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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 633/91

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DATE OF DECISION 12-10-1992

Smt. Dina M Venaina Petitioner

Mr. G S Walia Advocate for the Petitioners

Versus

Union of India Respondent

Mr. S. Joshi Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S K Dhaon, Vice Chairman

The Hon'ble Mr. M Y Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESCOT ROAD; BOMBAY-1

OA NO. 633/91

Smt. Dina M Venaina
R/o. Plot No.669, 1st floor;
Katrak Road; Wadala; Bombay-31
C/o. Shri G S Walia
Advocate, High Court
16 Maharashtra Bhavan
Mezzanine floor;
Bori Masjid road;
Behind Handloom House;
Fort; Bombay-1

..Applicant

V/s.

Union of India through

1. General Manager
Central Railway
Bombay VT; Bombay-1
2. Divisional Railway Manager
Central Railway;
Bhusawal Division
Bhusawal

..Respondents

Coram: Hon.Shri Justice S K Dhaon, V.C.
Hon.Shri M Y Priolkar, Member(A)

APPEARANCE:

Mr. G S Walia
Counsel
for the applicant

Mr. S. Joshi
Counsel
for the respondents

ORAL JUDGMENT:

((Per: S K Dhaon, Vice Chairman))

DATED: 12-10-1992

The applicant alleges herself to be the widow of one Marzban Ratanji Vevaina. She made an application on 11.11.90 praying that she may be given ex-gratia payment. On 28.11.90 she received a communication from the office of the Divisional Railway Manager, Bhusawal, wherein it was indicated that she was required to submit any documentary

evidence such as Provident Fund slip, payment advise, retirement order, medical identity card, retirement passes etc., along with ~~three~~ three Xerox copies of the original death certificate of her husband so that further action may be taken.

On 31.12.90 the DRM(P) Bhusawal sent another communication to the applicant informing her that since no documentary evidence was available, her matter had been referred to the Railway Board for a decision. Having received no redress she approached this Tribunal by means of this Original Application.

A reply has been filed on behalf of the respondents. Before we consider the reply, we may have a look at some averments made in the application. In paragraph 4.1, the averments are these. The applicant is a widow of one Shri Marzban Ratanji Vevaina, who worked as a Guard at Igatpuri Station of the Central Railway under Bhusawal Division. The husband of the applicant was in service from 1917 to 1952 and he retired on attaining the age of superannuation under the Contributory Provident Fund (CPF, for brevity) scheme. By order dated 30-8-1988 the Railway Board circulated an Office Memorandum issued by the Ministry of Personnel, Public Grievances and Pension (Department of Pension and Welfare) dated 30-6-1988, in which it was decided that the widows and dependant children of the CPF pensioners

who retired from service prior to 1.1.1988 shall be granted ex-gratia payment. The reply to paragraph 4.1 runs thus: . The averments made in paragraph 4.1 are not admitted because present matter is a delayed one since more than 40 years have passed by. Therefore, the concerned record is not available. Hence the respondents are unable to confirm whether the applicant was borne on rolls of Railways or otherwise. The applicant's representation was properly forwarded to the concerned Accounts Department. On scrutiny it was found there was no trace of such a railway employee as the applicant's husband working as Guard during the period from 1917 to 1952. Since the husband of the applicant was not at all working in the Railways, the claim of the applicant has rightly been rejected.

It will be atonce seen that the respondents have not disputed the fact that the applicant is the widow of Marzban Ratanji Vevaina. The only dispute raised is that Marzban Ratanji Vevaina was not employed in the Railways between 1917 and 1952, he therefore, did not retire as a Railway employee having the benefits of the CPF scheme and therefore, the applicant is not entitled to any payment.

We have carefully examined the contents of para 4 of the reply and we ^{that} find ~~the~~ basis of the assertion that the husband of the applicant was not

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at all working in the Railways is the fact that the relevant records are not available. The reply has been verified by one Dr. N C Meshram, Senior Divisional Personnel Officer, Central Railway, Bhusawal.

Dr. Meshram does not state in the affidavit, nor he could possibly do so, that the husband of the applicant was known to him and that he was at Bhusawal during the relevant period and it was in his personal knowledge that the said husband was not working in the Railways. It necessarily follows that the averment made by the Senior Divisional Personnel Officer is based on the perusal of the record, whatever it may be worth. Since the respondents have come out with a categorical case that no relevant record is available, no importance can be attached to the ~~averment~~ that the husband of the applicant was not an employee of the Railways.

We may now examine the material placed before us by and on behalf of the applicant. We have already referred to the categorical averment made by the applicant that her husband was employed as a Guard at Igatpuri station from where he retired with the CPF scheme. An affidavit has been filed by the applicant to the rejoinder. To the affidavit she has attached as Annexure B a photostat copy of a certificate of marriage issued to her by the Registrar of Parsi Marriages, High Court, Bombay, on 30-7-1992. A certified copy of the certificate

14.4.1932, the applicant, who was then married for the first time, was known as Dinamai Ardeshir Patel and she was married to Marazban Ratanji Vevaina. Both the applicant and her husband Marazban Ratanji Vevaina are shown as residents of Igatpuri, the rank or profession of Marazban Ratanji Vevaina is shown as "Guard". The certificate bears the signature of the officiating priest, the signature of the contracting parties and also the signatures of the two witnesses. It also indicates that the marriage was registered by Registrar of Parsi Marriages under Act III of 1936, High Court Bombay. It is thus evident that the certificate fully conforms to the requirement of Schedule-II. It is also clear that the entry of the rank or profession as "Guard" of Marazban Ratanji Vevaina as contained in the certificate is in pursuance of the statutory requirement of Schedule-II. Therefore, there can be no escape from the conclusion that the certificate was issued in the normal course of an official act regularly performed by the officer authorised to issue the same and, therefore, the said certificate should be presumed to be genuine and correct. Neither it has been stated by the respondents that the certificate is not genuine nor has any evidence been led to demonstrate that either the certificate had not been actually issued or it was a fake document. Therefore, we have to proceed on the

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issued to the applicant on 30.7.92 has been produced before us and we have perused the same. This certificate was issued in pursuance of Section 6 of the Parsi Marriage and Divorce Act, 1936. ^{marginal note} The ~~expression~~ of Section 6 is "Certificate and registry of marriage". The said ~~provision~~ provides inter alia, that every marriage contracted under the Parsi Marriage and Divorce Act, 1936 shall, immediately on the solemnization thereof, be certified by the officiating priest in the form contained in Schedule II. The certificate shall be signed by the said priest, the contracting parties, or their fathers or guardians when they shall not have completed the age of twenty-one years, and two witnesses present at the marriage; and the said priest shall thereupon send such certificate together with a fee of two rupees to be paid by the husband to the Registrar of the place at which such marriage is solemnized. The Registrar on receipt of the certificate and fee shall enter the certificate in a register to be kept by him for that purpose and shall be entitled to retain the fee. Schedule-II contains the particulars of the certificate of marriage. One of the columns deals with "rank or profession". According to it, the rank or profession of the husband or the wife should be entered in the certificate. The certificate produced before us indicates that on

assumption that the certificate had been genuinely issued and the contents therein are correct.

The mere fact that Marazban Ratanji Vevaina was employed as a "Guard" on 14-4-1932 would not be enough to entitle the applicant to get a relief from us. However, in paragraph 4.6 of the application it is averred that on 27-2-91 the applicant sent a representation to the respondents and annexed thereto two affidavits of the ex-employees who had worked with the deceased husband. The first affidavit is of one Mr.Lockhart Symss and the second is of one Mr.Doliba Rustomji Pithawalla. Photostat copies of the said affidavits are before us as annexures to the application. In the reply filed it is not denied that the applicant had along with her representation submitted the aforesaid two affidavits in original. It is also not denied that the copies of the affidavits annexed to this application are not true copies of the affidavits submitted to the authority concerned along with the representation of the applicant.

We may now read the two affidavits.

The first is sworn by Mr.Lockhard Symss who has given his age as 72 years. According to him, he had joined the then GIP Railway, now the Central Railway, on 18-5-1943 at Kalyan as an Assistant

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Driver and voluntarily resigned the job in 1965 as Deputy Chief Controller, BB.VT. Since 1989 he is functioning as the Special Executive Magistrate (Maharashtra State, Bombay). In 1940 he was at Igatpuri as his father was headquartered there and in 1948 he was transferred to Igatpuri as an Assistant Driver. He personally knew M.Ratanji(Vaveina) as a 'Guard' of Bhusawal Division, being headquartered at Igatpuri.


The other affidavit is of Mr. Doliba Rustomji Pithawalla, aged 71 years. He has sworn that he had joined GIP Railway, now Central Railway, on 12.2.1942 at Kalyan as an Assistant Driver and he retired on and from 1.6.1977. He was transferred to Igatpuri as a Ghat Assistant Driver in the year 1945 and was transferred to Bombay in the year 1949. Mr.Marazaban Ratanji(Vevaina) was working as a 'Guard' in the Bhusawal Division and headquartered at Igatpuri and was personally known to him.


The entry in the certificate of marriage that the husband of the applicant was employed as "Guard" stands amply corroborated by the affidavits of the afore said two gentlemen. In the absence of any evidence to the contrary and in view of the positive evidence led by the applicant, we find no difficulty in coming to the

conclusion that the husband of the applicant was employed as a 'Guard' in the Central Railway at Igatpuri from where he retired. There is nothing on record to belie the case set up by the applicant that her husband was enjoying the benefit of CPF scheme when he retired from service. Once we come to the conclusion that the husband of the applicant had retired as a 'Guard' while in service of the Central Railway and he enjoyed the benefits of the afore mentioned scheme on the date of retirement, the applicant becomes entitled to ex-gratia payment with effect from 1.1.1986.

The application succeeds and is allowed. The respondents are directed to pay to the applicant the ex-gratia payment as permissible under rules with effect from 1.1.1986. Payment shall be computed and paid over to the applicant within a period of four months from the date of receipt of a certified copy of this order. The applicant is permitted to transmit a certified copy of this order to the competent authority under Registered Post Acknowledgement Due.

No order as to costs.


(M Y Priolkar)
Member(A)


(S K Dhaon)
Vice Chairman