

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.264/87

Smt.Asha Ruben Nelson,
Hut No.A-183,Azadnagar.
Zopadpatti,Central Railway Colony,
Matunga,
Bombay - 400 019. .. Applicant

vs.

1. The Assistant Personnel Officer(C),
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager(P),
Central Railway,
Bombay V.T.
3. The Inspector of Works(M)
Central Railway,
Bombay V.T. .. Respondents

Coram:Hon'ble Member(J)Shri M.B.Mujumdar
Hon'ble Member(A)Shri P.S.Chaudhuri

Appearances:

1. Mr.C.Nathan
Advocate for the
applicant.
2. Mr.Mohan Sudame
(for Mr.D.S.Chopra)
advocate for the
respondents.

JUDGMENT

Date: 28-11-1988

(Per P.S.Chaudhuri,Member(A))

Original Application No.264/87 was
filed before this Tribunal on 16-4-1987 under
Section 19 of the Administrative Tribunals Act,1985.
In it the applicant, Smt.Asha Ruben Nelson, has
prayed for (a) appointment to the post of Water Woman
or some other such suitable post on the Central
Railway; (b) grant to her and to her minor daughter
the benefits of the Family Pension Scheme,1964 with
effect from 5-1-1982; and (c) payment to her of
Rs.10,000/- under the Central Govt. Employees
Insurance Scheme 1980.

2. The brief facts relevant to the case are that one Shri Ruben Ananda Nelson (hereafter referred to as the deceased) was working as a Khalasi in the office of the Inspector of Works (M), Central Railway, Bombay V.T. He died in a railway accident on 5-1-1982.

The applicant claims that she was married to him on 6-4-1979 and that out of this marriage a daughter, named Suvarna Ruben Nelson, was born on 27-9-1981. Her prayers mentioned above are based on her claim that she and her minor daughter are the sole legal heirs of the deceased.

3. We heard Mr. C. Nathan, the learned advocate for the applicant and Mr. Mohan Sudame (for Mr. D. S. Chopra) the learned advocate for the respondents. It was Mr. Nathan's basic contention that the applicant was the wife of the deceased and hence entitled to all the dues of the deceased, including Family Pension. He contended that she was also entitled to compassionate appointment as per the rules and practice of the Central Railway.

4. The first evidence cited by Mr. Nathan in support of his contention that the applicant was the wife of the deceased was the document at Ex. 'A' at page 12 of the application. This is a Marathi document signed by the applicant herself but is not addressed to anyone. It seeks the help of the committee members in regard to her intention of marriage. It contains some signatures which are said to be those of committee members.

To begin with, the document does not contain the signature of the alleged bridegroom.

It pertains to only an intention of marriage. It is not a certificate issued by someone authorised to do so certifying the marriage of two parties. Against this background, we are unable to take the view that this certificate is a documentary proof of marriage.

5. The second point raised was the certificate of birth on 27-9-1981 of a female child named Suvarna Ruben Nelson at Ex.'C' at page 14 of the application. The child was born at Mahim Maternity Home. In the certificate, the name of the father is given as Ruben Ananda Nelson. This only proves what it states. It does not prove that Ruben Ananda Nelson was married to the mother of the child.

6. The third item of evidence cited was a certificate dtd. 2-3-1987 purported to be from the mother of the deceased at Ex.'J' at page 21 of the application. It states that the deceased "got married on 6-4-1979 with Asha D/o. Namdeo Yeshwant Jadhav. This marriage was performed in Hindu style and not in Christian style in Church. Since my son did not inform of his marriage in the office there were no records in IOW's office. Hence settlement dues were all paid to me. I shall request you to kindly consider my daughter-in-law Smt. Asha w/o my son for appointment on compassionate grounds and also to pass pension in her favour". It is pertinent to mention here that in terms of the Railway Pension Rules, family pension may be sanctioned only to the widow/widower and where there is no widow/widower to the minor children of a deceased Railway servant but not to his widowed mother. In our interim order dtd. 2-8-1988 we had considered this application and had said that:"The applicant has

produced a declaration purported to have been made by the mother of the deceased on 2-3-1987 stating that her son was married to the applicant on 6-4-1979 according to Hindu style and not according to Christian style in a Church. Unfortunately the mother is not added as a party to this application and hence we direct the respondents to keep the mother of the deceased Shantabai present before us on Friday the 5th of August, 1988. The applicant may also try to keep the mother of the deceased present before us." In spite of this, at no time was the mother kept before us. We cannot, therefore, take this certificate as valid evidence of the applicant's contention that she was married to the deceased.

Further, it is nobody's case that either the applicant became a Christian or that the deceased had become a Hindu. Thus, the applicant's contention becomes that a person belonging to the Christian faith married a person not belonging to the Christian faith through Hindu rites. This does not constitute a valid marriage.

7. In reply, the respondents have raised a number of issues. They have submitted that it was the widow mother of the deceased who came forward initially as legal heir and claimant of the dues of the deceased on or about 16-2-1982. It was she who produced the death certificate of the deceased. All the settlement dues were therefore processed in her name and paid to her. When the applicant approached the respondents to claim the dues of the deceased they held back the DCRG and advised the applicant by a letter dtd. 9-8-1984 to produce a succession certificate from the competent court and proof of marriage

held in Church since the deceased was a Christian. Mr. Nathan contended that this letter had not been received. The fact, however, remains that though these documents are self evidently necessary, the applicant has not produced these documents till today.

8. The respondents further contended that on 13-9-1979 the applicant signed the prescribed oath of allegiance. On that date he also declared that he was unmarried. It was their contention that this declaration was signed only 5 to 6 months after his alleged marriage and it is inconceivable that he would then have said that he was unmarried if he had, in fact, been married a short while earlier.

The respondents also contended that the deceased affirmed an affidavit on 29-8-1979. In this affidavit he gave the name of his mother and stated that she was staying with him. It was the contention of the respondents that it is inconceivable that so soon as 4 to 5 months after his marriage the deceased would testify that it was his mother - and not his wife - who was staying with him.

9. The respondents raised some other points based on the practice and procedure in force on the railways. They stated that Railway employees are required to have Medical Identity Cards giving details of the family of the employee. The deceased had not had any such card issued to him. It was their contention that he would have had one issued in favour of his wife and child if he had, in fact, been married because they would not have been able to get the free medical treatment from the Railways that they were entitled to without it. It was also their contention that the

deceased would have arranged his wife's delivery free at a Railway Hospital instead of, presumably, on payment in a private medical establishment as recorded on the birth certificate had he, in fact, been married.

The respondents also stated that Railway employees are entitled to privilege passes for self and family. The deceased had not taken any such facility for a wife.

10. The respondents also stated that certain essential documentation had been made available to them not by the applicant but by the deceased's widow mother. These were the deceased's death certificate and workman's free railway pass. It was their contention that had the applicant been married, these would have been forthcoming from his widow.

11. In conclusion, Mr. Nathan contended that the term "Wife" in various Railway rules and regulations should not be construed as covering only legally wedded wife but should also include a woman accepted and declared as wife notwithstanding absence of ceremonial marriage. In support thereof he cited 1981 CRI L.J. 674 Boli Narayan Pawye v. Smt. Shiddheswari Morang. In that judgment, the Guwahati High Court has held that "A woman who comes in the life of a man, gives herself to the man, takes the family-life of the man and the man uses her as such, recognises her as his wife, must come within the fold of the term "wife", absence of ceremonial marriage notwithstanding."

We do not think that the two cases are identical. In the Guwahati case the facts are that "there is backing of evidence to show that the couple

eloped and went through the formal marriage of "Dugla-Lanam", a Gandharva form of marriage, which is a valid form of marriage amongst the Mishing Tribe. The girl was brought and kept in the house of the petitioner as his wife for a few weeks; the village elders accepted her to be the wife of the petitioner and commanded the petitioner's family to go through the expensive form of marriage ceremonies, as they could afford to do. The recognition of the village elders that Siddheswari was the wife of the petitioner was the sanction of the union and grant of socio-legal relationship to Shiddheshwari for leading a family life with the petitioner. She got the recognition of the society as to her marital status"

There is no such evidence on the record in this case and hence we are unable to take the view that the applicant comes within the term "wife" as far as the applicability of the railway rules are concerned.


12. It was the respondents' contention that the deceased was a Christian and, therefore, for any marriage is to be valid it would have had to be performed in accordance with Christian practices and marriages performed by any other custom would not be valid.

13. Based on this discussion we are unable to draw the conclusion that the applicant is entitled to the benefits of a "wife" of a deceased railway employee. We, however, hasten to add that we are saying so only in the context of the prayers made and the reliefs asked for in this application. We are not taking any view on whether she is or she is not the legally wedded wife of the deceased. We are also not

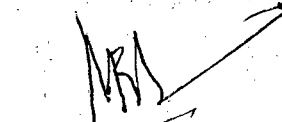
commenting on whether she and/ or her minor daughter is entitled to a succession certificate in respect of the estate of the deceased. These are decisions that she has to obtain from the competent court. Should she be successful in doing so, she will, of course, become entitled to all the payments and benefits to which the legally wedded wife of a deceased Railway servant is entitled notwithstanding our decision on this application.

14. Be that as it may, it is a fact that the applicant is a young woman with a minor daughter to support. After the deceased's death the respondents had employed the applicant as a Water Woman during the hot weather months of April to June for three successive years viz. 1984, 1985 and 1986. It was the applicant's contention that she was called for a test on 4-2-1986 for appointment on compassionate grounds. This call letter dated 31-1-1986 is at Ex.'G' at page 18 of the application and is in reply to an application dtd. 23-3-1982. Mr.Nathan contended that this proved that the applicant was entitled to permanent employment on compassionate grounds as per the standing instructions of the Ministry of Railways. It was not only that no such permanent employment had been given to her. but, in fact, the Railways had stopped employing the applicant even on a casual basis as a part of the hot weather establishment in 1987 and this year (1988)also because of the pendency of this application. In view of the position brought out in para:13 above, it is true that the applicant has no legal claim to such employment but, purely on humanitarian grounds, we would recommend to the respondents that, just as they had been doing in the past, they may consider the applicant for such employment as is available and for which she is suitable.

15. With this observation, the application is rejected. There will be no order as to costs.



(P.S. CHAUDHURI)
Member (A)


(M.B. MUJUMDAR)
Member (J)