

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 240/96

Date of Decision: 25/9/97

Mrs. Meerabai Damu Kardak.

Applicant.

Shri S.N.Pillai.

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri R.R.Shetty.

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. M.R.Kolhatkar, Member(A).

Hon'ble Shri,

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.240 / 1996.

Promoluted, this the 25th day of Sept 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A)

Mrs. Meerabai Damu Kardak,
Gaikwad Chawl,
Ashok Nagar,
Wakadi Waldhuni,
Kalyan,
Dist. Thane.

... Applicant.

(By Advocate Shri S.N.Pillai)

V/s.

1. Union of India through
The General Manager,
Central Railway,
Bombay V.T.
2. The Chief Workshop Manager,
Central Railway Loco Workshop,
Parel,
Bombay - 400 012.
3. Ms. Chabbubai, through
Respondent No.2. ... Respondents.

(By Advocate Shri R.R.Shetty).

Q R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this O.A. the applicant has sought the relief of grant of family pension on the footing that she is the first legally wedded wife of the deceased Railway employee Damu Gopal Kardak who retired on 31.7.1992 and who expired on 18.1.1993. According to the applicant in terms of the Judgment of the Judicial Magistrate 1st Class, Kalyan dt. 26.4.1985 (at page 9) the deceased railway employee was directed to pay monthly

maintenance allowance to the applicant (this is at page 10 of the order) in which the Magistrate has found it as an admitted position that the applicant was legally wedded wife of the deceased railway employee but that since 1972 he had kept Respondent No.3 as a mistress. The applicant contends that even prior to the death of the husband i.e. on 28.7.1992 (page 22) her Lawyer had sent a certified copy of the decree dt. 4.1.1992 passed in Regular C.S. No.178/91 against the deceased railway employee. Thereafter, she sent a letter dt. 10.2.1993 on the subject of recovery of maintenance through settlement dues to which the Railways sent a reply on 26.2.1993 which is reproduced below :

" With reference to your letter dated above, the payment of settlement dues have already been paid to Shri Damu Gopal Kardak on 31.7.1992. It is obligatory on the part of Railway Administration as an employer to pay the settlement dues to him on the last day i.e. 31.7.1992. No payment due to the employee can be stopped as per the judgment of the Supreme Court in AIR 1976 SC 1163, no attachment order can be passed by any Court in respect of PF, Gratuity, Insurance, DCRG and Pension of the employee in terms of GM's letter No.G.382/Opn/307/92/A. of 3.12.1992.

Shri Damu Gopal Kardak himself has given the name of Smt. Chhabubai as his wife for the purpose of PF Nomination, pass etc. the name of Smt. Meerabai does not appear in any of the records of the Railway as his wife.

Please advise your client accordingly."

Thereafter, the applicant under her letter dt. 22.4.1993 (at page 24) sent a certified copy of the Judgment and Order of the J.M.F.C. dt. 26.4.1985 to the Divisional

Railway Manager with a copy to the Chief Workshop
then
Manager. She sent the reminders on 10.1.1994 and
28.6.1994 and in reply to her letter dt. 28.6.1994
the Advocate was informed that the Railways have already
advised to the applicant by their letter dt. 26.2.1994
which was really meant to convey by letter dt. 26.2.1993.

2. The contention of the counsel for the applicant
is that the Railways have mixed up the questions relating
to recovery of maintenance allowance from the retirement
dues with the claim for the family pension set up
by the applicant and that it was not correct for the
respondents to grant family pension to R-3 who is not
a legally wedded wife of the deceased Railway employee.

3. The respondents have contended that the
records do not show any nomination in favour of the
applicant for the pensionary benefits. All the
nominations by the deceased railway employee including
Provident Fund, Family Pension are in favour of R-3.
Therefore, she is being paid Family Pension regularly
as per Pension Payment Order No.Cr/11304/191050. The
respondents also contended that this Tribunal has no
jurisdiction to decide the question as to the applicant's
relationship with the Late railway employee which is
required to be decided by a Court of Competent
jurisdiction by grant of Succession Certificate in
favour of the applicant. In regard to the order of the
J.M.F.C. dt. 26.4.1985 the respondents have stated that

the same was received in their office on 23.4.1993 and the respondents have no comments to offer.

4. I have already reproduced in full the respondents' letter dt. 23.2.1993 which relies on the Supreme Court Judgment in the case of Union of India V/s. J.C.Fund & Finance (AIR 1976 SC 1163). In this Judgment the position that the amount in the hands of Government due to an employee ^{towards} P.F. and Pensionary benefits is not liable to attachment has been reiterated.

5. The learned counsel for the applicant has rightly argued, however, that the essential point is not regarding non-attachability of the P.F. and the Pension dues, but whether the applicant is entitled to Family Pension or whether the R-3 is entitled to Family Pension. According to the applicant, the Judgment of the J.M.F.C. is conclusive that the applicant is the legally wedded wife of the deceased Railway employee and she is entitled to Family Pension. In my view, the stand of the respondents that the burden is on the applicant to produce a succession certificate and till that time they will continue to pay Family Pension to R-3 is not sustainable in law. The failure of the respondents to make comments on the Judgment and Order of the J.M.F.C. is eloquent. It is well known that under Rule 54 of C.C.S. (Pension) Rules a clarification was issued by the Department of Personnel on 4.3.1987 in which the advice of the Law Ministry was quoted to the following effect :

4 "Therefore, any second marriage by a Hindu male

after the commencement of 1955 Act during the lifetime of his first wife will be a nullity and have no legal effect....."

So under these circumstances, the second wife will not be entitled to family pension as a legally wedded wife.

6. In my view, the contention of the respondents that the applicant ought to have produced a succession certificate amounts to de-valuation of the order and judgment on maintenance passed by J.M.F.C. That order is rendered after examining the applicant when he was alive, in which he had clearly admitted that the applicant was his legally wedded wife. There was no reference to the deceased government employee having divorced her at any time. He had also admitted that he had kept R-3 as a mistress, although his contention was that he had done so with the consent of the applicant. Whatever may be the position, the J.M.F.C's order has an equal or even a better sanctity than a succession certificate which, as is well known is issued after a very brief inquiry consisting of issue of advertisement in local newspapers inviting objections. I hold that there is a finding of the competent Court of Law that the applicant is a legally wedded wife of the deceased Railway employee and as such she is entitled to the family pension. The nomination in favour of R-3 who is judicially found to be only a mistress of the deceased employee has no value in the eyes of law and is hereby quashed.

7. I may observe here that the matter had proceeded ex parte in relation to R-3 because by the order of

the Court she was added as a party and it is on record that she has received the notice, but still she remained absent. I must, however, notice in fairness ^{that} from the Service Book it is seen that R-3 has two children and in accordance with Form No.6 being the "statement" showing the details of members of the family for the purposes of Family Pension Scheme 1964 ~~and since Form No.6 being the Statement~~, Kum. Suman, daughter 17 years and Master Ravindra, son 13 years are shown as children from Smt. Chhabubai/ on 4.7.1992. These are to be treated as illegitimate children but they do have rights by virtue of Hindu Marriage Act, 1955 as amended by Hindu Marriage Laws (Amendment Act), 1976.

8. Although the point was not argued before me, I take judicial notice of the fact that the Supreme Court in the case of Maharani Musum Kumari V/s. Kusum Kumari Jadeja (1991) 1 SCC 582 ~~wherein it~~ held that the amended Section 16 of the Hindu Marriage Act has enlarged the applicability of beneficial provision to illegitimate children. I also take judicial notice of the fact that in terms of the Supreme Court Judgment the Department of Personnel has issued instructions on the point by its O.M. No.1/ 16/96-P&PW(E) dt. 2.12.1996 which was noticed in my own Judgment in O.A. No.867/96 decided on 12.6.1997 (Smt. Manjula Magaraj Dolas & Anr. V/s. Union of India & Ors). The relevant paragraph of the above memorandum lays down as below :

"4. The rights of such children requires to be protected and will accrue accordingly.

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It is, therefore, clarified that pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same."

Therefore, I also direct that the respondents should take action in terms of the above instructions as and when occasion arises. For the present, of course, the applicant is alone entitled to family pension.

9. The O.A. is disposed of in these terms with no orders as to costs.

MR. KOLHATKAR

(M.R. KOLHATKAR)
MEMBER(A).

B.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R. P. NO.: 47 OF 1998 IN O.A. No. 240 OF 1996.

Dated the 29/4 day of April, 1999.

CORAM : HON'BLE SHRI D. S. BAWEJA, MEMBER (A).

Mrs. Chabbubai,
C/o. Ravindra Damodar Kardak,
N-31, H-Z-10-13, Dutta Chowk,
Mahalaxmi Office, Near Mahadeo
Mandir, New C.I.D.CO., Nasik - 7.
(By Advocate Shri C. M. Jha)

.. Petitioner /
Original Respondent
No. 3.

VERSUS

1. Union Of India through the
General Manager,
Central Railway,
Bombay C.S.T.

.. Respondents.

2. The Chief Works Manager,
Central Railway,
Loco Workshop, Parel,
Mumbai - 400 025.

(By Advocate Shri R. R. Shetty)

.. Respondent /
Original Applicant.

3. Mrs. Meerabai Damu Kardak,
Gaikwad Chawl, Ashok Nagar,
Wokad, Waldhuni, Kalyan
District, Thane.

(By Advocate Shri S. N. Pillai)

: ORDER :

¶ PER.: SHRI D. S. BAWEJA, MEMBER (A) ¶

This Review Petition has been filed by Respondent No. 3 against the order dated 24.09.1997 in O.A. No. 240/96 seeking review of this order on various grounds detailed in the review application.

2. The Hon'ble Member who had constituted the Single Member Bench and passed the order dated 24.09.1997 has since retired. In view of this, a new Bench has been constituted

and the review application has been preliminary heard.

3. Heard the arguments of Shri C.M. Jha, the Learned Counsel for Respondent No. 3 in the O.A., Shri R. R. Shetty on behalf of official respondents and Shri S. N. Pillai for the applicant in the O.A.

4. The review applicant has been filed on 01.06.1998 against the order dated 24.09.1997. The review application has been filed beyond the period of 30 days as allowed and therefore is barred by limitation. The review applicant has filed a miscellaneous application making a prayer for condonation of delay in filing the present review application. Considering the grounds advanced for delay in filing the present review application, the delay is condoned and the review application is accordingly being considered on merits.

5. The official respondents have filed a written reply to the review application.

6. On careful consideration of the grounds advanced by the review applicant and keeping in view the arguments advanced during hearing, it is noted that review of the order has been sought mainly on two grounds. The first ground being that the order has been passed against the Respondent No. 3 ex-parte as no notice had been served on Respondent No. 3. The second ground is that the order is erroneous on merits. As regards the first ground, the respondents in their written reply have brought out that the contention of Respondent No. 3 is not tenable as the notice has been served through the official respondents

on Respondent No. 3 by deputing a person at her address. Subsequent to the written reply, the respondents have also filed another affidavit of the Inspector who was deputed for service of the notice on Respondent No. 3. From the details brought on record by the official respondents, there is no doubt that the notice had been served on Respondent No. 3. During oral submissions, the Counsel for Respondent No. 3 fairly conceded that the notice had been received by Respondent No. 3. In view of this, this ground for seeking review does not sustain. As regards the second ground, from the pleadings made in the review application, it is noted that Respondent No. 3 has made out a case that the order dated 24.09.1997 is erroneous on merits and therefore the review of the order is necessary. As held by the Hon'ble Supreme Court in several judgements, the power of review can be exercised only in case there is any error or mistake apparent on the facts of the record or some new or important evidence has come to the knowledge which could not be brought out at the time of passing of order. The power of review cannot be used in the disguise of an appeal seeking review of the decision on merits. Keeping these parameters for exercising the review in focus, the present review application is not maintainable, as the review is being sought on the ground that the order is erroneous on merits.

7. In the result of the above, the review application is without any merit and the same is accordingly dismissed. No order as to costs.

D. S. Baweja
(D. S. BAWEJA)
MEMBER (A).