

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH, LUCKNOW

Original Application No. 149/2009

This, the 24<sup>th</sup> day of October, 2013

**Hon'ble Sri Navneet Kumar, Member (J)**

Smt. Sarojani Devi aged about 57 years w/o late Amar Singh resident of village Anaura, Post Office Amausi, P.S. Sarojani Nagar, District-Lucknow.

Applicant.

By Advocate: Sri Praveen Kumar

Versus

1. Union of India through the Secretary, Ministry of Railway, Govt. of India, New Delhi.
2. General Manager, Northern Railway, New Delhi.
3. Chief Works Manager, C&W Workshop, Alambagh, Lucknow.

Respondents.

By Advocate: Sri S.Verma

(Reserved on 8.10.2013 )

**ORDER**

**By Hon'ble Sri Navneet Kumar, Member (J)**

The present Original Application has been preferred by the applicant u/s 19 of the AT Act with the following reliefs:-

- i) That this Hon'ble Tribunal may graciously be pleased to direct the opposite parties concerned to make payment of family pension regularly and every month including the other benefits of her husband in the interest of justice while quashing the order dated 28.04.2005, contained as Annexure No. A-1 to this O.A.
  - ii) Any other relief or reliefs including the order as to costs which in circumstances of the case this Hon'ble Tribunal may deem just and proper in the circumstances of the case.
2. The brief facts of the case are that the applicant claims to be widow of ex-employee who superannuated on 31.8.1993 and subsequently died in 1995. The learned counsel for the applicant has

pointed out that son and daughter of the ex-employee were also getting family pension till they attained the age of majority and when the family pension was stopped to the son and daughter of the ex-employee, the applicant made an application for grant of family pension and the said application was moved in 2008. The learned counsel for applicant has sought amendment in the O.A. and through that amendment, prayed for quashing of an order which was passed in the month of April, 2005 and also submitted that the applicant came to know about this order when the copy of the order was served upon the applicant along with the counter reply. By means of said order, it was pointed out by the respondents that ex-employee had married to another lady i.e. applicant without giving divorce to his first wife, as such as per pension rules, the applicant is not entitled for family pension. Learned counsel for applicant has also placed reliance on the family details mentioned in the identity card which clearly provides the name of the applicant.

3. Learned counsel appearing on behalf of the respondents filed counter reply as well as Supplementary CA to the amended O.A. Learned counsel for respondents mentioned Section 17 of Hindu Marriage Act which reads as Under:-

“Any marriage between two Hindus solemnized after commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of Section 494 (45 of 1860) shall apply accordingly.”

Apart from this, it is also pointed out by the learned counsel for respondents that every Railway Servant is governed by the Railway Service (Conduct) Rules, 1966 and the Rule 21 of the aforesaid Rules reads as under:-

**“21. Restriction regarding marriage:-**

(1) No Government servant shall enter into or contract a marriage with a person having a spouse living.

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(2) No Government servant having a spouse living shall enter into, or contract a marriage with any person-

Provided that the Central Govt. may permit a govt. servant to enter into, or contract any such marriage as is referred to in clause (1) or clause (2), if it is satisfied that:-

(a) Such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage ; and

(b) There are other grounds for doing so.

(3) A government servant who has married or marries a person other than of Indian Nationality shall forthwith intimate that fact to the Government.

4. Learned counsel for respondents has also pointed out that the Hindu Marriage Act, 1955 explicitly not only prohibits but makes any marriage between two Hindus with a living spouse void, but also punishable under Section 17 of the aforesaid Act read with Section 494 and 495 of the Indian Penal Code. Learned counsel for respondents has also categorically pointed out that no divorce degree is on record as such it cannot be said that the applicant after obtaining divorce from the competent court solemnized marriage with the applicant.

5. Learned counsel appearing on behalf of the applicant has filed the Rejoinder Reply and through Rejoinder Reply, mostly the averments made in the O.A. are reiterated. Though, the applicant has submitted certain documents along with application for amendment and as per that amendment application, the applicant has annexed the Railway pass issued in favour of the applicant as well as details of family which was issued by the respondents on the basis of declaration given by the applicant. The discharge certificate of the applicant also shows as the wife of the ex-employee. But the applicant failed to file any divorce degree whereby the ex-employee has given the divorce to



his first wife and applicant has failed to file any marriage certificate as well.

6. Learned counsel for the respondents, through Supple. CA filed an order dated 25.7.95 which was passed by the family court u/s 125 Cr.PC and granted maintenance to Smt. Munni Devi, who is said to have been the first wife of the applicant. But the said order does not show that ex-employee has given divorce to his first wife and solemnized marriage with the applicant.

7. Heard the learned counsel for the parties and perused the record.

8. The applicant claims to be wife of the ex-employee and before stoppage of the family pension to the son and daughter of the ex-employee, applied for grant of family pension on 7.3.2005. The said request of the applicant was considered by the authorities and the same was rejected on 28.4.2005 and the order was duly communicated to the applicant as well. The said order clearly provides that late Amar Singh, ex-employee had married with another lady without giving proper divorce to his first wife as such, the same is not permissible under the law. Therefore, the family pension cannot be paid to the applicant in terms of Railway (Pension) Rules. For ready reference Rule 21 of the Railway Services (Conduct) Rules, 1966 is absolutely clear which has already been reproduced above.

9. Apart from this, it is also contended that Smt. Munni Devi was married to ex-employee. She was his legally wedded wife and in absence of any divorce degree, it cannot be said that the ex-employee has given divorce to his first wife. The applicant has also failed to give any cogent and admissible evidence to substantiate her contention that Smt. Munni Devi was divorced by ex-employee. Only on the basis of Ekrarnama, the applicant is claiming that she is the wife of the ex-employee. Apart from this, the mere particulars given by the applicant in the Railway passes, medical facilities etc., the applicant cannot



claim to be legally wedded wife of the applicant. Apart from this, Rule 75 of Railway Servants (Pension) Rules clearly provides for the family pension and in the entire rule, nowhere it is mentioned that the unmarried wife is entitled for the family pension. In the present case, the applicant failed to file any document which may provide that she is the wife of the deceased employee, as such she is not entitled for the pension.

10. Since the applicant failed to bring on record any valid documents which may indicate that the applicant is legally wedded wife of ex-employee, as such I am not inclined to interfere in the present O.A. and issue any direction upon the respondents .

11. Accordingly, O.A. is dismissed. No order as to costs.

  
(NAVNEET KUMAR)  
MEMBER (J)

HLS/-