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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 191 OF 2010
Cuttack this the 23rd day of April, 2013

Rukshana Bibi...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No
2. Whether it be referred to CAT, PB, New Delhi for circulation or not ? No


(R.C.MISRA)
MEMBER(A)

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

Rukshana Bibi, aged about 38 years, wife of Mallik Khalil, presently working as Helper-II, C.No.184, under Senior Section Engineer, Trimming, Carriage Repair Workshop, Mancheswar, At/PO-Bhubaneswar, Dist-Khurda

...Applicant

By the Advocate-M/s.B.S.Tripathy
M.K.Rath
J.Pati

-VERSUS-

Union of India represented through

1. The General Manager, East Coast Railways, Rail Vihar, At/PO-Chandrasekhpur, Bhubaneswar, District-Khurda
2. The Chief Workshop Manager, East Coast Railways, Carriage Repair Workshop, At/PO-Mancheswar, Bhubaneswsar, Dist-Khurda
3. The Workshop Personnel Officer, East Coast Railways, Carriage Repair Workshop, At/PO-Mancheswar, Bhubaneswar, Dist-Khurda
4. The Sr.Asst.Financial Advisor, Carriage Repair Workshop, E.Co.Railway, Mancheswar, At/PO-Mancheswar, Dist-Khurda

...Respondents

By the Advocates:Mr.P.C.Panda
M/s.M.R.Mishra
R.B.Sinha
S.Wanda
G.S.Rana
Md.Immadnudin
(For intervenor)

ORDER

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

Applicant has approached this Tribunal in this Original Application with a prayer that the order dated 5.4.2010 of the East



Coast Railway, which is an advice for stoppage of family pension payable to her may be quashed. This order has been filed as Annexure-A/4 to the O.A.

2. The facts of the matter in short are that the applicant's husband while working as Painter, Gr.I in the East Coast Railways died in harness during the year 1993. The applicant being the legally married wife was receiving the family pension and she also was provided with a compassionate appointment on 28.10.1994 as Khalasi Helper in the East Coast Railway. The case of the applicant is that she had three major sons at the time of the death of her husband. The railway authorities sent a show cause notice dated 26.2.2010 to the applicant on the ground that one of her sons had alleged that the applicant did not look after her sons and was not providing them any financial help. In reply to the said show cause, the applicant intimated the railway authorities that three sons being major were leading their independent lives and she has been compelled to get married for the 2nd time. Thereafter, the applicant received a letter dated 5.4.2010 intimating that amount of family pension which was being paid in her favour would be stopped immediately and the total amount of family pension that was paid to her since 6.7.2003, i.e., the date of her re-marriage, would be recovered from her. These are the contents of Annexure-A/4, a letter issued by Sr.Assistant Financial Advisor, East Coast Railway to the Manager, India Overseas Bank, with a copy to the applicant.



3. In the O.A. , it has been alleged by the applicant that the stoppage of her family pension and the recovery of the same are illegal and arbitrary and that she has not been given any prior notice in this regard. The applicant has further stated that it is a fact that she got remarried on 6.7.2003, but on the very next date, i.e., on 7.7.2003, she divorced her 2nd husband and subsequently, again got married to one Mallik Khalil on 16.3.2008. She has also stated that the allegation made by her son about non-maintenance is false since she has paid a sum of Rs.4,00,000/- to her son by taking a loan from the Bank.

4. Respondents in their counter affidavit have mentioned that the applicant is the widow of late Mirza Samed Baig who worked as Painter, Gr.I and expired while in service on 7.9.1994. Consequently, the applicant was given family pension and she was also given a compassionate appointment on 28.10.1994. Subsequently, a complaint was received from her son Mrja Husen Baig alleging that she was not looking after the family of the deceased railway employee. It was also alleged that she had entered into a 2nd marriage. On receiving the complaint, Respondents served a show cause notice on the applicant on 26.2.2010 and the applicant submitted her reply on 9.3.2010 along with an affidavit which was sworn on 7.3.2010. In the reply to the show cause it was mentioned by the applicant that she had re-married for the first time on 6.7.2003 and again after divorce remarried on 16.3.2008. The Respondents considered that after her remarriage on 6.7.2003, the



applicant had lost the status of widow of her deceased husband, Mirza Samed Baig, the deceased railway employee and consequently, also lost her eligibility to draw family pension from the date of her remarriage under the provisions of relevant Pension Rules. Since the explanation of the applicant was not satisfactory, the total amount of family pension paid from the date of her remarriage was directed to be recovered. The Respondents have further submitted that under the Railway Services (Extraordinary Pension) Rules, 1993, the period for which family pension is payable shall be in case of a widow or widower up to the date of death or remarriage, whichever is earlier. Part-III of the Pension Payment Authority issued to the applicant in respect of her family pension has also been filed at Annexure-R/1, in which it has been specifically mentioned that the family pension would be paid till the date of death or remarriage, whichever is earlier. In terms of these provisions, a case made out in the counter is that the family pension in favour of the applicant cannot be admissible from the date on which she loses the status of widow of the deceased railway employee. Accordingly, the family pension has been stopped and also recovery ordered from the date on which she got remarried.

5. It is also seen that the children of the deceased employee had through their counsel filed an intervention petition in which it has been alleged that the applicant, on receipt of her family pension from the Respondents has not cared to look after the children who are the interveners and also married as per her choice.



6. It is seen from the record that on 23.11.2012, when this matter was taken up for hearing, neither the applicant nor her counsel was present. Mr.P.C.Panda, learned counsel for the Railways submitted on that date that Shri B.S.Tripathy, learned counsel for the applicant had informed him that the file had been returned back to the applicant. Since the conducting counsel was absent on that date, the matter was put up to next week with orders to inform the applicant by post. Again on 18.3.2013, when the matter was taken up for hearing, none was present for the applicant and it was observed that perhaps the applicant was not interested to pursue this O.A. Even then, another opportunity was given to the applicant as last chance to be present by herself or through her counsel and the case was posted to 22.4.2013. It was also made clear that on the next date of hearing, if none was present for the applicant the matter would be decided on the basis of record after hearing the learned counsel for the Respondents. Further, ^{it} was directed that a copy of this order should be sent to the applicant by Speed Post. The order was implemented but the Speed Post returned un-served with postal remarks "no such addressee". Thereafter, the case has been posted to 22.4.2013 for hearing, when again no one for the applicant has appeared and only the learned counsel for the Respondents is present and has been heard.

7. Heard Shri P.C.Panda, learned counsel for the Respondents and perused the materials on record. It is seen that except the documents which have been discussed in the preceding paragraphs,



no other document has been filed either by the applicant or the Respondents. The affidavit of the applicant clearly states that she has got remarried and lost the status of widow of the deceased railway employee. She has further mentioned that after remarriage also she has got divorced and again remarried. But for these claims no other document has been filed before this Tribunal. The Respondents have filed a copy of the extant rule at Annexure-R/2 and also a copy of the Pension Payment Authority at Annexure-R/1. These documents have been discussed already in the preceding paragraphs. It has been submitted that the period for which family pension is payable shall be in case of a widow/widower up to the date of death or remarriage, whichever is earlier. This stipulation has been reflected clearly in the Pension Payment Authority, copy of which has been filed at Annexure-R/1.

8. Rule-15 (1) of the C.A.T.(Procedure) Rules, 1987 stipulates that "where on the date fixed for hearing of the application or on any other date to which such hearing may be adjourned, the applicant does not appear when the application is called for hearing, the Tribunal may, in its discretion, either dismiss the application for default or hear and decide it on merit".

9. It is found in this case that after repeated opportunities being provided, the applicant did not appear before the Tribunal to press her case. It is, therefore, considered appropriate to decide the case on merit after perusal of the relevant records and upon hearing the

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learned counsel for the appearing for the Respondents.

10. The facts of the case which have been discussed earlier are absolutely clear and there is no ambiguity about the Pension Rules as applicable in the case of widow/widower of the deceased railway employees. The relevant rule stipulates that after remarriage the applicant would lose her entitlement to family pension since she ceases to be the widow of the deceased railway employee. This condition was also clearly stipulated in the Pension Payment Authority. Therefore, the orders issued by the Respondents at Annexure-A/4 stopping the payment of family pension and also ordering recovery of the family pension paid from the date of remarriage on wards are justified fully as per the extant provisions of the rules. Therefore, I do not find any irregularity about this order. The position of facts has also been admitted by the applicant in her O.A. and affidavit and show cause that she had filed before the Respondents.

Accordingly, this O.A. being devoid of merit stands dismissed.

No costs.


R.C. MISRA
MEMBER(A)

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