

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 755/95

Date of Decision: 31-12-97

Smt.D.S.Solanki

Applicant.

Shri K.B.Talreja

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
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

M.R. Kolhatkar

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 755/1995.

Prorogued, this the 31st day of Dec. 1997.

Coram: Hon^{ble} Shri M.R.Kolhatkar, Member(A).

Smt.Darsha S.Solanki,
Navjivan Chawl No.4,
Sanjay Gandhi Nagar,
Devi Pada,
Borivali (W).

... Applicant.

(By Advocate Shri K.B.Talreja)

V/s.

1. The General Manager,
Central Railway,
Bombay V.T.,
Bombay.

2. The Chief Commercial Manager,
Central Railway,
Bombay V.T.

3. Smt.Shantabai S.Solanki,
C/4, B.M.C.Chawl,
L.B.S.Marg,
Kurla (W).

... Respondents.

(By Advocate Shri V.S.Masurkar).

ORDER

¶Per Shri M.R.Kolhatkar, Member(A)¶

The applicant states that she is a widow of Late Railway employee Shri S.D.Solanki who died on 12.3.1993. She has been appointed on compassionate grounds as a Hamal by orders dt. 20.10.1993. Her grievance is that ^{although} she is the legally wedded wife of the deceased employee ^{and} although she made a representation on 18.3.1993 (Annexure A-3) for payment of settlement ^{of} dues ^{of} her Late husband and also for compassionate appointment, the settlement dues of her late husband ~~have~~ not been paid to her ~~and only~~ the request for compassionate appointment was considered. According

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to the applicant her late husband had a relationship with one lady Smt. Shantabai S.Solanki who ^{has no legal} ~~has~~ ^{applicant alone} status of wife as per Hindu Marriage Act and therefore ~~she~~ ^{is} is entitled to family pension and other dues of her late husband, viz. D.C.R.G., P.F., Group Insurance benefits etc.

2. The respondents in their written statement have stated that the compassionate appointment ^{given} to the applicant is not conclusive as to ^{her} claim for family pension and other retirement dues. The present applicant, as well as, R-3 Smt.Shantabai S.Solanki have come forward claiming grant of payment of settlement dues, but the same could not be paid as there is a dispute. In the circumstances, the Tribunal is required to satisfy itself first of all that Respondent No.3 ^{given} is an opportunity of being heard before passing any order. Efforts were made to serve the R-3. On 4.9.1995 the counsel for applicant had received copies of the application for service to the Respondents directly. The counsel for the applicant has filed an affidavit stating that Smt. S.S.Solanki refused to accept the O.A. and hence the same was sent by Registered Post on 8.9.95. The Tribunal on 12.3.1997 ascertained the ^{correct} Pin Code and directed to issue a fresh notice to R-3. ^{Such} a notice was issued by the office of the Tribunal on 14.3.1997; however, there is no acknowledgement. I hold that R-3 has served and has chosen to remain absent.

3. The second question is regarding whether there was nomination in favour either ^{the} applicant or R-3 in the Service Book of the deceased Railway servant. The Tribunal had directed the counsel

for the respondents to produce the record and since the applicant's husband had last served in Kurla Car Shed, Senior D.E. in-charge of Kurla Car Shed and the D.R.M. were directed to be served ²copies. However, the counsel for ~~Respondent~~ has produced a letter from Divisional Office, Personnel Branch, C.S.T. dt. 17.12.1997 that the record of the deceased government employee is not traceable.

4. The contention of the learned counsel for the applicant is that he has produced a certificate of Marriage from Shree Tulsiwadi Meghwal Panchayat dt. 15.3.1993 attesting the marriage between the applicant and the late Railway employee. He also relies on C.Kamala Kumari & Ors. V/s. Collector of Customs decided on 5.2.1993 by CAT Hyderabad Bench (O.A. 342/91) and appearing at Swamys Case Law Digest 1993 page 674 that the Family Pension is payable to only the legally wedded wife of the deceased government servant. He also relies on a decision of this Tribunal in Jijabai (Smt.) Widow of Ramdas Manik Bhirde V/s. Union of India reported at (1997(1) CAT/MAT 221) in which the Tribunal noted that there was a valid nomination in favour of the applicant in the service record and directed payment of the Family Pension to the applicant therein. However, since the nomination in regard to other benefits were in favour of R-3 the court did not pass any order in regard to those benefits." He therefore pressed that a similar order ~~granting~~ Family Pension be passed in favour of the applicant. The counsel for the respondents argued that unlike in ~~Jijabai's case~~ Jijabai's case, the

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records not being traceable, the Tribunal cannot direct the payment of Family Pension in favour of the applicant and that the applicant may be directed to obtain orders of Court of competent jurisdiction.

5. In a series of Judgments, this Tribunal has upheld the jurisdiction of this Tribunal to direct payment of Family Pension to the wife of the government employee having a valid nomination and also discussed the question of burden of proof as between disputants vide *Kasturi Bai Subharayan P. (Smt.) V/s. Union of India & ors.* (1997-II CAT MAT 313). The question is as to what should be the proper direction in the present case where the service record is missing.

6. In such a situation, it cannot be said that the applicant is entirely without remedy. The applicant has taken the trouble of approaching the Tribunal and joining a proper party viz. R-3 to enable the Tribunal to give its decision. The applicant has filed a certificate of marriage. The department has considered the claim of the applicant for compassionate appointment consequent on the death of her husband. The R-3 who has raised this dispute has chosen not to appear. Under the circumstances, the applicant and the R-3 cannot be treated on the same footing. The applicant has certainly raised a presumption in her favour for grant of settlement dues including family pension. This presumption, of course, is rebuttable, but it is to be rebutted by a proper party fortified by a proper order of the Court of competent jurisdiction. The applicant has made a prima facie case that she is the legally wedded wife of the applicant and the burden of disproving the case is on R-3. It is for R-3, therefore, to file a succession certificate from competent Court. I, therefore dispose

of this O.A. by passing the following order :

O R D E R

The official respondents are directed to call on R-3 to produce a succession certificate in favour of R-3 within four months from the date of receipt of the order. The official respondents should also satisfy themselves that while applying ^{for} the succession certificate, R-3 must make applicant as a party. If R-3 fails to produce the succession certificate as above, within the specified time limit which official respondents are at liberty to extend ^{directed to} on reasonable grounds, the respondents are pay the settlement dues of the late railway employee to the applicant. There will be no orders as to costs.

M.R. to the Kar

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

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