

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1264/1995

Date of Decision: 19-12-96

Smt. Jijabai wd/o. Ramdas. M. Birhade

Petitioner/s

Shri K.B. Talreja

Advocate for the
Petitioner/s

V/s.

Union of India & 2 Ors.

Respondent/s

Shri W.S. Masurkar

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M.R. Kolhatkar, Member (A)

Hon'ble Shri

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? X

abp.

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, PRESCOT RD, 4th FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.1264/95.

DATED THIS 19th DAY OF DECEMBER, 1996.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A).

Smt.Jijabai Wd/o Shri Ramdas Manik Birhade,
T.No.492, Helper Under District Controller
of Stores.,

Central Railway,
Currey Road,
Mumbai.

... Applicant.

By Advocate Shri K.B.Talreja.
W/S.

The Union of India,
Through the General Manager,
Central Railway, Bombay W.T.,
Bombay - 400 001.

The District Controller of Stores,
Central Railway, Currey Road,
Bombay.

Smt.Akabai alias Indu,
Hanuman Nagar,
Kandivli, Bombay.

... Respondents.

By Advocate Shri V.S.Masurkar

I O R D E R

I Per Shri M.R.Kolhatkar, Member(A) I

This is an application by the first wife of a deceased railway employee, Ramdas Manik Birhade for payment of pensionary dues alongwith interest including Monthly Family Pension, Commutation of Pension, DCRG, encashment of leave salary alongwith a sum of Rs.13,000/- against maintenance allowance as per rules.

2. The applicant's husband was working in the Office of District Controller of Stores, Central Railway

Currey Road, Bombay. He expired on 7/1/95. It appears that during his life^{time} he contracted a second marriage in violation of Government Servants' Conduct Rules and it is not disputed that a major penalty chargesheet was issued. Respondents on requisition the file of have produced the connected chargesheet dated 7/12/94, in which the statement of articles of charges reads as below:-

Annexure-I

Statement of article of charges framed against Shri Ramdas Birhade, T.No.482, Gr.II of DCOS (G) CRD. Shri Ramdas Manik Birhade, while working as Gr.II Artisan, T.No.482 in DCOS (G) CRD during the period from 1964 to 1994 committed serious misconduct in that:-

Article-I:

Shri Ramdas Birhade, T.No.482, while working as Gr.II Artisan in the office of DCOS (G) CRD had married with Smt.Jijabai. He performed second marriage with Smt.Akkabai, though Smt.Jijabai is alive, without obtaining permission from Railway Administration as required.

Article-II:

Shri Ramdas Birhade, T.No.482 availed privilege pass facilities for his second wife Smt.Akkabai and he has also availed medical facilities from Railway Administration wide Railway Medical Card No.587515 dt. 5/6/90 and 203593 for his second wife.

Article-III:

IInd J.M.S.C. Ulhasnagar has ordered on 14/6/90 that Shri Ramdas Birhade, Gr.II T.No.482 of DCOS (G) CRD shall be committed to jail for one month from 14/6/90 in case No.MA 20/88 registered under Section 125 of Cr.P.C. and this fact was suppressed by him and produced duty certificate from Sr.DMO Borivali & has cheated the administration.

By the above said act Shri Ramdas Birhade T.No.482, Gr.II Artisan of DCOS (G) CRD failed to maintain

absolute integrity, devotion to duty and behaved in a manner of unbecoming of a Railway servant and thereby contravened Rule No.3 (I) (i) (ii) (iii) & 21(2) of Railway Service (Conduct) Rule 1966."

3. The applicant has contended that her late husband was living with one Smt. Akkabai alias Indu, respondent No.3 a few years before his death and Jt. Civil Judge & J.M.F.C., had directed him to Ulhasnagar wide Maintenance Application No.20/88/ deduct a sum of Rs.350/- p.m. vide Annexure-4. Further the applicant's husband was in arrears of maintenance allowance to the tune of Rs.13,000/- and he had given an undertaking to the Court on 30/7/91 when a Lawyer's notice was sent by the applicant to respondent and they had replied vide their letter dated 19/10/93 at Annexure-6 informing her that the recovery of the amount of Rs.13,000/- will be arranged at the time of his superannuation retirement from his final settlement dues. The applicant has therefore prayed for reliefs as mentioned above.
4. The private respondent has not put in an appearance. On behalf of official respondents, it is contended that the chargesheet was drawn and shown as issued but within a fortnight thereafter the Railway Employee expired and therefore no further action was taken. All the official respondents dispute the tenability of the OA before the Tribunal because according to them the question involved is that of validity of the marriage and this question can be adjudicated only by a Civil Court of competent jurisdiction. Moreover, the Railway Employee had nominated respondent No.3 as his nominee for the settlement dues and therefore also the issue would be governed by Hindu Succession Act and therefore they are not in a position

to pay the dues as claimed by the applicant.

5. The applicant has relied on the judgement of Hyderabad Bench in OA-342 of 1991, reported in Swamy's Case Law Digest, 1993 extracted as below:-

"C.Kamalakumari and Ors v/s. The Collector of Customs and Central Excise, Hyderabad & Ors.,

Date of Judgement : 5/2/1993.

(A) Family Pension payable only to legally wedded wife. Held: The learned Counsel for the second wife of the deceased relied on Rule 54(7)(a)(1) of CCS(Pension) Rules, 1972 and said that the family pension should be distributed among the two widows. On the other hand, the learned Counsel for the first wife and her children referred to the Government of India Decision No.(13) under the same rule wherein it has been specifically stated that the second wife is not entitled to the family pension under the Hindu Marriage Act. This decision having the effect of modifying the rule is issued in the light of section 5 of the Hindu Marriage Act, 1955. This being the position, it is clear that the family pension is payable only to the legally wedded wife of the deceased Government servant."

6. The respondents were asked to produce the service record of the deceased railway employee and the nomination forms signed by the deceased employee. It is seen that the deceased employee had filled in form No.6 as to the details of family pension in which he had mentioned the name of applicant/on 29/1/1971. ^{of family pension in-}
^{as wife}

On the other hand, there is also a separate combined nomination form for PF, GIS and DCRG ^{D/21-2-14} in which the applicant has nominated respondent No.3 to receive PF, GIS and DCRG benefits.

7. First of all I consider the contention of the respondents that this Tribunal has no jurisdiction to entertain the OA. This, ^M is prima-facie untenable. The pensionary benefits are a part

condition of service and they are governed by rules framed under article 309. A Widow who claims Family Pension and other benefits to which her husband is entitled, certainly can file an OA before this Tribunal and the Tribunal is competent to decide the issues in accordance with the rules. This is also substantiated by the fact that such issues have been adjudicated by the Hyderabad Bench.

8. Regarding the question of validity of marriage, it is clear that the second marriage of the late Government employee while the first wife was living was not valid in the eyes of the Government because it was against the ~~xxxxxx~~ provisions of conduct rules.

9. ^{of CCS (Pension) Rules} Rule-54 deals with Family Pension. ^{under,} In Government of India decision No.14 / Rule-54, it is laid down that the second wife will not be entitled to Family Pension as a following legally wedded wife. The clarification was issued by the Department of Personnel and P.W. by the memorandum dated 4/3/87 in the light of the advice given by the Ministry of Law.

EXTRACT

It is specifically a question arising under the Hindu Marriage Act, 1955. Under Rule 54(7) of the CCS(Pension) Rules, 1972, in case a deceased Government servant leaves behind more than one widow or a widow and eligible offspring from another widow, they are entitled to family pension in respect of that deceased Government servant. Section 11 of the Act provides that any marriage solemnized after the commencement of the Act shall be null and void and can be annulled against the other party by a decree of nullity if the same contravenes any of the conditions specified in clauses (i), (iv) and (v) of section 5 of the Act. Section 5(1) stipulates that the marriage cannot be

legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu male after the commencement of 1955 Act during the lifetime of his first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife."

10. There is no doubt that the second wife i.e. respondent No.3 is not entitled to Family Pension in terms of Government rules. I have already noted that there is a valid nomination made by Government employee in / ^{favour of the applicant} on which the respondents are bound to act.

11. So far as the nomination in regard to PF, GIS and Gratuity is concerned, the ~~same~~ is in favour of respondent No.3. However, there is already a Court order and an undertaking given by the department that at the time of retirement/superannuation, recovery of Rs.13,000/- would be arranged. The department however has not arranged such a recovery after the death of the applicant's husband.

12. The official respondents are therefore directed to make payment of Rs.13,000/- out of DCRG to applicant. So far as the question of payment of balance amount of GPF, GIS and DCRG is concerned, the respondents may hold the same in trust and take action for payment of same as per rules and as per advice which may be obtained by them.

13. So far as Family Pension is concerned however, official respondents are bound to pay the same to applicant

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as held by ^{M.C.} me above. Official respondents may complete the formalities in this regard and should obtain requisite the application from applicant as per rules and make payment of the same to the applicant within three months of the date of communication of the order. The respondents are also directed to pay interest on the arrears of Family Pension till the date of payment at the rate of 12% interest. As mentioned above respondents are also directed to make payment of Rs.13,000/- being arrears of maintenance allowance within three months. Regarding the balance pensionary benefits, respondents may take action as indicated in para-12 supra. OA is disposed of in these terms with no orders as to costs.

abp.

M. R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

R.P.NO. 06/97 in
ORIGINAL APPLICATION NO: 1264/95

Date of Decision: 29-5-97

Smt. Jijabai Birhade

.. Applicant

Shri K.B. Talreja

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S. Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri M.R. Kolhatkar, Member (A)

The Hon'ble

(1) To be referred to the Reporter or not ? *Y*

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? *X*

M.R. Kolhatkar

(M.R. KOLHATKAR)

MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

R.P.NO.06/97 in OA.NO.1264/95

Presented this the 29th day of May 1997

CORAM: Hon'ble Shri M.R.Kolhatkar, Member (A)

Smt. Jijabai Birhade ... Applicant
By Advocate Shri K.B.Talreja
V/S.

Union of India & Ors. ... Respondents
By Advocate Shri V.S.Masurkar
C.G.S.C.

AND

Smt.Akkabai Ramdas Birhade ... 3rd Respondent
By Advocate Shri Suresh Kumar (Review Petitioner)

Tribunal's Order

In this Review Petition the private Respondent No. 3 has prayed for review of my judgement dated 19.12.1996. In Para 4 of the judgement it is stated that 'private respondent has not put in an appearance'. The Review Petitioner has stated that as a matter of fact, no notice was served on her in as much as although a notice was issued, the same had been returned back unserved because the address given in the application was incomplete. The address given was 'Smt.Akabai alias Indu, Hanuman Nagar, Kandivli, Bombay'. According to the applicant, there are two parts of Kandivli, Kandivli East and Kandivli West and Hanuman Nagar is a slum area with a population of one lac and 35 thousand and therefore with ^{the} said incomplete address, there was no possibility of service. The applicant has stated that her correct address is "Smt.Akkabai Ramdas Birhade, C/o.Mrs.Malan Dhansingh Yadav, Navyuvak Sanghatan Mandal, Hanuman Nagar, Near Yadav Kirana Shop, Kandivali (E), Mumbai- 400 101."

2. It appeared to me that prima facie Respondent No. 3 had not been served and therefore I fixed the case for preliminary hearing. Notice was issued to all the parties. Time was given to all the other parties to file a reply to Review Petition, but the same was not filed either by the original applicant or by the official respondents. Review Petitioner also did not choose to file a reply to the OA.

3. The contention of Review Petitioner/original Respondent No. 3 is that the correct position as to marital status is explained by late Government employee in his reply to the disciplinary authority dated 27.12. 1994 that 'there was no marriage between the late Government employee and the applicant. She was only living with the Government employee for a few years and thereafter left her husband on her own and this fact was informed to the 'Panchayat' of late Government employee's community', who have approved the same.' According to the Review Petitioner the applicant had not produced any evidence regarding her marriage. On the other hand, Review Petitioner has several pieces of evidence showing her subsisting marriage, namely, Voter's Identity Card, Electricity Bill etc. According to the Review Petitioner, she has three children from the deceased Government employee who are to be treated as an issue from the legally wedded wife of the Government employee and even assuming that the late Government employee had contracted first marriage with the applicant Jijabai, the three children do have a right to the estate of the deceased employee including the family pension. In this connection, she also refers to Bahri's 'Railway Pension and Retirement Benefits' Manual in which at page 49 the rule laid down is as below :-

"Where deceased employee is survived by a widow, but has left behind an eligible minor child from another deceased/divorced wife, the eligible minor child will be paid the share of F.P. which his/her mother would have received if she had been alive/not divorced."

4. In the present case, the facts are different. What is contemplated in the rules quoted above is that the wife is deceased or divorced. In the present case, the second wife is very much alive. Moreover, the department has taken a view that she is not a legally wedded wife. Moreover, there is also the rule that family pension is granted first to widow and then sons and daughters. Moreover, in the case of retiral benefits the greatest importance is required to be attached to the nomination left by the Government employee which is dealt with in Rule 53 of the CCS (Pension) Rules which are para-materia with rules for Railway servants.

5. I have already observed in my original judgement that pension is payable in terms of nomination to the legally wedded wife. In this matter, it is the intention that counts and ^{if} it was intended by the late Government employee that the children from the second wife, whatever the status of the wife may be in the eyes of the law, should be entitled to family pension, he should have taken action to amend his nomination. The deceased Government employee did no such thing. The contention of the late Government employee in his defence that no action can lie in the departmental enquiry regarding bigamy cannot be attached much weight because it remains a mere contention and the department had no time to scrutinise the same. Under the circumstances, I do not see that my order directing payment of family pension in favour of applicant requires any change.

6. At the argument stage, counsel for the official respondents stated that respondents have not been able to pay the family pension due to these disputes and therefore they should not be saddled with the burden of paying interest on family pension at the rate of 12%.

7. I am not impressed by this contention. The department is to act in accordance with the nomination and if it had so acted, no interest liability would have attached to the department. The department delayed the matter on the pretext of there being a dispute. The department also did not take action on the judgement dated 19.12.1996, although direction was given to comply with the judgement within three months. I am, therefore, of the view that no direction not to pay interest is required at the stage of review.

8. In my view, Review Petition has no merit and therefore the same is dismissed with no orders as to costs.

mrj.

MR Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

CPNO 90/97
for orders
fixed on 12/1/98

MB
3/12

Dated: 12/1/98 (19)

None for the applicant.
Notice on C.P. Returnable on
16/3/98

M.R. Kolhatkar
(M.R. Kolhatkar)
M(A)

R.G. Vaidyanatha
(R.G. Vaidyanatha)
V.C.

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Dated: 16.3.98 (47)

None for the applicant.
Shr V-S. Masurkar, Counsel for the
respondent/2.

Adjourned to 8-5-98.

M.R. Kolhatkar
(M.R. Kolhatkar)
M(A)

R.G. Vaidyanatha
(R.G. Vaidyanatha)
V.C.

MB