

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.984/99 & 178/2000

Dated this the 30th day of March 2001.

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

Smt.Varsha Vishwas Vaidya,
Wd/o Shri Vishwas Hari Vaidya,
Ex.Machinist Craftsman, Machine
Shop, T.No.005452.1 Matunga Workshops
of Central Railway, Mumbai.

...Applicant

By Advocate Shri K.B.Talreja

V/S.

1. The Union of India
through the General Manager,
Central Railway, Mumbai CSTM.

2. The Chief Workshop Manager,
Central Railway,
Matunga Workshops,
Matunga, Mumbai.

3. Smt.Vidula Vishwas Vaidya
(Shobha Anant Bhawe),
C/o. Shri A.G.Bhawe,
Dr.Vaze Chawl,
Upper Khopoli,
Dist. Raigad.

...Respondents

By Advocates Shri R.R.Shetty
for Respondents No. 1 & 2 and
Shri R.C.Ravalani for Respondent
No.3.

O R D E R

{Per : Shri S.L.Jain, Member (J)}

As the common question of fact and law is involved in both the OAs., i.e. OA.NOs.984/99 and 178/2000, both the OAs. are filed by the same applicant, the respondents are the same, I proceed to decide both the OAs. together.

2. The relief claimed in OA.No.984/99 is to consider the claim of the applicant for appointment on compassionate ground in Group 'C' post and in OA.NO.178/2000 a direction to the respondents to release the full pension instead of 50%, arrears and interest @ 18% p.a. thereon.

3. The applicant claims that she is the legally wedded wife of Shri Vishwas Hari Vaidya who was working as Machinist Craftsman under Machine Shop, Matunga vide T.No.0054552, who expired while in service on 4.2.1997. Smt.Vidula Vishwas Vaidya has filed a petition against Shri Vishwas Hari Vaidya under Section 13 (v) of Hindu Marriage Act, 1955 on 21.12.1987 which was decided on 24.6.1988 and the order passed is "The marriage solemnized between the petitioners on 25.5.1983 is hereby dissolved by decree of divorce." The applicant further claims that her husband has told that the marriage with the applicant was solemnized after seeking permission from the department and after getting decree of divorce from the competent court, Thane.

The applicant further claimed that Respondent No. 1 to whom the matter was referred by Respondent No. 2 has opined as under :-

"In view of the above facts, I am of the opinion that the settlement dues and family pension can be released in favour of Smt.Varsha V.Vaidya ... the applicant."

who in turn vide letter dated 14.10.1997 has written to the Divisional Cashier, Matunga to release the payment of settlement dues and family pension in favour of the applicant but she is provided with only 50% pension. Her representation dated 17.8.1998 and 25.11.1998 to Respondent No. 2 and her personal visits were not fruitful. Hence, this OA.

4. The official respondents have resisted the claim of the applicant claiming that their action is in accordance with Rule 75 (7) (iii) Pension Manual of 1993. The marriage between the applicant and Shri Vishwas Hari Vaidya took place in the year 1984 when marriage between Vishwas Hari Vaidya and Smt.Vidula Vishwas Vaidya was subsisting, hence the marriage between the applicant and Vishwas Hari Vaidya is void. Kumar Vaibhav Vishwas Vaidya the son born from the marriage between Vishwas Hari Vaidya and Smt.Vidula Vishwas Vaidya is entitled to 50% family pension, as he is their legitimate son. The claim for compassionate appointment was considered and rejected vide order dated 17.9.1998 on the ground that she is the second wife of Shri Vishwas Hari Vaidya. Hence, prayed for dismissal of OA. along with costs.

5. The Respondent No. 3 (Private Respondent) has also alleged that marriage between her and Shri Vishwas Vaidya took place on 25.5.1983 and out of this wedlock Vaibhav Vishwas Vaidya was born on 30.5.1984. The applicant has no locus standi to claim any compassionate appointment. She further alleged that for her son who is 17 years old, she has applied for appointment on compassionate ground, as he is unemployed and has no other means of livelihood. Hence, prayed for dismissal of the OAs. with a further request for refund in full the amounts received by her from Respondent No. 1 & 2 or the Respondents No. 1 & 2 be directed to adjust the amounts paid to her against the amounts payable to her son.

6. The marriage between the applicant and Shri Vishwas Hari Vaidya took place on 27.11.1984 when the marriage between Shri Vishwas Hari Vaidya and Smt. Vidula Vishwas Vaidya was subsisting. The decree of divorce is passed on 24.6.1988. Hence, the marriage between the applicant and Shri Vishwas Hari Vaidya is void in view of Section 5 (i) read with Section 17 of Hindu Marriage Act, 1955.

7. The learned counsel for the private Respondent No. 3 relied on (1991) 16 ATC 491 Smt. Violet Issaac & Ors. vs. Union of India & Ors. decided by the Apex Court of the land which lays down the proposition that 'Family Pension' cannot bequeathed by will as it does not form part of estate of the employee. I agree

with the said proposition of law but in my considered opinion, the said question is not for consideration. Hence, the said authority does not apply to the present case.

8. The learned counsel for private Respondent No. 3 relied on 2000 SCC (L&S) 276 and argued that even children born out of second marriage which is void are entitled to 'Family Pension' while Kumar Vaibhav Vishwas Vaidya is the legitimate child born out of wedlock of Shri Vishwas Hari Vaidya and Smt. Vidula Vishwas Vaidya. I agree with the argument of the learned counsel for the private Respondent No. 3 and it is hereby held that Kumar Vaibhav Vishwas Vaidya is entitled to family pension. In such circumstances, the claim of the applicant in OA.NO.178/2000 for full pension is devoid of merit.

9. A.I.R. 1984 S.C. 346 Smt. Sarbati Devi vs. Smt. Usha Devi lays down the proposition regarding rights of the nominee which is not relevant for the decision in the present case, as it is no one's case for nomination.

10. The claim of the applicant for compassionate appointment is also devoid of merit for the reason that the marriage which is void, continues to be void, can not change its nature and becomes valid on account of decree of divorce passed on 24.6.1988 between Shri Vishwas Hari Vaidya and Smt. Vidula Vishwas Vaidya.

11. I leave the matter to be decided by competent court of jurisdiction for refund of 50% of pensionary benefits by the applicant to Kumar Vaibhav Vishwas Vaidya, as the claim is made by his mother, he is minor and not a party to the OA. It is also not a service matter and no relief can be granted in favour of a person who is not a party to the OA.

12. In the result, both the OAs. are liable to be dismissed and are dismissed with costs amounting to Rs.650/- in each OA. (Rs.500/- as Legal Practitioner's fee & Rs.150/- as other expenses) payable to each set of respondents, i.e. Respondent No. 1 & 2 jointly and Respondent No. 3 separately.

(S.L.JAIN)

MEMBER (J)

mrj.