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CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI
CIRCUIT BENCH LUCKNOW.

J.A.NO. 240 of 1990.

Baij Nath Prasad Gupta Applicant
Versus
Union of India & Others Respondents.

Hon'ble Mr.D.K.Agarwal, J.M.

Hon'ble Mr.K.Joaya, A.M.

(Hon'ble Mr.D.K.Agarwal, J.M)

This application under section 19 of the Administrative Tribunals Act 1986 is directed against refusal of the Railway Administration to grant family pension to applicant No.2, who got married with the applicant No.1 after retirement of applicant No.1.

Briefly, the facts are that Sri B.N.Gupta retired Chief Engineer, N.E.Railway, Gorakhpur who has since expired married Smt. B.N.Vijaya Gupta (applicant No.2) after retirement and claimed that order for payment of family pension be made in her favour. The Railway Administration refused to do so in view of the provision contained in sub rule 14, Clause (b) in sub Clause(I) and sub clause (Ia) of Rule 54 of Central Civil Services(Pension) rules, 1972 which provided that if the marriage takes place after retirement of the Government servant, the benefit is not admissible to the widow of a retiring government servant. The Hon'ble Supreme Court in Smt. Bhagwati -Vs- Union of India (AIR 1989 S.C. 2088), however laid down that the

Dr Agarwal

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words " provided the marriage took place before the retirement of the government servant " in clause (I) is ultravires of Article 14 of the Constitution of India and struck the said clause accordingly. The learned counsel for the opposite parties has placed before us a notification No. 1/87/89 dated 12.11.90 issued by Govt. of India, Ministry of Personnel, Public grievances & pensions, Deptt. of Pension & Pensioners welfare whereby the words " provided the marriage took place before the retirement of the government servant" have been omitted from sub rule in clause (b) in sub clause (i). Thus the widow of a government servant after the death of the retiring government servant even if the marriage took place after retirement becomes entitled to family pension. The learned counsel for the opposite parties has also brought to our notice that a notice to this effect has been issued to Sri. B.N.Gupta dated 1.1.1991 to complete the formalities. The learned counsel for the applicant stated before us that such an intimation has not been received by applicant No.2 nor it was received by applicant No.1 before his death, which took place sometimes back. The learned counsel for the opposite parties has fairly agreed to supply the copies to the learned counsel for the applicant to facilitate the applicant No.2 to complete the formalities at an early date. The applicant No2, accordingly has to submit the documents as required in the letter issued by F.A. & C. (Pension) Gorakhpur dated 1.1.91. However, we hereby make it clear that in case the joint photograph is not available the same shall be dispensed with or the applicant be permitted to use Annexure 7 to the claim petition.

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(Photo stat copy) for the purpose of furnishing a joint photograph and marks of identification and the Railway Administration will deem it to be sufficient in view of the death of the husband of the applicant No 2. In case the joint photo is available the applicant No.2 may submit the same. We also direct that the Railway Administration shall issue order for payment of family pension within 30 days of the submission of papers by applicant No. 2 in the office of P.A. & C.A.O. (Pension), N.E. Railway, Gorakhpur. The parties are left to bear their own cost.

[Signature]
A.E.

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J.M. 7.1.91.

Dated: 7.01.1991,

Lucknow.

A.S.H.