

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.298/2007

Date of decision: 4-8-2010

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

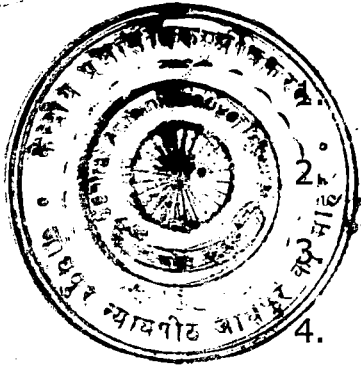
Smt. Naseem Bano w/o late Sh Mohammad Haneef, aged about 45 years, resident of Near Gulsan Market, Behind Bijlighar, Pratap Nagar, Jodhpur her husband was last employed on the post of Senior Diesel Assistant in the office of Senior Section Engineer (Loco) North Western Railway, Jodhpur.

: Applicant.

Rep. By Mr. J.K. Mishra & Mr. A.K. Kaushik,

: Counsel for the applicant.

Versus



Union of India through General Manager, North Western Railway, Jaipur Zone. Jaipur.

Senior Divisional Personnel Officer, North Western Railway, Jodhpur division, Jodhpur.

Smt. Nazma Bano, daughter of Ravaz Ahmed, Kachher-Das Ji Ki Haveli, Mundro Ki Gali, Jodhpur.

4. Ku. Sahina, d/o late Shri Mohammad Haneef, aged 15 years, minor- through her guardian Smt. Nazma Bano, daughter of Ravaz Ahmed, Kachher-Das Ji Ki Haveli, Mundro Ki Gali, Jodhpur.

5. Ku. Shahin Shareen, d/o late Shri Mohammad Haneef, aged 09 years, minor- through her guardian Smt. Nazma Bano, daughter of Ravaz Ahmed, Kachher-Das Ji Ki Haveli, Mundro Ki Gali, Jodhpur.

: Respondents.

Rep. By Mr. Ravindra Singh proxy counsel for

Mr. C.S. Kotwani

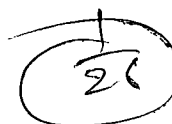
Counsel for the respondents. 1 & 2

Dr. Rakesh Sinha : Counsel for the respondents 3 to 5.

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, Judicial Member.

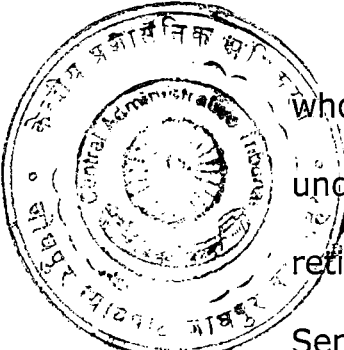
Applicant Smt. Naseem Bano, has filed this application claiming to be the w/o late Shri Mohammad Haneef, who was employed as Senior Diesel Assistant in the office of Senior Section



Engineer (Loco), North Western ⁻²⁻ Railway, Jodhpur. She has claimed the following reliefs:

- (i) that the impugned order dated 27.04.2006 (annex. A-1) may be declared illegal and the same may be quashed. The respondents may be directed to grant the family pension to the applicant and with all consequential benefits including payment of arrears thereof along with market rate of interest.
- (ii) The respondents may be directed to produce the service records of the late government servant for perusal of this court. That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the cost of this application may be awarded.

2. The case of the applicant in brief is as follows:



The applicant is the legally wedded wife of Shri Md. Haneef, who was a railway employee. The said Md. Haneef, joined service under the respondents on 04.08.1973. He took voluntary retirement with effect from 24.07.2003, while holding the post of Senior Diesel Assistant in the office of Senior Section Engineer (Loco), Jodhpur. After retirement, he was granted pension at the rate of Rs. 3452 + R and the family pension was reckoned as Rs. 2279+R as per calculation sheet (Annex. A/3). The said Md. Haneef died on 10.11.2005. In proof of his death, a death certificate dated 23.11.2005 has been filed as Annex.A/4. During his lifetime, while in service, the said Md. Haneef submitted a statement showing the details of family members for the purpose of family pension scheme 1964, which is Annexure A/5. According to the said statement, the family of Md. Haneef comprised of himself, his wife Naseem Bano (applicant herein), two daughters, namely, Kum. Sahina and Ku. Sahin Shareen (respondent Nos. 4 & 5). It is stated that both daughters were

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born to him from his earlier wife, namely, Smt. Nazma Bano (respondent No. 3 herein). It is also stated that late Md. Haneef, divorced Smt. Nazma Bano on 05.11.96 by oral pronouncement of Talak and thereafter by pronouncement of Talak in writing on 11.11.99. After the divorce of Nazma Bano, the said Md. Haneef married the applicant on 27.09.2002.

3. After the death of Md. Haneef, the applicant submitted a representation before the concerned authority for grant of family pension, but the same was not sanctioned for want of succession certificate from the competent court. Meanwhile the first wife of late Md. Haneef (respondent No. 3) also made a claim for grant of family pension and the same was also pending with the authority. The applicant had filed an application for grant of succession certificate before the District and Sessions Court, Jodhpur and the same is pending for adjudication. However, the applicant was advised to file this O.A on the ground that the family pension is a right of widow and it cannot be granted or disbursed on the strength of succession certificate, rather it is a right of widow due to her widowhood and not related with the question of inheritance of the estate of deceased government servant. On the basis of the above pleadings the applicant has filed this application claiming above mentioned relief.

4. On filing of this O.A, notices were issued to the respondents and in compliance of the notice, the official respondents, as well as



the private respondents both ⁻⁴⁻ appeared through their lawyer and filed separate replies.

5. The official respondents in their reply contended that since the applicant as well as respondent No. 3 both filed representations for grant of family pension, claiming to be legally wedded wife of late Md. Haneef, so they directed the applicant as well as the 3rd respondent to produce succession certificate issued by the competent court and in the circumstances of the case, the decision of the official respondents to obtain succession certificate for granting family pension is just and proper. The official respondents have no objection in granting the family pension to either of the party or jointly to both the claimants.

6. In her reply, the 3rd respondent claimed that she is the legally wedded wife of late Md. Haneef. She has also claimed that respondent Nos. 4 & 5 were born to her through the wedlock of Md. Haneef. She has denied the factum of Talak by her late husband Md. Haneef.

7. Heard the learned advocate of both parties and perused the application & its annexures as well as the replies of official and private respondents with their respective annexures.

8. From the perusal of Annex. A/5 of the application it appears that late Md. Haneef had submitted a statement of family members for the purpose of family pension. It appears that in the said

statement, he had shown the applicant Naseem Bano as his wife. He had also shown respondent Nos. 4 & 5 viz. Kum. Sahina and Kum. Shahin Shareen as his daughters. However, it is admitted position that Kum. Sahina and Kum. Shahin Shareen are the daughters of respondent no. 3, born to her through wedlock of Md. Haneef. Thus this documents establishes, beyond doubt that the applicant as well as Nazma Bano both were wife of late Md. Haneef. From both sides, it has been stated that Md. Haneef had divorced both the wives. However, both have denied the factum of Talak and I am of the view that this Tribunal is not competent to decide as to whether the respondent No. 3 Nazma Bano was really divorced by late Md. Haneef and after divorcing her, he married the applicant. There were claim and counter claim that both were divorced. However, from the documents brought on record, it is established beyond doubt, that late Md. Haneef had two wives, i.e. the applicant herein and the 3rd respondent. Under these circumstances, it is just and proper to divide the family pension half and half between the applicant as well as respondent No. 3 for herself and on behalf of her two daughters.

9. During the course of hearing, the learned advocate of the applicant, Mr. J.K. Mishra, had given his consent that he has got no objection if the family pension and other retiral benefits if any of the deceased Md. Haneef, are divided equally between the applicant and respondent No. 3.



10. It further transpires from the ⁶ records that after hearing the arguments and before pronouncement of the order, the learned advocate of private respondents 3 to 5, has also given no objection, if the family pension and any other retiral benefits are divided into half and half among the applicant as well as respondent no. 3.

11. Considering the submissions advanced on behalf of both parties and after going through the relevant documents attached with the application as well as with the reply of the respondents, I am of the view that the best course available in the matter is to divide the family pension and other retiral benefits due to late Md. Haneef, are equally divided half and half between the applicant on the one hand and the 3rd respondent on the other hand who also represents the interest of her daughters (Respondents 4 & 5).

12. Accordingly, this O.A is allowed. The respondents are directed to divide the family pension and other retiral dues of Late Md. Haneef equally, between the applicant and the 3rd respondent for herself and on behalf of her two daughters. i.e. respondent Nos. 4 & 5. It is further ordered that the direction given above shall be complied with by the official respondents within a period of three months from the date of receipt of a copy of this order. No order as to costs.


[Justice S.M.M.Alam]
Judicial Member.

jsv

दिनांक 17/12/10 के आदेशानुसार
मेरी उपस्थिति में दिनांक 11/12/10
को भाग-II व III नष्ट किए गए।

अनुभाग अधिकारी
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर

Recd copy of
order Dt. 10/8/10
Bom.

Received Copy
Gurinder Singh
(Resp. No. 1 & 2)

R/S
19/8/10