

10
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.701 OF 2011

Cuttack this the 8th day of May, 2013

CORAM

HON'BLE SHRI R.C.MISRA, MEMBER(A)

Magdalena Nayak, aged about 57 years, Wife of late Ambrut Kumar Nayak,
Village-Kutiguda, PO-Karachabadi, PS-Mohana, Dist-Gajapati

...Applicant

By the Advocate(s)-M/s.M.K.Khuntia

A.K.Apat

G.R.Sethi

J.K.Digal

Ms.B.Ku.Pattnaik

-VERSUS-

Union of India represented through

1. The Manager, Orissa Telecom Circle, Orissa, At/PO-Bhubaneswar, Dist-Khurda
2. General Manager, Telecom District, Cuttack, At/PO/Dist-Cuttack

...Respondents

By the Advocate(s)-Mr.S.B.Jena

ORDER

HON'BLE SHRI R.C.MISRA, MEMBER(A):

Applicant in this case has approached this Tribunal with a prayer that she should be granted family pension and also the post retiral dues on the basis of the fact that she is the legally married wife of the deceased employee of BSNL.

2. The facts which have been placed before the Tribunal are that the husband of the applicant, while working as Regular Mazdoor in Group-D category in BSNL expired on 8.3.2004. The applicant happens to be his widow. It has been



11

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mentioned that after the death of her husband, the applicant was paid an amount of Rs.1,512/- towards duty pay of her husband for the period from 1.3.2004 to 8.3.2004. She applied for Legal Heir Certificate from the appropriate authorities and the legal her certificate was issued by the Tahasildar, Mohana which is placed at Annexure-A/3 to the O.A. In this legal her certificate the applicant has been shown as sister- in- law of late Ambrut Kumar Nayak. A total number of five persons have been mentioned as the legal heirs including the applicant and the certificate is stated to have been issued for the purpose of receiving Government dues. The case of the applicant is that it was a mistake in the legal heir certificate that she was not shown to be the wife of the late Ambrut Kumar Nayak. She filed Intest Case No.2/2006 in the Court of the Civil Judge (Senior Division), Paralakhemundi in the District of Gajapati along with other legal heirs. In this case she has been described as wife of late Ambruta Kumar Nayak. The order of the Civil Judge, Sr.Division, Paralakhemundi in this case is quoted below.

"The petition under Section 372 of the Indian Succession Act be and the same is allowed on contest but without cost. The Petitioners are entitled to a Succession Certificate in respect of Rs.17,317/- (Rupees seventeen thousand three hundred seventeen) only being the Insurance amount under General Insurance Scheme (C.G.E.G.I.S.) of the deceased Ambrut Kumar Nayak and any further sum accrued thereon till the date of realization. Petitioner No.2 to 5 are not entitled to such certificate.

Given under my hand seal of this 14th day of September, 2007"

3. The applicant subsequently filed application before the authorities for releasing family pension and the post retiral dues of her late husband. But there had been no reaction on the part of the Respondents to redress her grievance as



12

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alleged by the applicant in this Original Application. The applicant, therefore, approached this Tribunal earlier in O.A.No.587/10 with a prayer that the family pension should be granted in her favour and the post retiral dues should be paid with 18% interest. This Tribunal heard the matter and disposed of the said O.A. on 10.11.2011 on the basis of the prayer of the petitioner to withdraw the O.A. so as to file a proper representation before the Respondents. The Tribunal ^{not} did enter into the merit of the case and directed the Respondents to consider the representation of the applicant if it is made within a period of 15 days hence and pass a reasoned order within a period of 30 days from the date of receipt of the representation. The Respondents, viz., the BSNL authorities in pursuance of the direction of this Tribunal disposed of the representation of the applicant vide their letter dated 7.12.2010 which has been filed as annexure-A/8 to the O.A. On perusal of the said letter it reveals that the authorities have not accepted the claim of the applicant for family pension since her claim to be the legally married wife of the deceased employee has not been accepted by them. On the other hand, according to their records, late Ambrit Kumar Nayak was unmarried at the time of his death and the applicant has been described as sister- in -law of the deceased for all purposes in the nomination form and that the legal heir certificate dated 16.6.2004 issued by the Tahasildar, Mohana is on the same lines on the basis of which duty pay and gratuity have been already paid to the applicant. In addition to this, this letter further mentions that the claim of the applicant that she is the legally married wife of the deceased was found false. Although the applicant claimed to have married the deceased employee on 1.1.2002 and he expired on 8.3.2004, he has not mentioned anything in his family



13
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declaration within two years of the so called marriage. By mentioning that there is neither a single witness nor a single documentary evidence found to justify her claim as legally married wife of the deceased the claim of the applicant for family pension has been rejected by the concerned authorities.

4. I have heard the learned counsel for both the sides. In course of hearing of this matter, the learned counsel for the applicant has put emphasis on the Succession Certificate issued ^{by P} Civil Judge, Senior Division, Paralakhemundi and also the affidavit filed by the applicant regarding the solemnization of her marriage with the deceased employee under the Special Marriage Act, 1954. Learned counsel for the applicant has also drawn my attention to the Christian Marriage Certificate dated 1.1.2002 which is filed at Annexure-9 to the O.A. On the other hand, the learned counsel for the Respondents has also drawn my attention to the legal heir certificate issued by the Tahasildar, Mohana in which the applicant has been mentioned as the sister- in- law (elder brother's widow wife) of the deceased employee. The learned counsel representing the BSNL also further mentioned that the payment of gratuity and the duty pay of the deceased employee has been made to the applicant on the basis of the legal heir certificate issued by the Tahasildar, Mohana. But for the payment of family pension, the applicant has to submit documents to prove that she is the legally married wife of the deceased employee. The Respondents have raised questions about the status of the applicant as the legally married wife of the deceased employee in this case.

5. Having heard the learned counsel for both sides and upon perusal of records, it appears ^{to me P} that the authorities have not been fully satisfied with regard to

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documents produced by the applicant to establish her claim that she is the legally married wife of the deceased employee and consequently her entitlement to family pension. In the legal heir certificate of the Tahasildar, Mohana the applicant is described as the sister-in-law of the deceased employee. Before his death, the deceased employee has not made any family declaration before the authorities concerned; and in their records it is mentioned as an employee who has not been married. It is the responsibility of the applicant in this case to submit the documents as required for her entitlement to the satisfaction of the concerned authorities. Since the authorities in their letter dated 7.12.2012 have clearly stated that they have not found any single witness or a single documentary evidence to justify the claim of the applicant's marriage, it should be the duty of the applicant to meet the various points that have^{ve} been raised in this letter and submit the required documents in justification of her claim. Therefore, this Tribunal cannot adjudicate on the papers that have been produced before us, since it is for the Respondents, viz., BSNL authorities to first verify regarding the veracity of the claim. The applicant is, therefore, directed to meet the various points mentioned by the Respondents in their letter dated 7.12.2012 and submit the required documents in support of her claim regarding her marriage to the deceased employee. On receipt of such documents, the Respondents will examine the claim of the applicant again and pass a well-reasoned order regarding the admissibility of her entitlement. The applicant should furnish all the required documents within a period of 30 days of the passing of this order and on production of such documents, the Respondent will



examine her claim once again and dispose of this matter through a well- reasoned speaking order within a period of 60 days from the date of receipt of such documents from the applicant. In consequence, therefore, the matter is remanded for further consideration by the Respondents as per the direction given above.

In the result, the O.A. is disposed of with the observation and direction as made above. No costs.


(R.C.MISRA)
MEMBER(A)

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