

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

ORIGINAL APPLICATION No. 285/LKO/2010

Reserved on 08.02.2013

Pronounced on 2.4.2013

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

1. Smt. Chandrawati wife of Late Shri Mallu.
2. Tej Narain Singh, son of Late Mallu
3. Raj Narain Singh, son of Late Mallu.

(All resident of 1375/5, A Block Indira Nagar, Lucknow).

-Applicants

(By Advocate: Shri V.S. Tripathi)

Versus

1. Union of India through Secretary Railway Department, New Delhi.
2. The Divisional Railway Manager, (D.R.M. Northern Region) Hazaratganj, Lucknow.
3. The Assistant Works Manager, (AWM) Carriage and Wagon Works Shop, Northern Railway Alambagh, Lucknow.

-Respondents

(By Advocate: Shri B.B. Tripathi, for Respondent No.1 to R-3 and Shri S.K. Gupta R-4 & R-5)

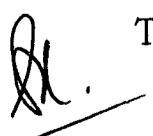
O R D E R

This OA has been filed by three applicants claiming *late* to be the legal representatives of Shri Himmat Lal, son of

Late Shri Mallu. Their grievance is that the respondents are not making payments of the deceased Railway Servant's retiral dues like Group Insurance, Provident Fund, Gratuity etc. to them, and have prayed for issuance of directions upon the respondents for payment of such retiral dues to them. Applicant No.1 is the mother of the deceased, and the applicants No.2 & 3 are the brothers of the deceased.

2. The deceased Late Shri Himmat Lal son of Late Shri Mallu was a Mechanic Grade-I in the Railways, and expired on 19.12.2008. Soon after his death, the applicants of this OA, with Applicant No.1 being nominee of the deceased in his service records, moved an application through Annexure A-2 dated 24.03.2009 for payment of his retiral dues to them. After pursuing their case for some time, they came to know that the respondents are likely to make payment of the retiral dues of the deceased to some other person, who was not a nominee in the service records of the deceased Railway servant, and, therefore, they issued a legal notice dated 21.10.2009 (Annexure A-3) to the official respondents.

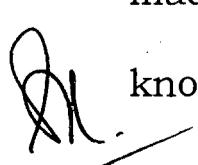
Their grievance is that the Applicant No.1 being nominee



of the deceased, as recorded in the service records, they alone are entitled for payment of all the retiral dues of the deceased Railway servant, along with 24% interest on the amount from the due date till the date of actual payment, and have taken the ground that the actions of the opposite parties respondents, in not making payment due to them, are illegal, arbitrary and malafide. In the result, they have prayed for the following reliefs:-

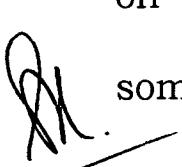
- i) that this Hon'ble Tribunal may be pleased to direct the opposite parties to make payment of all the retiral dues of Late Himmat Lal like Gratuity, Provident Fund, Insurance etc. to the applicants forthwith.
- ii) that this Hon'ble Tribunal may be pleased to direct the respondents to make payment of 24% interest p.a., on entire due amount from due date till the date of actual payment.
- iii) any other order or direction which this Hon'ble Court/Tribunal may deem just and proper under the circumstances of the case.
- iv) allow this application with costs".

3. Soon after the filing of this OA on 18.01.2010, on 02.02.2010, an application was filed by one Smt. Asha Singh, wife of the deceased Railway Servant, and Abhinandan Singh, minor son of the deceased. They had prayed that the applicants of the present OA had not made them party to the Original Application, despite knowing fully well that they are the legally wedded wife



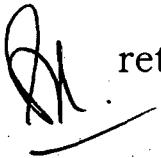
and the minor son of the deceased Railway Servant. It was claimed that being the legally wedded wife and the minor son of the deceased Government servant, she and her son were entitled for getting all the service benefits of Late Shri Himmat Lal, like gratuity, Provident Fund, Insurance etc., and they had, therefore, prayed for being impleaded as opposite party-respondents in this OA, for a proper adjudication of the case. It was also submitted that as the legally wedded wife, she is also entitled to compassionate appointment under Dying in Harness Rules, in place of the deceased Government servant, in addition to settlement of all the financial dues in her favour. This impleadment application filed by the wife and the minor son of the deceased later came to be allowed on 18.03.2010, after considering the objection/counter affidavit for impleadment application that had been filed by the applicants of the OA on 11.03.2010.

4. Thereafter, on 07.04.2010, a counter affidavit was filed on behalf of the newly impleaded opposite party respondents/Respondents No.4 & 5. It was admitted that after her wedding with the deceased Railway Servant on 09.12.1996, due to some family dispute, after sometime the Respondent No.4 had started living with



her parents, and the deceased had filed a divorce case Under Section 9 of the Hindu Marriage Act before the Family Court, Lucknow (R.S. No.146 of 1998), but which later came to be dismissed on 07.04.2000, due to non-prosecution. A parallel case for maintenance had also been filed by the Private Respondent/Respondent No.4, bearing Case No.34/99 before Civil Judge (Senior Division), Balrampur, but afterwards, with mutual consent, a compromise had been reached, and the Private Respondent/Respondent No.4 wife of the deceased had returned to her husband's house, and an application for compromise had also been prepared for being filed in the case No.34/99, but when the deceased was no more, that case for maintenance was dismissed due to non-appearance of the parties concerned. The Private Respondents had produced copies of the Court's orders dated 07.04.2000, and the compromise application as Annexure CA-1 & CA-2 of the counter affidavit filed by them.

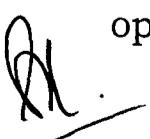
6. It was, therefore, submitted that in the absence of any dissolution of their marriage, and since she was living with the deceased at the time of his death, her claim as family of the deceased, and eligible to get all retiral dues and pension of the employees, is covered by



Sections 5 & 74 of the Railway Service (Pension) Rules 1993 (copies filed as Annexure CA-3 & CA-4 of the counter affidavit). It was further submitted that the applicants of the OA have filed the present O.A. on the basis of concealment of facts regarding the marriage of Private Respondent/Respondent No.4 with the deceased, which has not been mentioned in the O.A. anywhere, nor have the names of the wife and the minor son been mentioned anywhere in the OA. It was submitted that any nomination made before marriage automatically gets repelled after the marriage, and when the legally wedded wife and minor son are alive, they are entitled to all the dues like family pension, retiral dues and also compassionate appointment.

7. In view of the above, it was prayed by the Private Respondents/ Respondents No.4 & 5 that the retiral dues may not be paid to the applicants of the OA, and that the OA may be dismissed in the interest of justice.

8. Thereafter, the applicants of the OA filed a fresh compilation of the OA on 06.07.2010, including the names of the wife and the minor son of the deceased as opposite party respondents/Respondents No.4 & 5, but



still they did not amend any other portions of their pleadings in the original OA.

9. The official respondents filed their counter reply on 13.08.2010. It was submitted therein that after the marriage of an employee, the nomination given by him before the marriage is of no legal consequence. It was also disclosed that the deceased employee had first married one Smt. Anita Rani in the year 1989, and, thereafter, in the year 1992 Smt. Anita Rani filed a suit under Section 13 of the Hindu Marriage Act, and the said suit was decreed on the basis of mutual consent on 05.08.1992 by the Family Court, Lucknow through Annexure CR-1. The deceased employee had no issue with his first wife, and thereafter he had got married a second time to the Private Respondent/Respondent No.4 in the year 1996, and out of that wedlock, one son, private respondent No.5 was born. It was submitted that since Respondent No.4 is the legally wedded wife of the deceased, and she also has a son, therefore, as per the Railway Rules in this regard, she is entitled for all the service benefits of the deceased employee as per law, and in the said situation, any nomination made by the deceased employee at the time of his initial appointment,



and prior to his marriage, is of no consequence whatsoever.

10. It was also submitted that applicants No.2 and 3, who are major, and are only brothers of the deceased employee, have actually got no *locus standi* to file the instant OA, and, therefore, the OA suffers from the *vice* of misjoinder of necessary parties, and deserves to be dismissed on that ground alone. It was submitted that the applicants of the OA cannot be held to be entitled for the service benefits of the deceased employee, as they cannot be termed as family members of the deceased, especially in the circumstances when the deceased had left behind his wife and one minor son. It was submitted that even the legal notice sent to the official Respondents by the applicants of the OA was misconceived, particularly because all the applicants of the OA were fully aware that the deceased employee had left behind his family in the form of his wife and one minor son, who were legally entitled for grant of service benefits after his death. It was further pointed out that after the death of the deceased railway servant, a detailed enquiry had been conducted by the Welfare Department for making the payment of the service benefits of the deceased



employee, and the statement of the applicants of the OA, as well as all others, were also recorded, and, therefore, it was prayed that in the circumstances of the case, the applicants of the OA are not entitled to the reliefs as prayed for by them, and the O.A. deserves to be rejected.

11. Thereafter, the applicants of the OA filed a rejoinder affidavit on 28.04.2011, along with an application for condonation of delay in filing the rejoinder-affidavit. In this it was submitted that the Private Respondent/Respondent No.4 had resided mostly with her parents only during the life time of the deceased Railway servant, and after his death also, and as such, she is not entitled for claiming the retiral dues of the deceased government servant. It was also submitted that the private respondent/Respondent No.4 lived with the deceased only for a period of about three months, and during this period also her behaviour towards her husband and other family members was not good, and then she had started residing with her parents.

12. It was also submitted that no compromise had ever been reached between the deceased and his wife, private respondent No.4, and, therefore, as nominee on record of



the deceased, the applicants alone are entitled for all the retiral dues of the deceased. It was, therefore, prayed that when the employment of the deceased Railway servant Sh. Himmat Lal itself was on compassionate grounds after the death of his father late Shri Mallu during the tenure of his service, and since at that time applicant No.1, wife of late Shri Mallu was the preferential candidate to get compassionate appointment, but it was only after considering the family circumstances that the name of the deceased Himmat Lal, the younger son, was proposed in place of his mother Smt. Chandra Wati for compassionate appointment, and, therefore, she was now entitled to all the retiral benefits, and that the private respondents/Respondent Nos.4 and 5 were not at all so entitled to. Another Application was filed praying for summoning the original official service records of the applicant.

13. A separate rejoinder-affidavit was also filed by the applicants in reply to the counter-reply filed by the official respondents/Respondents No.1-3 on 03.05.2011, more or less reiterating the same contentions, and pointing out that since the Private Respondent/Respondent No.4 had gone away to live with



her parents, and did not perform her marital obligations with the deceased during his life time, and had even filed a maintenance case u/s 125 Cr.P.C. bearing Crl. Misc. Case No.146/98, there was no reason or occasion for the nomination of the Private Respondent No.4 to be presumed to have been made in service records, and that she had no right to get retiral dues of the deceased. It was submitted that in the absence of the specific nomination, she was not entitled to claim any retiral dues of the deceased, more so because her behaviour towards the deceased was not good.

14. Thereafter, a supplementary counter affidavit was filed on behalf of official respondents on 15.07.2011. It was submitted that only if the legally wedded wife or the children of the deceased Government servant are not alive, then only the nomination made by the deceased employee at the time of his initial appointment prior to his marriage, would be allowed to stand, which was not the case in the instant case. It was also pointed out that the retiral benefits of the deceased employee had since been already paid in favour of his legally wedded wife, as per the Rules. It was, therefore, reiterated that the applicants of the OA are not entitled to the payment of



the retiral benefits of the deceased, in spite of the applicant No.1 being the mother, and further that the applicants No.2 & 3 being the brothers of the deceased, have no *locus standi* in the matter whatsoever.

15. The applicants thereafter filed a supplementary rejoinder affidavit on 09.09.2011, more or less reiterating their contentions already submitted in the earlier pleadings. They had objected to the official respondents having already paid the retiral dues to the Private Respondent No.4, and had submitted that it was done in collusion with each other, and the original records were, therefore, again prayed to be called for. The present original application was once dismissed in default, and for non-prosecution on 22.11.2011, but was later restored through orders dated 16.03.2012.

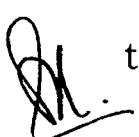
16. The arguments were heard in detail on 08.02.2013. During the course of arguments, the learned counsel for the applicants submitted that in partial modification of the prayer at para 8(1) of the OA, he is confining his prayer only for the payment of all the retiral dues of the deceased Late Sh. Himmat Lal, like gratuity, PF, Insurance etc. only to the applicant No.1, the mother of the deceased Government servant, and is giving up the



claim on behalf of the applicants No. 2 & 3, brothers of the deceased. He also submitted that even from the side of the applicant No.1 also, he is not pressing any claim for any portion of the family pension payable to the family of the deceased, which, it transpired during the hearing, had already been sanctioned in favour of the Private Respondent/Respondent No.4, as the legally wedded wife of the deceased. The official respondents, in-turn, submitted the original file, as well as copies of the Railway Services (Pension) Rules, 1993, and the Rules concerning grant of Family Pension. The learned counsel appearing on behalf of the Private Respondents/Respondents No.4&5 submitted a copy of the judgment of Allahabad High Court in **Abdul Samad Khan vs. State of U.P. & Others (2010) 3 UPLBEC 2586.**

17. I have given my anxious consideration to the facts of the case.

18. By having given up some portions in the prayer portion, and having confined the prayer only for payment of all the retiral dues of the deceased last Shri Himmat Lal like Gratuity, Provident Fund, Insurance etc. only to the applicant No.1, the mother of the deceased, the



applicant had tried to come out of the rigours of the Railway Services (Pension) Rules-1993, cited by the respondents, under which the pension is admissible only to the family of the deceased, and has since been sanctioned to the legally wedded wife of the deceased.

Under Rule-54 (6) & (8) of the Railway Services (Pension) Rules, the question of 'As to whom the pension is payable' has been laid down as follows:-

"Except in cases, where the deceased is survived by (i) more than one widow; or (ii) one widow and children through another wife already expired; or (iii) twin children, the family pension is payable to only one member of the family at a time. It is first payable to the surviving widow/widower till her/his death or remarriage, whichever is earlier, and thereafter to eligible children one by one in the order of their birth, irrespective of their sex".

19. However, in the same Rule-54, it has also been mentioned that if the deceased does have a family, and only has dependent parents, and if both parents are alive, the pension will be paid first to the mother, and after her death to the father of the deceased. However, here the deceased Government servant was not the only bread-earner in his parental family, and was not the only person supporting the applicant No.1, the mother of the deceased. It is clear that the other brothers, who are co-applicants in the OA, have also been supporting her.



20. Section-18 of [The] Hindu Adoption and Maintenance Act, 1956, lays down the obligations of a Hindu to maintain his wife in the following terms:-

"18. Maintenance of wife.-

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or willfully neglecting her.

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injuries to live with her husband.

(c) if he is suffering from a virulent form of leprosy.

(d) if he has any other wife living.

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine elsewhere.

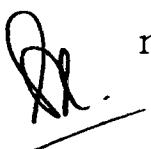
(f) if he has ceased to be a Hindu by conversion to another religion.

(g) if there is any other cause justifying living separately.

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion".

21. A plain reading of the Section-2 of the above Section

makes it clear that even if an averment made by the



applicants, that the private Respondent/Respondent No.4, the wife of the deceased, was staying separately from her husband for sometime, her rights as a Hindu wife do not get forfeited in any manner whatsoever, unless the conditions in sub-section (3) of the above Section are fulfilled, which is not the case of the applicants in this case. In respect of parents the Section-20 of the said Hindu Adoption and Maintenance Act, 1956, states as follows:-

"20. Maintenance of children and aged parents-

(1) Subject to the provisions of this section a Hindu is bound, during his or her lifetime, to maintain his or her legitimate or illegitimate children and his or her aged or infirm parents.

(2) A legitimate or illegitimate child may claim maintenance from his or her father or mother so long as the child is a minor.

(3) The obligation of a person to maintain his or her aged or infirm parent or daughter who is unmarried extends in so far as the parent or the unmarried daughter, as the case may be, is unable to maintain himself or herself out of his or her own earnings or other property".

22. Both these Sections are applicable during the life of a Hindu, which the deceased Government servant was. After his death, the case gets covered under the Railway Services (Pension) Rules-1993, in which under Rule-70 (5), the term "Family" in relation to a Government servant has been defined for the purposes of the determination of



the Retirement gratuity or death gratuity under Rule-70, and for the purpose of Persons to whom gratuity is payable under Rule-71, Debarring a person from receiving gratuity under Rule-72, Lapse of death-cum-retirement gratuity under Rule-73, and Nominations under Rule-74 of the said Rules.

23. The limited surviving case of the applicant No.1 is that the deceased had nominated the applicant No.1, his mother, as a nominee at the time of his initial confirmation in service, in the prescribed format under Rule-74 of the Rules. It is clear from the pleadings that the deceased was not married at that point of time. Sub-rule-(1) of Rule-74 of the Rules states as follows:-

“74. Nominations

“(1) A railway servant shall on his initial confirmation in a service or post, make a nomination in Form 4 or Form 5, as may be appropriate in the circumstances of the case, conferring on one or more persons the right to receive the death-cum-retirement gratuity payable under rule 70.

Provided that if at the time of making the nomination-

- (i) the railway servant has a family, the nomination shall not be in a favour of any person or persons other than the members of his family; or



(ii) the railway servant has no family, the nomination may be made in favour of a person or persons, or a body of individuals, whether incorporated or not".

24. This gets qualified by Sub-Rule (4) of Rule-74, which states as follows:-

"(4) The nomination made by a railway servant who has no family at the time of making it, or the nomination made by a railway servant under the second proviso to clause (i) of sub-rule (3) where he has only one member of his family shall become invalid in the event of the railway servant subsequently acquiring a family, or an additional member in the family, as the case may be".

25. Therefore, as soon as the deceased had got married the first time, and later for the second time to the private Respondent/Respondent No.4, the original nomination made by him in favour of his mother at the time of his initial confirmation in service had become invalid, since with marriage he had acquired a family. The Rule-71 of the said Rules clearly lays down that the gratuity amount shall be payable under Rule-70 to the person or persons on whom the right to receive the gratuity is conferred by making a nomination, but when the said nomination becomes invalid by the operation of sub-rule-4 of Rule-74, the right to receive the gratuity, remains with the wife. The obligations which the



deceased may have had towards his mother during his life time under the Hindu Adoption and Maintenance Act, 1956, do not affect the operation of the sub-rule (4) of Rule-74 of the Railway Services (Pension) Rules, by virtue of which the private Respondent/Respondent No.4 alone is eligible for receipt of all the retiral benefits of the deceased.

26. It is seen that a ratio on the same lines has been laid down in a case arising out of General Provident Fund (Uttar Pradesh) Rules, 1985 by the Hon'ble Allahabad High Court, Lucknow Bench in the case of **Abdul Samad Khan vs. State of U.P. and others [(2010) 3 UPLBEC 2586]** in which in a parallel rule, Rule-5 of the General Provident Fund (Uttar Pradesh) Rules, 1985 prescribed in sub-rule 5 (b) of Rule-5 as follows:-

“(b) The nomination shall become invalid in the event of the happening of a contingency specified therein :

Provided that if at the time of making the nomination the subscriber has no family, he shall provide in the nomination that it shall become invalid in the event of his subsequently acquiring a family”.

27. Therefore, in the light of the case law as cited, and on a careful perusal of the official records, and looking



into the factual circumstances, Laws, and the prevalent Rules in this regard, I find that the official respondents have acted lawfully and correctly in having decided the way they have arrived at their decision, and have disbursed the retiral dues of the deceased Government servant to his wife. Therefore, I find no merit in the OA, and the same is rejected, but there shall be no order as to costs.



(SUDHIR KUMAR)
MEMBER (A)

cc.