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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK


OA No. 83 of 2011
Cuttack, this the 03rd day of January, 2012

Kumati Gochhayat Applicant
-Versus-
Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to the PB New Delhi for report?


(A.K.PATNAIK)
Member(Judicial)


(C.R.MOHAPATRA)
Member (Admn.)

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Cuttack, this the 03rd day of January, 2012

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (J)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (A)

Kumati Gochhayat, aged about 47 years, W/o.Late
Anadi Gochhayat of Village-Shandapur,
PS.Raghunathpur, Dist. Jagatsinghpur.

.....Applicant

By legal practitioner : Mr.P.K.Chand, Counsel

-Versus-

1. Union of India represented through General Manager, East Coast Railway, Chasndrasekharapur, Bhubaneswar, Dist. Khurda.
2. The Senior Divisional Personnel Officer, East Coast Railway, Khurda Road, At. Jatni, Dist. Khurda.
3. The Sr. Divisional Engineer (Co. Ordination) East Coast Railway, Khurda Road, Jatni, Dist. Khurda.
4. Asst. Divisional Engineer (II), East Coast Railway, Paradeep Section, At-Railway Station, Po. College Square, Town/Dist. Cuttack.
5. The Section Engineer (P.W), East Coast Railway, Gorakhnath, Dist. Jagatsinghpur.
6. Sanjulata Gochhayat, Village-Balisukuri (Naikula Patna), Po/Ps.Kishorenagar, Dist. Cuttack.

....Respondents

By legal practitioner: Mr.Trilochan, Rath, Adv
M/S.P.Lenka, P.K.Lenka,
[Counsel for Res.No.6]

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ORDER

MR.C.R.MOHAPATRA, MEMBER(A):

Smt. Kumati Gochhayat claiming to be the
legally married wife of Late Anadi Gochhayat of Village
Shandapur, PS Raghunathpur in the District of Jagatsinghpur
(Odisha) has filed this Original Application U/s.19 of the



Administrative Tribunals Act, 1985 praying for direction to the Respondent-Department (Railway) to release the death retirement dues of Late Anadi Gochhayat in her favour with interest @ 18% per annum with cost of litigation. By way of ad interim measure, she sought direction to the Respondent-Department not to release the dues of Late Anadi Gochhayat in favour of Respondent No.6.

2. This matter came up for consideration on the question of admission and grant of ad interim order on 24-02-2011 and this Tribunal while issuing notice to the Respondents by way of ad interim order, directed that "any further payment in respect of pension and the pensionary benefits will be subject to the out come of this OA". In view of the above, as stated by the Respondent-Department, except the PF and CGEGIS dues of late Anadi Gochhayat [amounting to Rs.34, 395/- and Rs.46,083/- in compliance of the order of this Tribunal dated 22.1.2011 in OA No. 705 of 2010/nomination made by Late Anadi Gochhayat], no other amount has been released in favour of the Respondent No.6 and the Respondent No.6 has been advised by Respondent No.2 that in view of the dispute raised by the Applicant in the instant OA, release of other dues including family pension shall only be subject to production of legal heir and succession certificate.



3. Respondent-Department (Railway) have filed their counter in which it has been stated that after the death of Anadi Gochayat on 26.12.2008 while working in the Railway as Head Trackman Respondent No.6 by making representation along with the death certificate, affidavit, the vote identity Card in support of the claim that she is the legally married wife of Late Gochayat, has prayed for release of the death/retirement dues in her favour. Having failed to get any favourable response, the Respondent No.6 approached this Tribunal in OA No. 705 of 2010 claiming to be the legally married wife of deceased Railway Employee (Late Anadi Gochhayat) seeking direction for release of the dues. After verification of records, in compliance of the order of this Tribunal dated 22.1.2011 in OA no. 705 of 2010 and in view of the nomination in favour of Respondent No.6 made by the deceased in the service record, PF and CGEGIS amount of Rs.34,395/- and Rs.46,083/- were released in favour of the Respondent No.6. While the matter stood thus, the instant OA was filed by the present Applicant stating that she being the legally married wife of Late Anadi Gochhayat the death retirement dues should have been processed and released in her favour. Hence in view of the dispute, the Respondent-Department (Railway) in letter under Annexure-R/7 of their counter advised to submit the succession certificate so as to



enable the Railway to release the death retirement dues of Late Anadi Gochhayat.

4. Respondent No.6 has filed separate counter contesting the case of the Applicant in which it has been stated that she is the legally married wife of Late Anadi Gochhayat and, therefore, in compliance of the order of this Tribunal after being satisfied with the materials placed justifying that she is the Sanjulata Gochhayat in whose favour nomination was made by her husband Late Anadi Gochhayat and Respondent-Department (Railway) have rightly released part of the claim i.e. PF and CGEGIES and there is no reason to withhold the rest of the dues merely on the basis of demand of the Applicant. It has been averred that the legality and justifiability of the legal heir certificate granted by the Tahasildar is under challenge before the ADM, Cuttack which is still pending for adjudication. As such, Respondent No.6 has contended that in view of the material produced justifying that she is the Sanjulata Gochhayat in whose favour nomination was made by her husband late Anadi Gochhayat, withholding the rest of the dues (including family pension) and advising production of succession is unjustified. In support of her plea that when nomination is in favour of the wife and she proved to be the nominee and legally married wife of Late Anadi, advice issued under Annexure-R/7 for production of



succession certificate from the appropriate court is not tenable in the eyes of law. She has placed reliance on the authority of the Railway Board's letter No. 2005/AC-II/21/4 dated 04.08.2005. Accordingly, Respondent No.6 has prayed for dismissal of this OA.

5. Besides reiterating the stand that the applicant is the legally married first wife of Late Anadi it was contended by the Ld. Counsel appearing for the Applicant that Respondent No.6 in connivance with the Respondent Nos.4&5 and their office staff tried her best to obtain the so called nomination paper just before death of Anadi to grab the monetary benefits of the applicant's husband by approaching this Tribunal whereas she is in no way connected with Late Anadi and the applicant being the legally married wife of Late Anadi has absolute right over the dues of Late Anadi. This was vehemently opposed by the Learned Counsel appearing for the Respondent- Department so also by the Respondent No.6.

6. We have considered the rival submissions of the parties and perused the materials placed on record. The fact remains that the nomination was in favour of Respondent No.6 to receive the payments after the death made by Late Anandi is not in dispute. No dispute is also raised by any of the parties that in terms of the Railway Board's instruction arrears

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of pension and pensionary dues are payable to the nominee(s) in accordance with the nomination. It is revealed from the record that while releasing the PF and CGEGIS amount in favour of the Respondent No.6 based on the nomination etc and in compliance of the order of this Tribunal, in letter under Annexure-R/6 advised the Respondent No.6 that rest of the dues would be released only after submission of the legal heir certificate from the concerned Tahasildar. It is the case of the Respondent No.6 that meanwhile legal heir certificate has been obtained by her from the concerned Tahasildar.

7. Relevant portion of the order dated 23.11.2010 in OA no. 705 of 2010 filed by Respondent No.6 is quoted herein below:

“2.....The applicant claims that she has already approached the Tahasildar, Kishore Nagar (Annexure-A/5) to give her the legal heir certificate but to no effect. Similarly, Railway authorities have also requested to Tahasildar Kishore Nagar (at page 16 of the OA) but in spite of the Railways having approached the concerned Tahasildar, the legal heir certificate has not been issued perhaps because the necessary formalities have not been completed by the applicant. However the applicant submits that in the service record of her deceased husband, she has been recorded as the nominee and hence as nominee she is entitled to get payment in respect of Provident Fund, CGEGIS etc.

4. Having heard Ld. Counsel for the parties and perused the records, I feel at this stage the applicant is entitled to certain payment

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which can be released in terms of the nomination available in service record of the deceased employee. Hence, as agreed to by the Ld. Counsel for the parties, Respondent No.2 is hereby directed to consider the release of payments like GPF/CGEGIS which can be released in the absence of legal heir certificate based on the nomination available in the service record of the deceased employee.

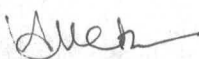
5. As regards the other amounts like pension gratuity etc. the Ld. Counsel for the applicant submits that he will make serious efforts to obtain the legal heir certificate from the Tahasildar and submit the documents before the concerned Railway authorities within a period of 60 days. Once legal heir certificate along with connected documents are submitted the Respondent No.2 shall take action to scrutinize the documents and decide on the question of release of remaining amount."


8. The above order has not been challenged by the Applicant and, therefore, is binding on the Respondent-Department so also on the Applicant till it is reversed/reviewed. Similarly, on perusal of the letter under Annexure-R/5 to the counter of Respondent No.6, it reveals that the advice to produce the succession certificate is not consistent with the very Railway Board's instruction relied on by the Respondent No.6 wherein it has been specified that arrears of pension and pensionary benefits shall be released in favour of the nominee. The allegation of the applicant that nomination was obtained from Late Anadi in favour of Respondent No.6 just prior to his death with the connivance of the officials of the Department appears to be a bald allegation

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without any substantive proof and hence cannot be accepted. Be that as it may, there is no prayer in this OA of the applicant that the nomination made in favour of Respondent No.6 should be declared void. In terms of the Railway Board's instructions, the Railway Authority is required to release the dues of deceased employee in favour of the nominee. Admittedly, the name of the Applicant does not figure as the nominee of Late Anadi Gochhayat in the service record maintained by the Respondents.

7. In view of the discussions made above, we find no merit in this OA. This OA is accordingly dismissed by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member (Judl.)


(C.R.MOHAPATRA)
Member (Admn.)