

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

Order dated 17.03.04

Heard Mr. B. Senapati, Ld. Counsel
appearing for the Applicant named Smt. Netramani
Behera. Mr. R.C. Rath, Ld. Standing Counsel
appearing for Railways and Mr. G. A.R. Dora I.d.
Counsel appearing for the Respondent No.3 named
Smt. Chita Beherani.

2. Prahallad Behera, a Railway Employee,
died prematurely on 03.12.99. His P.F. dues and
Group Insurance dues were released in favour of
Chitra Beherani. Prahallad Behera, during his life
time, nominated her in the official service
records (executed by him, during December 1984)
as is evident under Annexure R-1 & R-2 to the
counter filed by the Railways; wherein said Chita
Beherani was described as wife of Prahallad. The
present Applicant smt. Netramani Behera,
(claiming herself to be the wife/widow of said
Prahallad Behera, the deceased Railway employee)
produced a legal hair certificate (obtained from the
Tahasildar of Puri) before the Railway Authorities
and claimed terminal benefits. Smt. Chita
Beherani also produced another legal hair

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certificate from the Tahasildar of Chatrapur of Ganjam.

3. In the above said premises, Railway Authorities called upon both the parties to produce succession certificate as per extent Rules of the Railways and in the said premises. Succession Certificate (Case No.02/2001) in her favour has been in the Court of the Civil Judge (Senior Division) Chatrapur(Ganjam) by Smt. Chita Beherani.

4. The present Applicant Smt. Netramani Behera contested the said proceeding on the ground of jurisdiction and carried the said issue to the Hon'ble High Court of Orissa (in Civil Revision Proceeding No.04/02) and the said Revision has been dismissed by the Hon'ble Court on 20.09.02.

5. Thus, both the parties (who are claiming to be the wife/widow of late Prahallad Behera) ought to work out their remedy in the competent Civil Court to get declaration as to who is the real wife/widow of Prahallad. It may so happen that both of them may be declared to be the wife/widow of late Prahallad Behera.

6. Instead of working out her remedy in the competent Civil Court, Netramani Behera has filed this O.A (No.992/02) under Section 19 of the

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Administrative Tribunals Act, 1985 for redressal of her grievances.

7. This case is being contested by Chita Beherani. It is the case of the Railways that on the face of divergent nature of legal heir certificates produced from two different authorities, both the parties should obtain appropriate degree from the competent Civil Court and, only thereafter, the terminal benefits can be released in favour of either of them.

8. Mr. R.C. Rath, Ld. Standing Counsel for the Railways, has pressed into service the relevant rules governing the matter in issue. Relevant portion of Estt. Sl. No.17/92 dt.14.01.92 (Annexure R/7) and in Estt. Sl. No.30/97 dt. 17.02.97 (Annexure R/8) are extracted herein

below for ready reference:- Estt. Sl. No.17/92

No PS/Pen/Procedure Dt.14.10.1992

" A copy of Railway Board's letter No.F(E)III/90/PN-1/36 dated 20.12.91 is published for information, guidance and necessary action.

According to existing orders, the amount of Gratuity payable in respect of the following Railway employees lapses to the Govt:-

- i) if a Railway employee dies while in service leaves behind no family and also the nomination has not been made in favour of any other person or persons or the nomination made by him/her does not subsist.
- ii) if a Railway employees dies after retirement without receiving the amount of Gratuity and leaves behind no family member and had also not

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made any nomination or nomination made by him/her does not subsist.

The Board have now conveyed the President's decision on the case mentioned above that retirement or death Gratuity as the case may be paid to the person in whose favour Succession Certificate has been granted by the Court of Law.

Copy of Railway Board's letter No.F(E)III/90/PN-1/36 dated 20.12.91 addressed to G.M.s of All Indian Railways and others.

Payment of death gratuity on the basis of Succession Certificate.

As per the extent orders, if a Railway servant dies while in a service or after retirement without receiving the amount of gratuity and leaves behind no family and had also not made any nomination or the nomination made by him/her does not subsist, the amount of gratuity payable in respect of such a Railway servant lapses to the Government.

2. Payment of gratuity is not confined to the members of the family only. If does not have a family as defined in the provisions, he can made nomination in favour of a person or persons or even body of individual whether incorporated or not for payment of gratuity. Having regard to this the question whether gratuity which would otherwise lapse to the Govt. can be paid to any person or persons has been under consideration of the Government and the President is pleased to decide that in such cases, retirement or death gratuity, as the case may be paid to the person in whose favour Succession Certificate has been granted by the Court of law.

3. Formal amendment to the provisions shall issue in due course."

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No.30/97 (Date 2.17.02.1997)

In terms of Board's letter No.F(E)III/90/PN1/36 dated 20.12.91 published under Estt. Srl. No.17/92, retirement or death gratuity as the case may be, is to be paid to the person in whose favour Succession Certificate has been granted by the Court of Law in cases where employee dies while in service or after retirement without receiving the amount of gratuity and leaves behind no family and also no nomination.

2. Since no cut off date was fixed to extend the above benefit, the case was referred to the Railway Board vide this office letter of even no. dt.26.11.96 seeking clarification as to whether the past cases prior to issue of Railway Board's above letter will be accepted and payment made on production of Succession Certificate.

3. Board vide their letter No.F(E)III/90/TN1/36 dt.23.12.96 have clarified the points. Copy of the Board's letter dt. 23.12.96 is published herewith for information, guidance and necessary action.

Copy of railway Board's letter No.F(E)III/90/PN1/36 dated 23.12.96 addressed to the General Manager, S.E. Railway, Garden Reach & Copy to others.

Payment of death gratuity on the basis of Succession Certificate

Please refer to your Rly's letter No.P/S/Pen/Procedure dt.26.11.96. Since statutorily, Pension and gratuity are supposed to be property of a person, the unpaid gratuity is to be treated as the money lying in estate of the deceased on the date of death, the payment of which cannot be refused to a person who possesses a valid succession certificate in his favour from a competent court. All that the Board's orders of 20.12.91 have done is to incorporate the aforesaid principles of law laid down by the Courts within the frame of Pension Rules/Orders. It should, therefore, be possible to apply the provisions of

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Board's order dt.20.12.91 to the past cases also where death occurred prior to 20.12.91."

9. In the aforesaid premises, after hearing Ld. Counsels appearing for the parties, this O.A. is hereby disposed of by asking the Applicant (Natramani) and Respondent No.3 (Chita Beherani) to work out their remedy in the competent Civil Court and, in the event it is held that both were widows of the deceased Pranhallad Behera, then the Railways should ^{release} ~~utilize~~ the terminal benefits in favor of both the parties in exercises of their powers available under Rule 75 of Railway Service Pension Rules of 1993.

10. With the aforesaid observations and directions, this O.A. is disposed of.

[Signature]
17/03/04
MEMBER (JUDICIAL)

Copy of order dt.17/3/04
issued to the Counsel
for both side.

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29/3/04