

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 604/2001

Date of Decision : 31<sup>st</sup> October 2002

Smt. J.D. Verma

Applicant

Shri K.B. Talreja

Advocate for the  
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri R.R. Shetty for  
Shri R.K. Shetty

Advocate for the  
Respondents

CORAM :

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

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes

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

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.604/2001

Dated this the 31<sup>st</sup> day of October 2002.

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

Smt.Jadavatidevi Verma,  
Wd/o Shri Punnulal Brahmaddin Verma,  
R/o Virar Jeevadani Pada,  
Room No.25,  
Babubhai Painter Ki Chawl,  
Virar (W).

...Applicant

By Advocate Shri K.B.Talreja

vs.

1. Union of India  
through Financial Adviser  
& Chief Accounts Officer,  
Western Railway,  
7th Floor, Station Building,  
Churchgate, Mumbai.

2. Smt.Dularidevi,  
House No.219, Deliyahi,  
Taluka - Lalganj,  
Dist. Pratapgarh (U.P.)

...Respondents

By Advocate Shri R.R.Shetty  
for Shri R.K.Shetty

O R D E R

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

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for direction to the Respondents to release the Provident Fund, Group Insurance, Death cum-Retirement Gratuity, Pension, arrears of Pension and other residual retirement benefits in favour of the applicant and her four minor children with interest @ 18% p.a. along with cost.

*P.C. Jain* -

..2/-

2. Shri Punnulal Brahmaddin Verma was working as a Record Sorter under F.A. & C.A.O. Churchgate Western Railway, expired on 27.11.2000 (Annexure-2) has nominated the applicant vide 'Nomination Form' Annexure-5 dated 11.5.2000 in respect of Provident Fund, G.I.S. and D.C.R.G. The respondents have passed the order dated 17.7.2001 (Annexure-1) which is extracted below:-

"Shri Punnulal B. Verma, Ex. Record Sorter of this Office has expired on 27.11.2000. After death, one Smt. Dularidevi, House No. 219, Deliyahi, Tehasil Lalganj, Dist. Pratapgad (U.P.) has also claimed to be wife of the deceased employee.

Because Smt. Dularidevi had also claimed settlement dues, the settlement papers were sent to Law Section. It is their opinion that because both the wives have claimed the settlement dues, they are required to produce the declaratory decree from the Competent Court."

3. The applicant claims that her deceased husband was having illicit relation with one lady named Smt. Dularidevi, who claims to be the widow of her deceased husband. Her husband has given the declaration of his family vide Annexure-A-4 dated 29.6.1999 which is extracted below and on perusal of the same, the name of said Dularidevi does not exist :-

1. Jadavatidevi Verma - Wife
2. Gangasingh P. Verma - Son
3. Saraswatidevi P. Verma - Daughter
4. Jamunasingh P. Verma - Son
5. Surajsingh P. Verma - Son

RL-8211 -

..3/-

4. The respondents have resisted the claim of the applicant stating that Smt.Dularidevi has married the deceased employee Shri Punnulal B.Verma at the age of 5 and hence quite apparently is the first wife of the deceased employee. The applicant claims to have married the deceased employee Shri Punnulal B.Verma only about 16 to 17 years ago. On enquiries, it is revealed that Smt.Dularidevi is the first wife of the deceased employee, who is alive. As such, question of granting pensionary benefits in favour of the applicant does not arise. Hence, prayed for dismissal of the OA. with a direction to the applicant to approach the Court of Competent jurisdiction to produce the Succession Certificate after duly making Smt.Dularidevi a party.

5. The respondents have not filed any document along with their reply which ought to have been filed along with their reply in view of Rule 12 of CAT (Procedure) Rules, 1987. During the course of argument, the respondents placed few documents on record, which I accept not as a matter of right for the respondents but only as an exception not to delay the matter further. This cannot be treated as a precedent and the care should be taken to follow the Rule 12 in its true spirit.

6. On perusal of the aforesaid documents, I find that applicant has applied for passes in respect of his wife Ramdulari and himself on 2.6.1971 and passes were issued on 4.6.1971. Amongst the remaining three documents - one is telegram dated 26.9.1994 by the applicant for extension of leave on the ground

*P. L. M.*

..4/-

of 'wife serious' from village Pratapgarh, another is an application dated 15.9.1974 by the applicant to the respondents on account of wife being serious, the third one is the telegram dated 14.9.1994 about intimation to the applicant regarding seriousness of his wife from Pratapgarh by Maharajdden Verma.

7. On perusal of Annexure-3, it is clear that the marriage between the applicant and the deceased employee Punlul Verma took place on 15.4.1979. Thus, it is apparent that the deceased Punlul Verma married the applicant while his alleged wife Smt.Dularidevi was surviving and still alive.

8. Smt.Dularidevi has been arrayed as Respondent No.2. On 17.7.2002 Shri C.M.Jha - Advocate appeared for Respondent No.2, sought time to file reply, also appeared on 4.9.2002 but failed to appear thereafter. No reply was filed by Respondent No.2.

9. The learned counsel for the applicant argued that as the date of birth of her husband is 3.7.1949, the Respondent No.2 was married to him at the age of 5 years as such the marriage is void in view of Section 5 (iii) of Hindu Marriage Act, 1955. Suffice to state that the date of marriage between the deceased employee Punlul B.Verma and Smt.Dularidevi and the date of birth of Smt.Dularidevi is not on record, as such no conclusive finding can be recorded in this respect.

*P. Jha*

10. The learned counsel for the respondents relied on Rule 74 of Railway Servants' Pension Rules, 1972 and argued that if the Railway servant has a family, the nomination shall not be in favour of any person or persons other than the members of his family. He clarified that as the deceased employee Punmulal B. Verma was having a married wife Smt. Dularidevi, the nomination in favour of the applicant - cannot be made as such the applicant is not entitled to Provident Fund, G.I.S. & DCRG in view of nomination in her favour. Suffice to state that the illegality of the nomination has not been raised as a ground for disentitlement of the applicant. Such pleas which are not raised in pleadings being question of law can be raised for the first time during the course of arguments as the other party cannot be taken to a surprise for the reason that such pleas are to be decided only considering the question of law.

11. The Railway Services (Pension) Rules, 1993 - Rule 70(5) which deals with Retirement Gratuity or death Gratuity defines the word 'Family' for the purpose of the said Rule, Rule 71, 73, 74. Rule 71 deals with payment of 'Gratuity', Rule 73 deals with Lapse of death-cum-retirement Gratuity and Rule 74 deals with 'Nominations' in respect of the right to receive the death-cum-retirement Gratuity payable under Rule 70. Rule 70 (5)(i) is extracted below :-

"70 (5)(i) Wife or wives including judicially separated wife or wives in the case of a male railway servant."

P. V. M. / ..6/-

12. The perusal of the same makes it clear that the word 'Wife or wives' used in the said Rule is indicative of the fact that more than one wife is covered by the said provision which is not qualified by any personal law. As such, the ground raised during the course of arguments that the applicant being the second wife, though nomination in her favour, is not covered by the word 'Family', as such, she is not entitled to succeed on the basis of the said nomination fails to the ground.

13. The disbursement of Provident Fund, G.I.S. and D.C.R.G. to the applicant shall be subject to any decision by a competent Court of Law regarding the status of the applicant and Respondent No.2 but it shall discharge the Respondent No.1 from any and every liability on payment of the same to the Applicant.

14. Regarding other pensionary benefits, Gangasingh P.Verma, Jamunasingh P.Verma, Surajsingh P.Verma - the sons and Saraswati P.Verma - the daughter of the deceased Punnulal B.Verma - the employee (may be legitimate or illegitimate) be paid (keeping in view their shares in view of the fact that the claim of the applicant as well as Respondent No.2 is yet to be decided by the competent Court of Law for which the rightful share for applicant and Respondent No.2 can be withheld, in case they or any of them succeeds).

P. Verma -

..7/-

15. In the result, OA. is partly allowed. The Respondent No.1 is directed to pay to the applicant the amount of Provident Fund, D.C.R.G., G.I.S. and to Ganga Singh P.Verma, Jamuna Singh P.Verma, Suraj Singh P.Verma and Saraswati P. Verma - the other pensionary benefits - to the extent of their shares keeping in view their shares in view of the fact that the claim of the applicant as well as Respondent No.2 is yet to be decided by the competent Court of Law for which the rightful share for applicant and Respondent No.2 can be withheld, in case they or any of them succeeds, through applicant, as they are minor and applicant - the mother is the natural guardian. The said exercise be completed within three months of the receipt of copy of order. No order as to costs.

  
(S.L.JAIN)

MEMBER (J)

mrj.



CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

R.P. NO.12/2003  
IN

ORIGINAL APPLICATION NO. 604/2001

Date: 27.3.2003

CORAM: HON'BLE SHRI A.V. HARIDASAN  
HON'BLE S.K. HAJRA.

VICE CHAIRMAN  
MEMBER (A)

Smt. Jadavtidevi Verma

.. Applicant

Versus

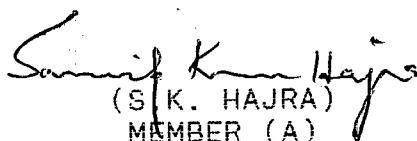
Western Railway & another

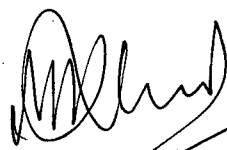
.. Respondents

The Respondent No.2 in OA No.604/2001 has filed this Review Application for review of the order passed by this Tribunal on 31.10.2002 which is annexed in the Review Application.

2. The ground stated for review is that the review petitioner was not heard before the OA was disposed off. There is no allegation that the order suffered from any error apparent on the face of records, or that some material of parties would have changed the verdict, could not be produced despite due diligence or that any other circumstance which warrant a review of the order existed. The petitioner had full opportunity to present her case which she did not avail off. If the petitioner is aggrieved by the order sought to be reviewed her remedy lies in carrying the matter before the High Court in appeal.

3. In the light of what is stated above, the Review Petition is dismissed.

  
(S.K. HAJRA)  
MEMBER (A)

  
(A.V. HARIDASAN)  
VICE CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

Date: 27.3.2003

ORIGINAL APPLICATION NO. 604/2001

Present: Shri K.B. Talreja for the applicant  
Shri R.R. Shetty for Respondent No.1  
Shri C.M. Jha for Respondent No.2


The applicant in OA 604/2001 has filed this petition as a Contempt Petition. However, the prayer made in the petition are as follows:-

- (a) Respondents be directed to implement the judgment and give her the amount of Provident Fund, D.C.R.G., G.I.S, and her children Ganga Singh P. Verma, Jamuna Singh P. Verma, Suraj Singh P. Verma and Saraswati P. Verma - other pensionary benefits to the extent of their shares, through applicant, as they are minor and applicant - the mother is the natural guardian.
- (b) Respondent may kindly be directed to pay the interest on the delayed payment at the rate of 18% as applicant had borrowed loan at market rate.
- (c) Such other and further relief/reliefs as may be expedient in circumstances of this case, including cost of this petition be granted.

2. Though the petition is titled as Contempt Petition, we are of the considered view that the intention of the petitioner is to have the order implemented. In the interest of justice we order this Contempt Petition to be converted to a Miscellaneous Petition filed under Rule 24 of the CAT (Procedure) Rules, 1987. Registry is directed to assign number accordingly. Shri R.R. Shetty, who is appearing for Respondent No.1 takes notice for Respondent No.1 and seeks three weeks time to file reply.

List it on 24.4.2003.

Copy of this order be supplied to Shri R.R. Shetty, learned counsel for Respondent No.1.

  
(S.K. HAJRA)  
MEMBER (A)

  
(A.V. HARIDASAN)  
VICE CHAIRMAN.