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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

M.A.No. 981/2003
(O.A.No. 324/2003)

Cuttack, this the 15th day of September, 2004

Sudit Kumar Supkar. Applicant.

-Versus-

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
(Manoranjan Mohanty)
Member (Judicial)

15/09/2004

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

M.A.NO. 981/2003

(O.A. No. 324/2003)

Cuttack, this the 15th day of September, 2004.

C O R A M:

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

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Sudit Kumar Supkar, aged about 18 years,
Son of late Bidyut Kumar Supakar,
At-Gundichapalli, Sector-D,
(Near Mohan Pan Shop),
PO: Bondamunda, Dist. Sundergarh. **Applicant.**

By legal practitioner: M/s. S. Mohanty, S. Satpathy, Advocates.

-Versus-

1. Union of India, represented through its Secretary, Railway Department, Rail Bhawan, New Delhi.
2. Divisional Railway Manager, S.E. Railway, Chakradharpur, BIHAR.
3. Senior Divisional Personnel Officer, S.E. Railway, Chakradharpur, Bihar.
4. Area Manager, S.E. Railway, Bondamunda, At/Po/Ps: Bondamunda, Dist. Sundergarh.
5. Senior Divisional Operating Manager, S.E. Railway, Chakradharpur, At/po: Chakradharpur, Bihar. **Respondents.**

By legal practitioner: Mr. R.C. Rath, Standing Counsel.

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O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Tersely expressed, it is the case of the Applicant that his father (late Bidyut Kumar Supakar, who was serving in the South Eastern Railways as Senior TNC/BNDM/CKP) died prematurely on 27.06.2002 and since no terminal benefits (and employment on compassionate ground) were extended to him (the Applicant/a family members of the deceased), the Applicant moved this Tribunal with Original Application No.324 of 2003 u/s. 19 of the Administrative Tribunals Act, 1985; which was taken up for consideration on the question of admission on 06-06-2003. Since the grievance of the Applicant pertained to non-payment of the statutory retiral dues of the deceased Railway employee (involving the question of survival of his family members), the said O.A. was disposed of on the said date i.e. on 06-06-2003 with the following directions:-

"Having heard the learned counsel for both parties, I direct the Respondents-Railways to disburse pensionary benefits and family pension in favour of the legal heir of the deceased within a period of 120 days from the date of receipt of copies of this order. Respondents should depute their Welfare Officer to contact the family members of the deceased employee in order to complete the necessary formalities so as to enable the legal heir of the deceased family to receive the terminal benefits by the time as indicated above."



As regards compassionate appointment, Respondents are to consider the same within the four corners of the rules and instructions on the subject to do the needful".

2. By filing the present M.A.No.981/2003, the Respondents (Railways) have expressed their inability to comply with the above said orders of this Tribunal and have sought modification of the said orders dated 06-06-2003. It has been disclosed by the Respondents that as per the above said direction dated 06-06-2003 of this Tribunal, a sectional Welfare Personnel Inspector was deputed to conduct a fact finding enquiry for the purpose of disbursement of pensionary benefits to the family of the deceased Railway employee and that the said Inspector, after enquiry, submitted a report to the effect that there are two sets of rival claimants to the pensionary benefits of late B.K. Supkar (one at Bondamunda through Smt. Fillomina ; working as Reja under IOW/BO/NDM) and, another at Purlia District of West Bengal through Smt. Maya Supkar) who have claimed for settlement dues of late B.K. Supkar. The Sectional Welfare Inspector, on enquiry, found existence of a compromise (reached between Smt. Maya Supkar and the deceased railway servant) before the Judicial Magistrate (First Class) of Purlia (West Bengal); which prima facie

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disclosed that the said Maya to be the wife of Bidyut Kumar Supkar. This report goes to show that the said Bidyut Kumar Supkar had two sons (namely Laltu and Pintu) through said Maya. The said report disclosed that the mother of the present Applicant Smt. Fillomina, to be not the legal married wife of the deceased and, therefore, the present Applicant is not entitled to any retiral benefits and that the same can only be released in favour of Maya Supkar. In the said background the Respondent-Railways prayed for modification of the order dated 06-06-2003 of this Tribunal to the extent of directing the rival parties to obtain declaration from a competent court of law pertaining to their status for the purpose of getting the settlement dues of the deceased Railway employee.

3. Applicant, upon receipt of the objection (M.A.No.981/2003) of the Respondents, did not accept the report of the Railway Inspector; as that was drawn without making any enquiry from him/Applicant. Since the enquiry report did not give complete picture, *prima facie*, Railways was again directed, on 21.4.2004, to conduct a further enquiry into the matter; pursuant to which certain documents, on further enquiry were placed on record on 25.08.2004 ^{and on 15.9.2004 (today)} from the side of the Railways. From the records produced by the Railways

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it has come to light that the deceased Railway employee (B. K. Supkar) during 1997 gave declaration (to the Railways) that the Applicant to be his son. Smt. Fillomina (who is in Railway Service) had also disclosed (long back during 1987) that B. K. Supakar to be her husband and Applicant to be her son. The uncontroveted legal heir certificate produced by the Applicant also disclosed that B. K. Supakar to be his father and Smt. Fillomina to be his mother. Birth certificate and HSC certificate (issued by Orissa Board of Secondary Education) show that the Applicant to be the son of B. K. Supakar and Smt. Fillomina. The records of the Criminal Court of West Bengal (proceeding u/s. 125 of Cr. P. C.) goes to show that the Railway employee (B. K. Supakar) also had a wife named Maya and through her he had children. The age factor of the children through both the wives goes to show that the deceased Railway employee had relationship with both the poor ladies at over-laping point of time; for which it is difficult to adjudicate as to who was first-wife and as to who was second wife of said B. K. Supakar.

4. Facing with such a situation, a view was expressed in Bar that parties should approach the Civil Court for appropriate declaration. At this stage one is fortified by the Judgment of the Hon'ble Apex

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Court of India rendered in the case of RAMESHWARI DEVI
Vs. STATE OF BIHAR AND OTHERS (reported in AIR 2000 SC
735) which lays down as under:-

"The Government need not wait for the Civil Court to pronounce that there was a marriage between deceased employee and the second wife in accordance with Hindu rights. That would, however, not debar the State Government from making an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of second wife. The Government can itself make an inquiry about the existence of such a marriage and act on that in order to grant pensionary and other benefits to the children of second wife".

present

In the above view, the matter has been examined at great length. Since Railway Pension Rule recognises existence of two wives and provides relief to them by making provision for apportionment of family pension and since the law is now well settled recognising even illegitimate children to get the family pension benefits till attaining the age of majority, this matter is disposed of on merit, without asking the poor parties to go to Civil Court.

5. From the discussions made above, there are no escape from the irresistible conclusion that the Applicant was born out of the wedlock of B.K. Supakar. For the reason of following decision, it is not necessary to delve into the issues, which stands on the way for dispensation of justice.

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As per the decision rendered by the Hon'ble Apex Court of India in the case of Rameshwari Devi VS. State of Bihar and others (AIR 2000 SC 735), the children of the deceased employee born out of the second wedlock would be entitled to share in the family pension and death-cum-retirement gratuity till they attain majority. That apart, a distinguishing feature in the present case is that under Rule 75 of Railway Service Pension Rules, 1993 where a pension holder has got two wives/widows, the family pension etc. are to be equally distributed between them. Sub-Rule 7 of Rule 1975 of the Railway Service Pension Rules of 1993, for the sake of clarity is produced below:-

"(7)(i)(a). Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares.

(b) On the death of a widow, her share of the family pension, shall become payable to her eligible child:

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her.

(ii) Where the deceased railway servant or pensioner is survived by a widow but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received if she had been alive at the time of the death of the railway servant or pensioner.

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows or the other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

(iii) Where the deceased railway servant or pensioner is survived by a widow but has left behind child or children from a divorced wife or wives, such child or children if they satisfy other conditions of eligibility for payment of family pension shall be entitled to the share of family pension which the mother would have received at the time of death of the railway servant or pensioner had she not been so divorced:

Provided that on the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child".

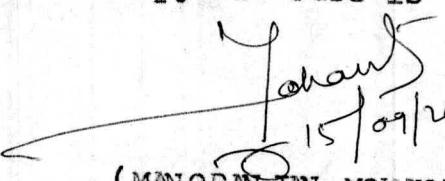
6. Similar question was also under consideration before this Tribunal in the case of SMT KUMARI MOHARANA vs. UNION OF INDIA AND OTHERS (reported in 93(2002)CLT 23 (ATC) wherein this Tribunal, taking into consideration the above said rules position, directed apportionment of the family pension between both the widows/legal heirs. In that case, this Tribunal held as under:-

"xxx xxx xxx.
Under the provisions of the relevant pension Rules governing this case, where a pension holder has got two wives/widows, the family

pension etc. are to be equally distributed between them. xx xx xx. Thus, the relevant pension Rules recognises a situation like the present one. xx xx".

The Hon'ble High Court of Orissa also in the case of SUKA NAYAK @ BEWA vs. STATE OF ORISSA AND OTHERS (reported in (2002)1 ATT (HC 258) also took the view that family pension is liable to be distributed equally among the two wives.

7. In the above view of the matter, the Respondents are hereby directed to sanction the retiral dues of the deceased Railway Servant (B.K. Supakar) and pay them to all the legal heirs/family members by apportioning the said amount without any further delay. This case is accordingly disposed of.


15/09/2004
(MANORANJAN MOHANTY)
MEMBER (JUDL.)