

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 704/98

DATE OF DECISION: 19/4/2000

Smt. Valavmagthi _____ Applicant.

Shri K.B.Talreja _____ Advocate for
Applicant.

Versus

Union of India & Anr. _____ Respondents.

Shri Ravi Shetty _____ Advocate for
Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member(J)

1. To be referred to the Reporter or not? yes
2. Whether it needs to be circulated to ~~the~~ other Benches of the Tribunal?
3. Library. yes

J.L.JAIN
(S.L.JAIN)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:704.99
DATED THE 19 DAY APRIL,2000.

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J).

Smt.Valavmathi,
W/o.Shri V.Muniyam,
Ex-Black Smith, T.No.00804101,
Signal & Telecommunication
Workshop/Central Railway/Byculla. Applicant.

By Advocate Shri K.B.Talreja

V/s.

1. The Union of India
Through the General Manager,
Central Railway, Mumbai CST.
2. The Chief Workshop Manager,
Central Railway,
Signal & Telecommunication
Dept., Byculla. Respondents

By Advocate Shri Ravi Shetty

(ORDER)

Per Shri S.L.Jain, Member(J).

This is ^{an} application under section 19 of the Administrative Tribunals Act 1985 seeking the relief to direct the respondents to appoint the applicant on compassionate grounds in any of the Group 'D' posts as promised.

2. Applicant claims to be the wife of Shri V.Muniyam, who was working as Black Smith, T.No.00804101, met with an accident as a result of which his two legs were amputated and was declared unfit for further service in view of the disability certificate granted vide letter dated 12/11/1997 by the All India Institute of Physical Medicine & Rehabilitation. The applicant's husband Shri V.Muniyam sought Voluntary Retirement on promise/assurance by the respondents for compassionate appointment of his wife.

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After the retirement, the applicant's husband applied to the respondents for compassionate appointment for his wife, the applicant but his prayer was rejected vide letter dated 22/2/99, in view of the Railway Board's letter No.E(NG)II/91/RL-1/136 dt.2/1/92 alleging that the prayer cannot be considered as the applicant's husband's first wife had not been judicially separated from Shri V.Muniyam.

3. After careful consideration of the documents, alongwith the OA and the written statement, I am unable to place my hands on the application filed by the applicant for compassionate appointment.

4. On perusal of the OA, nowhere it is mentioned that the to what religion the applicant belongs, is governed either by the Indian Divorce Act 1869 or by Hindu Marriage Act 1955.

5. It is true that the applicant's name has been recorded by the respondents as Shri V.Muniyam's wife, in view of letter of the applicant's counsel, Annexure-12, nomination forms bears applicant's name, and Railway Passes, identity card, group photographs, reservation ticket, etc all show applicant is the wife of Shri V.Muniyam. On the basis of the above facts, the learned counsel for applicant argued that the applicant be treated as wife of Shri V.Muniyam.

I am not in agreement with the applicant's counsel for the reason that on account of the said fact, the applicant can claim to be the wife of Shri V.Muniyam. Shri V.Muniyam was legally married to Laxmi, who left the applicant's husband in August, 1981, only on the basis of nomination, privilege passes, identity

card, it cannot be concluded that the applicant is the only wife of Shri V.Muniyam.

6. The Railway Board's letter No.E(NG)II/91/RL-1/136 dated 2/1/92 has the force of law and it requires that Smt.Laxmi ought to have been judicially separated before the applicant can claim the wife of Shri Muniyam.

It is true that the respondents advised the applicant for voluntary retirement, and then only the matter for compassionate appointment could be considered. By that it cannot be presumed that it is a promise and the respondents are

~~presumed~~ to consider the case of applicant for compassionate appointment as per law. The reason is that there cannot be any vested right with the applicant and there can be no estoppel against law. Consideration does not mean always a decision is in favour of the applicant.

7. After coming into force of Indian Divorce Act 1869 and the Hindu Marriage Act, 1955, the jurisdiction in respect of judicial separation exclusively lies with the District Judge. The applicant may be governed by any of the provisions contained in the said Acts cannot seek a declaration from this Tribunal that Smt.Laxmi ceases to be the wife of Shri Muniyam.

The applicant has also claimed that Smt.Laxmi be presumed to be dead in view of Section 108 of Indian Evidence Act. As the burden of proving that this person is alive is on the respondents and she has not been heard of since last seven years to be alive. Thus, in view of the said provision, the applicant's counsel claims that she be declared dead.

8. I do not agree with the learned counsel for the applicant for the reason that it is not within the dominion or jurisdiction of this Tribunal to declare a person dead or alive. This Tribunal exercises the jurisdiction in respect of matters enumerated under Section-14 of the Act subject to conditions and limitations, as mentioned under Section-20 and 21 of the Act.

8. Annexure-7, which is an application for compassionate appointment dated 11/3/98 nowhere claims that Smt.Laxmi is dead or she is judicially separated wife of Shri V.Muniyam. The jurisdiction of the Tribunal is a judicial review of the orders passed by the respondents. The facts which were not placed before the respondents for which they had no occasion to deal with them cannot be agitated before this Tribunal in judicial review for the first time.

9. In the result, the OA has no merit and deserves to be dismissed with an observation that if there is a change in situation, such as Smt.Laxmi is dead or a decree by the Competent Court that Smt.Laxmi is judicially separated wife, the respondents are at liberty to consider the case afresh in accordance with law. No orders as to costs.

S.L.JAIN
(S.L.JAIN)
MEMBER(J)

abp.