

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

Q.A.NO.477/05

Dated the 21st February, 2008

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN

1. Smt. Shakuntala Devi aged about 52 years, wife of Late Ram Saran Paswan, resident of Mohalla – F.P.I.Chouk Dhalai Ghar, Katihar, P.O. Katihar, P.S.Katihar, Distt.Katihar.
2. Raju Paswan, son of Late Ram Saran Paswan
3. Fuleshwar Paswan, son of Late Ram Saran Paswan,

By Advocate : Sri T.N.Jha

vs.

1. The Union of India through its General Manager, N..Railway, Katihar Division, Katihar.
2. The Senior Divisional Operation Manager (P), Katihar, N.F.Railway, Katihar.
3. Station Superintendent, N.F.Railway, Suriakamal.
4. Divisional Accounts Officer, N.F.Railway, Katihar.
5. Assistant Personnel Officer, N.F.Railway, Katihar.
5. Gulabi Devi w/o Late Ramsaran Paswan, r/o Mohulla FCI Chowk ,Dhalaighar, Katihar. .. Respondents

By Advocate : Sri N.K.Sinha, ASC

ORDER

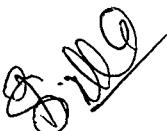
JUSTICE P.K.SINHA, V.C.:-

Heard the learned counsels for both the sides. The applicant has come up for



grant of half of the family pension on account of the death of the employee Ramsaran Paswan, the applicant being the second wife of the deceased employee. The applicant also has sought, besides half of the family pension, other retiral dues including interest. Following points are admitted ones:-

- (i) Deceased employee Ramsaran Paswan had married the applicant while his marriage with first wife, Smt.Gulabi Devi, was subsisting, she being still alive. This Gulabi Devi has been added as one of the respondents, but despite receipt of notice, she did not come up before this Tribunal.
- (ii) Later, through order in M.A.No.351/2006 prayer by two sons of the applicant Shakuntala Devi was allowed and they were inducted in the category of the applicants along with Shakuntala Devi. Learned counsels admitted, vide declaration form of the deceased employee annexed with Annexure A/2, that through the second wife the deceased employee had two sons and one daughter. Raju Paswan was shown to be born on 4.7.80 and Fuleswar Paswan, on 18.5.82. Daughter Ms Seema Kumari, then unmarried, was born on 19.9.87, though she has not been added as party.
- (iii) From this Annexure itself it will appear that through ^{the} first wife, the deceased employee had four sons, the youngest one born on 5.8.76. Obviously all the sons, through first and through second wives, by now have crossed the age of 25 years. However Seema Kumari, if still unmarried, could be a claimant for family pension or part of it.
- (iv) Admittedly, full pension was paid to the first wife till the two sons of the applicant had reached the age of 25 years, the maximum age for receiving family pension.



2. A second marriage while the first marriage is subsisting, that is, the spouse being alive, is null and void under the provisions of the Hindu Marriage Act. Such second wife would not be a legal heir to the estate of her deceased husband.

3. The deceased employee had superannuated from service on 31.1.1998 and had expired on 28.5.2004. Obviously by that time he had received his entire pensionary benefits. There is no denial to that. Therefore, the bone of contention in this application remains to be the division of the family pension in between the first wife and second wife, including their offsprings.

4. Learned counsel for the applicant has pointed out Annexure A/4, which purports to be an affidavit sworn in by the deceased employee on 11.11.97 stating therein that after his death, pension would go to his two wives and their children. According to this affidavit, the money deposited in his bank account would also go to his two wives.

5. In so far as the money deposited in the bank in the account of the deceased employee is concerned, claim to that would be personal claim of the two wives and/or their offsprings. In such a claim this Tribunal cannot intervene nor can give any direction in that regard. That right, if any, may be claimed through the Civil Court.

6. In so far as the family pension is concerned, the family pension is being received by the first wife who is the legally wedded wife of the deceased employee. The second wife being married during the life time of the first wife and while the first marriage was subsisting, would have no legal right to the estate left by the employee dying intestate. However, under the provisions of the Hindu Succession Act, her offsprings would have right to share the estate of the deceased employee which includes the amount in family pension. However, besides the applicant Shakuntala Devi, the two



other applicants, her sons, have now become overage to receive the family pension. The daughter from the second wife if still unmarried might make such a claim, but she is not a party to this case. Applicant Nos. 2 and 3 could have such a claim over the family pension after the death of their father in the year 2004, till they reached the age of 25 years. But the fact remains that till they had reached the age of 25 years, the official respondents had paid the entire family pension every month, to the first wife. Therefore the official respondents at this stage cannot be asked to decide the claim of Applicant Nos. 2 and 3 for sharing family pension during that period as they have paid the pension to the Applicant No.1 who was the legally wedded wife. Therefore, if the Applicant Nos. 2 and 3 want to enforce that right as against Gulabi Devi who already has received the entire pension during that period, they can enforce that only through a Civil Suit by filing the same in the Civil Court, as on this date this being a claim between two private parties, the same cannot be adjudicated, even if enforceable, by this Tribunal.

7. It is therefore held that the applicants would not be entitled to share in the family pension. The Applicant Nos. 2 and 3 may enforce their legal right over family pension, if any, for the period as aforesaid, before a competent Civil Court.

8. This Application, accordingly, stands disposed of.



(P.K. Sinha)
Vice Chairman

/njj/