

12

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.295/2010

Date of decision:29.11.2011

**HON'BLE Dr. K.B. SURESH, JUDICIAL MEMBER,
HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER.**

Smt. Nazma Wd/o Late Shri Mohd. Ishaq, S/o Late Shri Deen Mohd., aged 65 years, R/o Behind Umaro Khan Petrol Pump, Behind Vishal Mega Mart, Bombay Motors Chauraha, Jodhpur-342003. Husband was Ex.High Skilled Grade I Ticket No.1562/17 under working respondent No.2.

: Applicant

Mr. S. N. Bohra, counsel for applicant.

Versus

1. Union of India through the General Manager, North-West Railways, Hqrs., Jaipur (Rajasthan).
2. Chief Works Engineer, North-West Railway Workshop, Jodhpur-342003.

.....Respondents

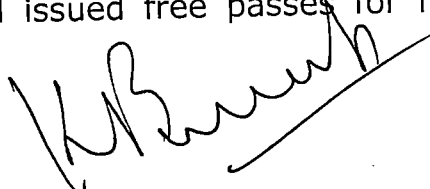
Mr. Salil Trivedi, counsel for respondents.

ORDER (ORAL)

Per Dr. K.B. Suresh, Judicial Member

We have heard both the learned counsels in great detail and examined the pleadings. The matter relates to family pension claimed by the second wife, who attained ~~the~~ the status after the retirement of the deceased employee. The Railway's question is that the right of applicant for claiming the family pension, on the ground that the family as they knew, had become still on the retirement of deceased employee, and, therefore, an addition to it cannot be recognized, and a second wife of the deceased employee cannot be agreed to. But the applicant would say that infact the Railways themselves had issued free passes for her also as a

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79
 result of her husband's employment, while her husband was alive. She produced documents and contemporaneous documents also from the children of the earlier wife, to the extent that she was the second wife of the deceased employee. It is, therefore, of no doubt that the applicant is the second wife of the deceased employee. There appears to be a mentally retarded daughter of the first wife of the deceased employee, who is a youngest child, and is under a sufficient disability, he. & has to share in the pension accrued to her life in accordance with the rules in force.

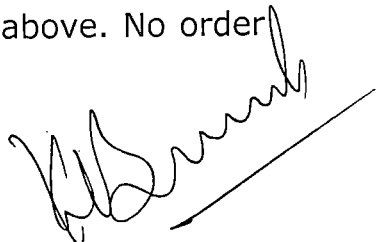
2. The Rule 7(i)(a) of the Railway Services (Pension) Rules, 1993, would state that if the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares, and the sub Rule (ii) would state that if the deceased railway servant or pensioner is survived by a widow, but has left behind eligible child or children from another wife who is not alive, the eligible child or children shall be entitled to the share of family pension which the mother would have received, if she had been alive at the time of the death of the railway servant. This rule we think is applicable to the present case. Therefore, between them the two shares, one half is eligible for applicant, who is the second wife of the deceased, and the second half is eligible for the daughter of the first wife of the deceased employee, who is mentally retarded, namely Ms. Sahanaj Banoo. But then the Railways have a right in accordance with Rules 6 (iii) he. (a), (b) and (c) of periodically verifying he. of the eligibility criteria as stated above. So, therefore, every three years, the Railways shall conduct a medical examination of the mentally disabled daughter

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of the deceased, and issue thereafter a certificate to the effect that the daughter of the deceased continues to suffer from disability, and based on which continued payments shall be made available. The responsibility of producing the mentally retarded daughter of the deceased employee before the Medical Officer during her life time shall be with the applicant, since it is stated that the daughter of the deceased is under the care of the applicant. The applicant shall be treated as a guardian of her, and the amount which Ms. Sahanaaj Banno, who is daughter of the first wife of the deceased employee, is entitled, shall be made available to the applicant, but then such shall be periodically monitored by the Railway Welfare Officers. The Railways have therefore a right of a super guardian, since they are looking after the welfare of the disabled child of the deceased. The Welfare Officers have a right not only to monitor the welfare of the disabled child, but in writing give a direction to the applicant for welfare of the disabled child, this we declare and hold as part ^{of} dynamic justice delivery.

3. The O.A. is allowed to the extent as stated above. No order as to costs.


[Sudhir Kumar]
Administrative Member


[Dr. K.B. Suresh]
Judicial Member