

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:966/99
DATED THE 31st DAY OF OCT. 2000

CORAM:HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

Smt.Anandibhai Vithal Sapkal,
Wd/o Shri Vithal A Sapkal,
Ex Parcel Porter, Kalyan,
Railway Station (First wife)

Smt.Laxmibai Vithal Sapkal,
Wd/o Shri Vithal A Sapkal,
Ex.Parecel Porter, Kalyan,
Railway Station. (Second wife)

... Applicants.

By Advocate Shri K.B.Talreja

v/s.

The Union of India,
Through the General Manager
Central Railway, Mumbai CST.

The Divisional Railway Manager,
Central Railway, Mumbai CST.

... Respondents

By Advocate Shri R.R.Shetty

(O R A L) (O R D E R)

Per Smt.Shanta Shastry, Member(A)

The applicants two in number have sought direction to the respondents to release the pension in their favour and to pay 18% interest on the delayed payment of retiral dues alongwith costs to be awarded.

2. There are two applicants in this case namely Smt.Anandibai V.Sapkal and Smt.Laxmibai V Sapkal who claim to be the widows of Shri Vithal.A.Sapkal, who died in harness on 24/6/94. The Applicants state that they have represented to the officials for getting their settlement dues. They had approached the DRM personally and through relatives. However, they have not so far received any retiral dues. It has been urged in the OA

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that the late Shri Vithal A Sapkal had obtained official permission through proper channel i.e. through Chief Parcel Clerk-Kalyan Central Railway Station for a second marriage. the applicants have pleaded that the family is put to great financial strain as they have not received the retiral dues of their late husband.

3. The learned counsel for the respondents opposes the relief on the ground that the deceased employee has not nominated either of the applicants for the purpose of pensionary benefits as per the records of the respondents. Infact, it is submitted that as per the Welfare Inspector's Report, applicant No.2 is the first wife and applicant no.1 is the second wife of the deceased Railway employee. The respondents have therefore submitted that the applicants should apply to the Court of relevant jurisdiction for obtaining the succession certificate which can then be honoured by the respondents. As such, the question can be decided only by the relevant Court of jurisdiction and not by this Tribunal. The Learned Counsel submits that there is no record of permission granted for second marriage to the deceased Shri Sapkal.

4. The Learned Counsel for the applicants vehemently argued that the applicant should not be put to the hardship of going for succession certificate as it would be possible to establish from the service record of late Shri Sapkal that the applicants were his wives and that permission had been obtained by him for second marriage. Further, the learned counsel argues that had it not been so the second wife would not have got the Railway Passes. As the Learned Counsel for the respondents maintained that there was no nomination by the deceased in favour of either of the two

applicants and since there was no permission granted for second marriage, it was obviously necessary to produce the succession certificate. On the request of the learned counsel for the applicant, the respondents were directed to check the record of Shri Vithal.A.Sapkal in the Parcel Department at Kalyan Railway Station. Accordingly, the learned counsel for the respondents has brought the service record today and has also produced a letter from Station Master, Kalyan Railway Station to the effect that the late Shri Sapkal had not nominated any of the two applicants to receive the retiral dues on his behalf and nor was any permission granted to Shri Sapkal for a second marriage. The Learned Counsel for the respondents therefore pleaded that since this was the only point to be checked, and since it had already been decided during the last hearing that in case no such nomination existed or no such permission had been granted, the applicants will have to produce the succession certificate. This order should stand. The Learned Counsel for the respondents has further submitted that there have been other litigations also in connection with this family. Shri A.V.Sapkal, the son of Shri Vithal.A.Sapkal had also approached this Tribunal in OA-965/99 for grant of compassionate appointment. In this OA, the applicant had claimed that he is the son of the first wife Smt.Anandibai. However, the Tribunal by its judgement dated 16/12/99 rejected the OA. The Tribunal held that in another OA-986/95, the same applicant had approached the Tribunal with a definite case that he is the son of the second wife and he wanted compassionate appointment. The Tribunal had held in that case that the applicant is the son of the second wife and therefore he is not entitled for compassionate appointment. Now the applicant

is again turing around after a few months and saying that he is the son of the first widow. The Learned Counsel for the respondents urges that such false statements have been made by the Learned Counsel for the applicant.

5. The learned counsel for the applicant maintains that he had all along maintained that Shri A.V.Sapkal is the son of the second wife.

6. The learned counsel further maintains that both the applicants are the widows of the deceased Shri Sapkal. As proof the learned counsel has enclosed the copy of the postmortem report, copy of rationcard, copy of the photographs, copy of death certificate, copy of joint saving account, copy of identity card issued by the Election Commission and copies of case papers issued by the Central Railway Hospital for treatment given to the applicant no.1 (Pages 14 to 39 of OA).

7. The Learned Counsel for the applicant further points out that according to Rule-75 of the Railway Servants Pension Rules 1993, sub para 718, the family pension is to be paid to the widows in equal share and therefore also both the applicants are entitled to retirement dues of the deceased.

8. I have heard both the learned counsel for the applicants as well as the respondents and have given careful consideration to the agrumnts advanced.

9. I find that while both the applicants are claiming a share from the retiral benefits of late Shri V.A.Sapkal, it is not really clear as to who is the first wife and who is the second wife and whether permission had been granted for a second marriage to the deceased. There appears to be lot of contradiction as can be seen from the judgements given in the

earlier OA Nos.986/95 and 969/99. There is no clear light thrown on as to who is the first wife in this case. Secondly apart from this it is necessary that there has to be a nomination filed by the deceased to receive the retiral dues on his behalf. The respondents have produced a clear letter from the Station Master, Kalyan Railway Station, stating that the deceased Shri Sapkal have not nominated anybody. The Learned Counsel for the applicant has not produced anything contrary to show that late Shri Sapkal had nominated either of the applicants. In the absence of the nomination, the question of giving equal share to both applicants does not arise. Also as seen from the record submitted by the applicants, the entire record seems to be in favour of applicant no.1. The postmortem report, the ration card, the photographs of the family and joint savings account, Identity card issued by the Election Commission of India too go to show that Smt.Anandibai is the first wife of the deceased employee. There is no mention of applicant no.2 in any of the record. It is quite clear as brought out by the respondents that no permission had been granted to the deceased employee for second marriage. Further, there is a doubt regarding ~~the~~ who is the first wife and who is the second wife According to me there is uncertainty about who is the first wife of the deceased employee.

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10. I am therefore unable to grant any relief in this matter. The applicants should therefore obtain succession certificate from the relevant Court of jurisdiction before the relief can be considered. Accordingly, the OA is disposed of with liberty to applicants to obtain the succession certificate as per rules. No costs.

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(SHANTA SHAstry)
MEMBER(A)

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