

116

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH, LUCKNOW

Original Application No. 254 of 1991

Smt. Keola . . . . . Applicant

Versus

- 1. Union of India through Secretary, Ministry of Railways, New Delhi.
- 2. The Deputy Chief Mechanical Engineer, Carriage and Wagon Workshop, Rly. Alambagh, Lucknow. . . . . Respondents

Hon'ble Mr. S.N. Prasad, Member (Judicial)

( By Hon'ble Mr. S.N. Prasad, J.M.)

The applicant has approached this tribunal for directing the respondents no. 2 to sanction family pension as per the Family Pension Rules with effect from October, 1986 and to pay all consequential benefits.

2. Succinctly, the facts of this case inter-alia, are that the deceased husband of the applicant namely Sri Gangu who was working under the respondent no. 2 bearing ~~XXXXXXXX~~ ticket NO. Ex.4903, was retired on 1.7.85 and was getting pension as per rules. The said Gangu died on 27.9.86 at Delhi and left behind him, the applicant who is the widow and who is not capable to maintain herself.

3. Main grievance of the applicant is that despite her best efforts she was not granted pension by the authorities concerned and her prayer for granting pension was rejected by the respondent no. 2 as per order dated 29.3.1988 (Annexure-5) on the ground that since the <sup>Gangu</sup> deceased had not declared <sup>the applicant</sup> as his wife during the 1 time, and since the aforesaid Gangu declared that he had only one son namely Shiv Kumar and if the applicant

2

that she should be granted family pension then in that case she made array Union of India and aforesaid Shri Shiv Kumar as party in <sup>~ Competent ~</sup> Civil Court and file the succession Certificate granted by the <sup>~ Competent ~</sup> Civil Court to this effect in her favour.

4. The claim of the applicant has been resisted by the respondents with the contentions, inter-alia, as set out in the counter-affidavit, filed by the respondents that since the aforesaid deceased Gangu while giving statement of his family details on 24.12.82 had not disclosed the applicant as his wife, but had stated that his wife <sup>^ was ^</sup> / not alive; the applicant is not entitled to get pension, and it has further been contended that as per the above declaration dated 24.12.82 the wife of the aforesaid Gangu had already died and the claim of the applicant that she is the widow of the aforesaid Gangu being contrary to the records (vide annexure-B-1 to the C.A.), the application of the applicant is liable to be dismissed.

5. The applicant has filed Rejoinder-affidavit wherein it has been stated that on 24.12.82 the aforesaid Gangu's family comprised of himself, his wife Smt. Keola (applicant in the present case) and his son Shiv Kumar and his daughter Sushila; and since the applicant Smt. Keola had filed a case under section 125 of the Criminal Procedure Code, bearing case no. 424 of 1978 against her husband (aforesaid Gangu) and since that case was decided in her favour

on 18.4.1981, and after having been aggrieved by the above judgement <sup>~ and order ~</sup> dated 18.4.81, the aforesaid Gangu had filed a Criminal Revision No. 302 of 81 and that revision was dismissed on 13.3.85 (Certified copy thereof is Annexure-E) and that is why the aforesaid Gangu had concealed this material fact and had given wrong statement on 24.12.82 as would be <sup>~ obvious ~</sup> from perusal of (Annexure -B,C,D and E to the rejoinder-affidavit) and alongwith rejoinder-affidavit, the affidavit of the aforesaid Shiv Kumar and Shushila have also been filed as Annexure A-1 and A-2 respectively to the rejoinder-affidavit to the effect that they have no objection and family pension be given to the applicant Smt. Keola.

6. I have heard the learned counsel for the party at length and have thoroughly gone through the records of the case.

7. The learned counsel for the applicant while drawing my attention to the contents of the application and to the contents of the rejoinder-affidavit and papers annexed thereto, has argued that Annexure-B to <sup>E</sup> the rejoinder-affidavit clearly go to show that the aforesaid applicant Smt. Keola Devi and aforesaid Shshila Devi <sup>~ had ~</sup> filed a criminal case <sup>~</sup> No. 424 of 78 against the aforesaid Gangu for granting maintenance to them under section 125 of the Cr.P.C. as being widow and daughter respectively of the aforesaid Gangu, and since they were neglected <sup>~ by the said Gangu ~</sup> and were not able to maintain themselves, they were allowed maintenance to the tune of Rs. 50/- per month each, to Smt. Keola wife of Gangu Rs. 50/- per month to Sushila daughter as per order <sup>~</sup> dated 18.4.1981 passed by ~~.....~~



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the then special Magistrate Lucknow, Shri D.P. Gupta, and revision which was filed bearing criminal revision no. 302/81 by the aforesaid Gangu against the aforesaid Smt. Keola and Km. Sushila and others, was dismissed by the High Court <sup>of Judicature at</sup> Allahabad on 13.3.1985, which clinches entire matter and fully establishes that the applicant is widow of the aforesaid Gangu, and has further argued that due to strained relation between aforesaid Gangu and applicant Smt. Keola at that time due to aforesaid litigation, the aforesaid Gangu had given wrong statement and had wrongly and maliciously stated that his wife had expired and had ~~also~~ <sup>even</sup> not disclosed the name of his daughter Km. Sushila, who was also alive and in whose favour maintenance allowances of Rs. 50/- per month was granted by the aforesaid Magistrate ; and has further argued that since in their affidavit, the aforesaid Shiv Kumar son of the aforesaid Gangu and aforesaid Shushila daughter of aforesaid Gangu, have clearly sworn in ~~their affidavit~~ that they have no objection in grant of family pension to the applicant; the applicant is entitled for pension as per rules.

5. The learned counsel for the respondents while drawing my attention to the pleadings of the parties and to the papers annexed to the R.A., and while drawing my attention to the provision contained under section 125 of Cr.P.C. has argued that above statement of the applicant during his life time dt. 24.12.82 should be deemed to be correct and the above criminal proceedings under section 125 of the Cr. P.C. against the Gangu will not affect the me

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and has further argued that the above statement of the aforesaid Gangu dated 24.12.1982 to the effect that his family comprised of himself and his son Shiv Kumar and his wife not alive, has over-riding effect and in any case only the son of the aforesaid Gangu namely Shiv Kumar is entitled to the family pension upto the age of 25 years; and while drawing my attention to the provisions contained under para 801 to 911 and 1022 of the Revised Edition of the 1958 Edition of the Manual of Railway Pension Rules, 1950 incorporating therein various changes brought about as a result of the accepted recommendation of the Second Pay Commission and the introduction of Family Pension Scheme for Rly. employees' 1964, has further argued that keeping in view the definition of family as provided in sub para 14 of para 801 of the aforesaid Manual of Railway Pension Rules, the applicant can not be deemed to be widow of the aforesaid Gangu, in view of above statement dated 24.12.82 and as such the application of the applicant should be dismissed.

6. Sub para 14 of para 801 of the aforesaid Manual of Railway Pension Rules reads as follows :-

- "(14) For the purpose of this para, the term "Family" will include -
- (i) Wife in the case of a male Railway Servant;
- (ii) husband in the case of a female Railway servant ;
- (iii) minor sons; and
- (iv) unmarried minor daughters.

Including children adopted legally before retirement.

The pension will be granted in the order (i)

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(ii), (iii) and (iv). In other words, if wife/husband is alive the pension will be sanctioned in favour of wife/husband and children will not be eligible for family pension."

7. This is noteworthy that annexure-5 which is the copy of the letter dated 29.3.1988 which is addressed to the applicant issued by the respondent no. 2 ~~namely~~ makes clear mention that in case if the applicant Smt. Keola wants to get family pension in her favour then in that case she ~~made~~<sup>may</sup> array the Union of India and aforesaid Shiv Kumar as party in the proceedings before a court of competent jurisdiction for granting succession certificate in her favour. In this context, this is important to point<sup>^ out ^</sup> that Annexure-6 shows that succession certificate was issued by the Civil Judge Malihabad Lucknow in Misc. Case no. 85/87 Smt. Keola Vs. <sup>deceased</sup> State of Gangu and others and succession certificate was issued in her favour as per order dated 27.11.1987 <sup>of</sup> Civil Judge Malihabad, Lucknow.

8. This is also important to point out that a perusal of rejoinder-affidavit of the applicant read together <sup>with the</sup> annexures B to E to the rejoinder-affidavit, ~~go to~~ show<sup>^ ~ ^</sup> that the aforesaid Smt. Keola and Km. Sushila wife and daughter of aforesaid Gangu respectively had filed a criminal case bearing No. 424/78 under section 125 of the Cr.P.C. for their maintenance against aforesaid Gangu and the above case was decided in their favour and a sum of Rs. 50 per month to each was granted as maintenance allowance and against the

aforesaid Judgement and order dated 18.4.1981 passed by the Special Judicial Magistrate Lucknow; a criminal revision was filed by the aforesaid Gangu bearing no. criminal revision <sup>NO</sup> ~~NO~~ 302 of 1981 in the High Court of Judicature at Allahabad and that criminal Revision was dismissed. On 13.3.1985. This fact should not be lost sight of that Annexure A-1 and A-2 which are the affidavits of the aforesaid Shiv Kumar and Sushila Devi go to obviate that they are the son and daughter borne from the aforesaid Smt. Keola Devi (applicant) with the Union of aforesaid deceased Sri Gangu and they further further show that the aforesaid Shiv Kumar is about 25 years of age and the aforesaid Sushila is about 20 years of age; and they have no objection to the grant of the family pension to the applicant Smt. Keola who is their widow-mother.

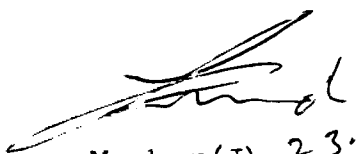
9. From the perusal of the annexure B to E to the Rejoinder-Affidavit of the applicant as referred to above, it is apparent that the aforesaid criminal case no. 424 of 1978 under section 125 Cr.P.C. was decided in favour of the aforesaid Smt. Keola Devi and Km. Sushila Devi on 18.4.1981 and the above statement of the aforesaid Gangu <sup>dated 24.12.82</sup> relates to the period subsequent to the above crucial date i.e. 18.4.1981. It is also <sup>in the fitness</sup> effect of the things to remark that the perusal of the affidavit of the aforesaid Shiv Kumar and Susheela and Annexure A-1/A-2 of the rejoinder-affidavit clearly reveal that after the aforesaid judgement and order dated 18.4.1981 the <sup>strained relation</sup> ~~strain~~ between the aforesaid Gangu and Smt. Keola (applicant) became harmonious and they started living jointly and that's why the

102

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aforesaid criminal revision no. 302 of 1981 was dismissed because neither the aforesaid Gangu nor his counsel appeared before the High Court on the date fixed for hearing <sup>on</sup> the aforesaid criminal revision as would be apparent from the perusal of the annexure <sup>A-1</sup> to <sup>the</sup> <sup>E</sup> <sup>to</sup> <sup>the</sup> Rejoinder-affidavit. Annexure-1 is the death certificate which shows that the aforesaid Gangu died on 27.9.1986. Thus, after considering all the material and evidence on record and keeping in view the provisions contained in Sub para 14 of para 801 of the <sup>aforesaid</sup> Manual of Railway pension Rules, and keeping in view all the <sup>facts and</sup> circumstances of the case, it is fully established that the applicant is the widow of deceased Gangu and she is entitled for family pension as per rules.

10 In the result, the application of the applicant is allowed as above and the respondents are directed to grant family pension to the applicant as per rules and to pay all the arrears of the family pension to the applicant for which she is found entitled as per extent rules, within a period of 3 months from the date of receipt of the copy of this judgement. No order as to cost.

  
Member (J) 23.9.92

Lucknow Dated 23.9.92

(RKA)