

In the Central Administrative Tribunal
Jodhpur Bench, Jodhpur

Original Application No. 218/2004
Misc. Application No. 105/2004 and
Misc. Application No. 106/2004
(In OA no. 218/2004)

CORAM :

Hon'ble Mr. G.R. Patwardhan,
Administrative Member

18th March 2005

Nasim Bano W/o Shri Abdul Hafiz
aged 53 years (legally wedded wife of
Abdul Hafiz, retired Diesel Assistant under
respondent no.3) by caste Ansari Musalman
r/o H.No. 79, Subhash Chowk, Ratanada, Jodhpur.

.....Applicant.

(By Mr. R.K. Soni, Advocate, for applicant)

Versus

1. Union of India through the General Manager,
North West Railway, Jaipur.
2. The Divisional Railway Manager,
Jodhpur Division, North West Railway, Jodhpur.
3. The Divisional Mechanical Engineer (P)
Jodhpur Division, North West Railway, Jodhpur.
4. Sarifa Bibi D/o Noor Mohd. At present resident of
H.No. 79, Subhash Chowk, Ratanada, Jodhpur.
5. The Divisional Railway Manager,
North West Railway, Jodhpur Division, Jodhpur.

(By Mr. G.R. Kalla, Advocate for respondents No. 1 to 3 and 5)
(By Mr. M.A. Siddique, Advocate, for respondent No.4)

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ORDER
(BY THE COURT)

O.A. No. 218/2004 as also M.A. Nos. 105 and 106 of 2004, have been
filed by Nasim Bano describing herself, as widow of late Abdul Hafiz, who retired
as Diesel Assistant, under respondent No. 3, the Divisional Mechanical Engineer

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(P), North Western Railway, Jodhpur. There are three more official respondents – the General Manager, North Western Railway, Jaipur who represents the Union of India, the Divisional Railway Manger, North Western Railway, Jodhpur and the Divisional Accounts Officer, North Western Railway, Jodhpur. The fourth respondent is Sarifa Bibi D/o Shri Noor Mohd. As the issue involved in the O.A. and the M.As are identical, the applications were heard together and this order will take into account the facts and the arguments as also pleadings concerning them.

2. The O.A. has been filed on 2.9.2004, its reply by official respondents on 1, 2, 3 and 5 on 26.10.2004 and by the private respondent No. 4 - Sarifa Bibi on 15.2.2005. A rejoinder mainly about the O.A. has been filed on behalf of the applicant Nasim Bano on 22.2.2005; all are on record.



3. Learned counsels for all the parties have been heard including one for the private respondent No. 4 Sarifa Bibi. Briefly stated, the issue concerns payment of family pension for which the applicant Nasim Bano is a claimant and private respondent No. 4 Sarifa Bibi, is the present recipient. In the O.A. two reliefs have been sought – in paragraph 8, prayer is, that the Pension Payment Order as at Annex. A/1 issued by the official respondents in favour of private respondent No. 4 Sarifa Bibi, should be quashed and set aside and secondly that instead a fresh pension payment order should be issued to grant family pension to the applicant Nasim Bano w.e.f. 16.3.2001. Through paragraph 9 by way of interim relief, it was prayed that during the pendency of the O.A., the effect and operation of the impugned pension payment order should be stayed and payment of pension

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being made to respondent No. 4, be stopped and Railways directed to grant suitable amount of family pension to the applicant provisionally.

4. On interim prayer, the matter was heard on 14.9.2004 when after hearing the learned counsel for the applicant, it was ordered that unless a cause is shown against the prayer of interim relief by the next date, orders would be passed in terms of the prayer. Matter was heard on 28.9.2004 in the presence of the learned counsels for the applicant and the official respondents and it was ordered that they will not disburse any amount of pension to either party. Notices were not getting served on private respondent and after repeated attempts at Jodhpur and Ahmedabad address as given by the applicant, reply was filed by respondent No. 4 on 15.2.2005. The matter was thereafter heard finally on 22.2.2005.



The applicant would like the Tribunal to believe that she is the only legally wedded wife of late Abdul Hafiz, who was working as Diesel Assistant under Railways and in support thereof, copies of following documents have been produced :-

(i) marriage certificate issued by the Shahar Kazi, Jodhpur on 7.4.2000;

(ii) identity card issued by the Election Commission of India on 15.4.1995;

(iii) affidavit filed in the District Court in Civil Misc. Suit No. 93 – A/ 2001 by Abdul Mazid, Shahar Kazi;

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(iv) statement of witness – Sayed Abid Ali, regarding 'Nikaah' of Nasim Bano with Abdul Hafiz on 12.7.1969;

(v) copy of Privilege Ticket Order (P.T.O.) No. 79461 issued in favour of late Abdul Hafiz for journey from Jodhpur to Jaipur for his wife dated 26.2.1980;



(vi) copy of ration card showing name of Abdul Sattar Head of the Family Julekha Begam, his wife, Shahjahan Begam-Daughter, Nasim Bano daughter-in-law and Abdul Hafiz, Son, issued by the rationing authorities of Jodhpur on 23.8.1992;

(vii) copy of another ration card issued on 9.7.2001 indicating Nasim Bano, applicant, as Head of the Family and Sahajahan, Sister-in-law as second member.

6. The applicant on the basis of the documents annexed and described as above, would like the Tribunal to believe that she being the wife of late Abdul Hafiz, is entitled to the family pension and that she has been residing as wife of Abdul Hafiz at the address given in these documents at Jodhpur. As there was no issue born to the applicant, it is alleged the applicant's husband fell into the hands of respondent No. 4 Sarifa Bibi and after the death of her husband on 16.3.2001, an apprehension came to the mind of the applicant that Sarifa Bibi may take the properties of her husband. She, therefore sent two registered notices through her counsel on 31.5.2001 and 27.7.2001 to the official respondents requesting for release of family pension in her favour but nothing happened.

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Thereafter, applicant initiated proceedings against the private respondent under Section 372 of Indian Succession Act for obtaining Succession Certificate from the Court of District Judge, Jodhpur so that she could get family pension. However, in the said proceedings for succession certificate, the Railway respondents submitted pension payment order as at Annex. A/1 on 18.12.2003 and then the applicant for the first time learnt about its existence. The said proceedings before the District Judge were dismissed vide order dated 28.7.2004 (Annex. A/10) for being not maintainable. Under the circumstances, after pursuing the remedy under Indian Succession Act, the applicant approached the Tribunal. The applicant has also said in paragraph 4 (iii) of the O.A. that even presuming for the sake of arguments but not admitting, that respondent No. 4 was also a wife of late Abdul Hafiz, even in that case, it cannot be said that applicant is not the first wife of the deceased. The applicant's husband was entitled to keep four wives but this could be done provided he had obtained permission from the Railway authorities, but performing the second marriage while the first wife – the applicant was alive and to the best knowledge of the applicant, such permission not having been obtained by late Abdul Hafiz, respondent No. 4 enjoys no status excepting that of a mistress and in these circumstances, applicant is entitled to have family pension.

7. The grounds taken in support of the application are as follows :-



(i) On the basis of documentary evidence, it is conclusively proved that applicant is entitled to receive family pension of Abdul Hafiz being his legally wedded wife.

(ii) It seems that respondent No. 4 had succeeded in getting the service record of late Railway employee manipulated

atleast by concealing the fact that applicant was a legally wedded wife of Abdul Hafiz and was very well alive inasmuch as in the year 1980 itself; it is the Railway authorities who had issued the Railway pass for the applicant as the wife of Abdul Hafiz.



(iii) When the entry regarding respondent No. 4 being wife of Abdul Hafiz was made, it was the duty of respondent authorities to have made a proper inquiry as to what had happened to the first wife of Abdul Hafiz who was none but the applicant as the Railway pass was issued for the applicant in the year 1980, when the respondent No. 4 was not at all in picture.

8. Reply filed by the official respondents opposes the prayer on the following grounds :-

- (a) the issues raised are matters of fact which need a thorough inquiry, evidence and adjudication by a competent civil court, hence, this Court has no jurisdiction to entertain the instant matter;
- (b) as per the judgement of District Judge in 93 A/01 under Section 372 for grant of succession certificate under the Succession Act, the applicant instead of filing OA before this Tribunal should have approached a competent civil court for declaration of her right and this Court is not supposed to grant

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such a declaration as the said issue is contentious;

(c) the application is grossly time barred and delay in approaching the Tribunal has not been satisfactorily explained nor sufficient cause within the meaning of law has been made out, therefore, OA deserves to be dismissed as this Tribunal cannot extend the period of limitation in the facts and circumstances of the case;



(d) they have sanctioned family pension to the nominee and no other nominee or a family member was described as such by the deceased Railway employee despite the fact that after taking voluntary retirement, the employee survived for quite some time but nothing was done during his life time to find out the state of affairs;

(e) the interim order passed by this Tribunal is causing hardship to the private respondent and the O.A. may be dismissed as not maintainable;

(f) the deceased Abdul Hafiz took voluntary retirement on 6.5.1998 is admitted but as regards applicant's travelling on Railway pass, it is not borne-out that it related to the present applicant as is evident from Annex.A/5 to the O.A;

(g) the applicant simply mentioned that the Railway pass proved that she is wife of late Abdul Hafiz but how the so called pass had any reference to the applicant vis-a-vis the deceased employee, is nowhere contended;

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(h) the marriage certificate at Annex. A/2 shows that on 12.7.1969 applicant was 18 years and late Abdul Hafiz was 24 years of age, whereas, in the service book, date of birth of the deceased employee is mentioned 2.2.1943 meaning thereby at the time of marriage he was about 26 and half years old. As compared to the age shown in the Election Identity Card, on 1.1.1995 applicant at the time of her marriage, was about 43 and half years old and these are contradictory;

(i) the P.P.O. at Annex. A/1 was issued after the retirement of the deceased Railway employee on 6.5.1998 and on the basis of nomination made by him in favour of respondent No. 4, as wife, pension papers were filled at the time of his retirement;

9. The reply filed by the private respondent No. 4 Sarifa Bibi has opposed the prayer on the following grounds :-

(a) the O.A. filed by the applicant is, hopelessly barred by time;

(b) the contention of applicant Nasim Bano, that she was bonafidely prosecuting the remedy under Section 372 of the Indian Succession Act before the District and Sessions Judge, Jodhpur, is not sustainable as controversy and the relief claimed before that Court, were totally different from the relief claimed in the present application, hence, it cannot be said that applicant was bonafidely prosecuting the case before the learned District Judge;

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(c) the applicant has prayed herein for quashing the Annexure 1 i.e. Pension Payment Order however before the District Court the Suit was for obtaining Succession Certificate;

(d) she is getting family pension since beginning i.e. soon after the death of the Railway employee and the applicant served a notice for demand of justice in May 2001 to the department, as such the O.A. should be dismissed on the ground of limitation itself.



(e) the so called marriage of applicant with the deceased employee is denied for want of knowledge;

(f) the identity card issued by the Election Commission, the affidavit and cross examination of Shahar Kazi, are not to be examined in this O.A. Even if it is admitted for argument sake that the marriage of the applicant was solemnized with the deceased Abdul Hafiz, Identity Card was issued and Shahar Kazi stated favourably in the evidence; this Tribunal has no jurisdiction to interfere in this question of fact as the said issue is to be decided by a competent civil court to determine as to who is the legally wedded wife of the deceased Abdul Hafiz;

(g) so far as the applicant's contention that Late Abdul Hafiz was her husband and she travelled with her on Railway pass is concerned, the same is denied for want of knowledge and also because these facts are not related to

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the present controversy. Had the main issue been like this "who is the legally wedded wife of the deceased then these facts could have been relevant for evidence purposes;



(h) it is wrong to say that applicant for the first time learnt about the PPO on 18.12.2003 as she is getting the family pension since death of her husband and no family pension can be granted without PPO. Therefore, it is wrong to say that the applicant came to know about the PPO on 18.12.2003 only. The contention of prosecuting bonafidely under Sec. 372 of Indian Succession Act, is not sustainable as the relief claimed and the subject matter before the District Court was totally different from the relief and subject matter of the present O.A.

(i) even if for the sake of argument but not admitting that applicant is also wife of late Abdul Hafiz, even then, this Tribunal is not the proper forum for such declaration. So far as the status of respondent No. 4 is concerned, she is legally wedded wife and not a mistress as has been alleged by the applicant. The P.P.O. issued in her favour is not at all unjust, illegal, arbitrary, contrary to law, without jurisdiction or for extraneous consideration with ulterior motive as has been alleged.

10. M.A. No. 105 of 2004 has been filed on 2.9.2004 by the applicant with a prayer to condone the delay in approaching the Tribunal. It is submitted that the applicant was pursuing for succession certificate in the Court of District Judge, Jodhpur and the payment of family pension was also one of the issues agitated

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there. But, the same was dismissed on 28.7.2004. Immediately, thereafter application for obtaining a copy of that order made which could be available only on 7.8.2004 and thereafter, the O.A. was filed in the Tribunal on 2.9.2004. It is submitted that thus, there has been no delay at all in pursuing the remedy and if it is held otherwise, the delay may be condoned and the application decided on merits. A reply to the M.A. has been filed by official respondents 1, 2, 3 and 5 on 3.12.2004. It is urged that the applicant was not legitimately prosecuting her remedy because there was no bar in approaching the Tribunal simultaneously for the purpose and in this view of the matter, there is no reason, the delay why should be condoned?

11. Private respondent, Sarifa Bibi, has also filed reply to this M.A. and has submitted that as she is the legally wedded wife of late Abdul Hafiz, her name appears in the service record as wife and therefore she is receiving family pension under authority duly given by the late employee and it was highly improper for the applicant to approach a civil court to quash the pension payment order and that too in a succession suit.

M.A. 106 of 2004 has been filed by the applicant Nasim Bano with a prayer that the entire service record of late Abdul Hafiz particularly prior to 1981 needs to be called for to ascertain if he had entered the name of the applicant as his wife (emphasis added).

12.. The issues that arise for consideration, in that order, are as follows :-

- i) If late Abdul Hafiz expired on 16.3.2001 and the family

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became entitled for family pension, is the delay in filing of O.A. on 2.9.2004 i.e. after nearly three and a half years, fit for condonation ?

(ii) Were the official respondents justified in issuing pension payment order as at Annex. A/1 indicating date of birth, date of appointment, date of cessation, date of starting of pension and original pension of late Abdul Hafiz and also indicating the name of family pension beneficiary as Sarifa Bibi (respondent No.4) ?

(iii) Do the pleadings taken together disclose unequivocally that the applicant is entitled for family pension through late Abdul Hafiz ?



13. Section 21 of the Administrative Tribunals Act, 1985, dealing with limitation is very clear and even at the cost of repetition needs to be quoted in extenso :-

"21.Limitation

(1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of sub section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been

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commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

NOTE : The phrase "whichever period expires later" comes into play only when sub-sections (1) and (2) both are applicable to the case. [R.Y. Srivastava v. UOI, (1987) 2 ATC 583 (CAT)(All).]



(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

A plain reading of the Section makes it very clear that the cause of action in the instant case accrued immediately at the death of the Railway employee and that was in 2001. The applicant maintains that she is the legally wedded wife and that she started pursuing the matter of family pension when she filed the succession suit that year itself. The order passed by the learned District Judge in July 2004 in para (1) discloses that the applicant prayed for issue of a succession certificate only for the purpose of obtaining family pension and nothing else. There is therefore enough material to presume that the remedy was pursued and that the wrong choice of forum could be un-intentional. The M.A. No. 105 of 2004 is, therefore, allowed and delay condoned.

We may now see if the official respondents had observed the Instructions contained in Railway Services (Pension) Rules, 1993 with regard to determination and authorization of pension and gratuity. Chapter VII of the Rules deals with the modalities of preparation of list of government servants due for retirement on the 1st January and the 1st July of each year, obtaining no demand

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certificate from Directorate of Estates, preparation of pension papers in Form VII by verification of service, calculation average emoluments and obtaining Form VIII from the government servant. Form VIII is a detailed document and the retiring Railway servant is expected to submit two specimen signatures duly attested by a gazetted government servant, three copies of passport size joint photographs with wife to be attested by the Head of the Office, two slips showing particulars of height and personal identification marks, present address, address after retirement and details of family as per Form VI in which relationship of each member of family with date of birth, has to be indicated and later on countersigned by the Head of the Office. The official respondents have placed a copy of PPO at Annex. A/1 and it is found that it has all the details described above as also a joint photograph. Prima facie, therefore, it has to be presumed that the official respondents have gone strictly as per the prescription in the pension rules and have, therefore, come to the conclusion that Sarifa Bibi, respondent No. 4, is entitled for family pension. If this is the conclusion arrived at after going through the exercise as prescribed by rules and nothing except bland statement of malafides and manipulation is made, the Tribunal has little option but to accept that respondent No. 4 is entitled to family pension under Annex. A/1. The official respondents have consistently maintained that their actions in issuing the PPO is based on the material that they have and they are prepared to make amendments should a competent court order accordingly. This eventuality can take place only when, in view of the pleadings, the competent court declares Sarifa Bibi not entitled for family pension or declares the applicant Nasim Bano to be the wife of the deceased Railway servant and so entitled for family pension – two aspects which are beyond the jurisdiction of this Tribunal. In the result, there appears no

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necessity to call for records, as prayed for in M.A. No. 106 of 2004, no individual having been named to have acted with bias or prejudice. This M.A. lacks merit and is, therefore, dismissed.



14. Allegations or statement casting doubt on the legality of a marriage have to be dis-couraged as the general approach is in favour of accepting a marriage as valid. In the instant case, while it is definitely not the job of the Tribunal to pronounce a judgement on the relationship, not much has been said which could be recorded as causing, even some doubt about the status of respondent No. 4 Sarifa Bibi as a nominee of the late employee for receiving family pension. Having said that nothing more is required by way of comment on the actions taken by the official respondents in issuing the P.P.O. as at Annex. A/1. No procedural lapse on their part has been established and, therefore, to that extent, the O.A. lacks merit.

15. The applicant has not been able to establish that she is also entitled for family pension. In the result, the O.A. is dismissed. No order as to costs. Interim stay vacated.

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18.3.23

(G.R.Patwardhan)
Administrative Member

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Copy from
C. J. Smith
for E. J. Smith
Adv
C. J. Smith/N. E. L.

Recd copy
Adv
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C. J. Smith
T. J. Smith
2/1-3-05