submissions carefully. Sub-rule 7(a) of Rule 54 of C.C.S.

S. Nam

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(Pension) Rules, 1972 provides that where family pension is payable to more widows than one, the family pension shall be paid to the widows in equal share. So far as Railway employees are concerned, they are governed by Railway Services (Pension) Rules, 1993 and prior to that the Railway Services (Pension) ~~Rules~~ ^{Manual} 1953. Chapter 10 of Railway Services (Pension) Rules, 1993 deals with cases of family pension and residuary gratuity in respect of death of a railway pensioner. Rules 100 and 101 of this chapter do not mention about eligibility of more than one widow to get the family pension in equal share. Sub-rule 10 of Rule-801 of ^{Manual of} Railway (Pension) Rules, 1950 lays down that where a railway servant or pensioner is survived by more than one widow the pension will be paid to them in equal share and on the death of a widow, her share will go to her eligible minor child. If there is no eligible minor child the payment of that part of share of pension will cease. The departmental respondents have rightly stated that it is not open for the Tribunal to embark upon an enquiry into the status of the present applicant as the legally wedded 2nd wife of the deceased railway pensioner. But in view of the claim put forward by the applicant before the Tribunal and prior to that through the Lawyer's Notice to the Railway authorities vide Annexure-A/4, it is incumbent on the part of the departmental authorities to conduct an enquiry into the matter and come to a finding if the applicant is

S. JCM.

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really the legal weded 2nd wife of the deceased railway employee-cum-pensioner. In view of this, I direct the departmental authorities to conduct such an enquiry within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order and to come to a definite finding and if the authorities come to a finding that the applicant is the legally weded 2nd wife of the deceased railway pensioner, then on the basis of that finding the family pension should be equally divided between the two widows. It is also to be noted that under the Muslim Law each and every marriage must necessarily is to be registered before the Kazi and therefore, it will not be difficult on the part of the departmental respondents to ascertain with regard to legality or otherwise of the 2nd marriage. If after the enquiry it is not possible to come to a definite conclusion with regard to legal status of the applicant as the second wife of the deceased railway pensioner, then they should direct the applicant to file a Declaratory Suit before the appropriate Court of Law arraigning the railway authorities as also Res.4 in the present O.A. as necessary parties to establish her status as the legally weded 2nd wife of the deceased railway pensioner.

With the above directions O.A. is disposed of, but without any order as to costs.

Somnath Vira
VICE-CHALMAN
18.1.2002

Free copies of final order at 18.1.02 issued to counsel for both sides.

PNK
S-0 (D)

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22/1/02