

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1013/97

4-2-99
Date of Decision:

Smt. Narsomma Ananda

Applicant.

Shri K.B. Talreja

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri Suresh Kumar

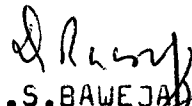
Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. D.S. Baweja, 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? ✓


(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

DA.NO. 1013/97

this the 4th day of February 1999.

CORAM: Hon'ble Shri D.S.Baweja, Member (A)

Smt. Narsomma Ananda
Wd/o Ananda Bhimmana
Ex. Gangman under
Chief Permanent Way Inspector
(Maintenance) C.Rly., Pune.

By Advocate Shri K.B.Talreja ... Applicant
V/S.

1. Union of India
through the General Manager,
Central Railway, Mumbai CST,
Mumbai.
2. The Divisional Railway Manager,
Central Railway, Mumbai CST,
Mumbai.
3. Smt. Nagamma Ananda
M.B.Camp, Dehuroad.

By Advocate Shri Suresh Kumar ... Respondents

O R D E R

(Per: Shri D.S.Baweja, Member (A))

This application has been filed seeking the relief of directing the respondents for release of Pension, Death-cum-retirement gratuity (DCRG), Provident Fund, Group Insurance and other related retiral benefits along with the interest at the rate of 18% on account of delay in payment of the dues.

(D)

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2. The applicant's husband while working as Gangman under Chief Permanent Way Inspector, Pune, Central Railway died on 18.12.1994 leaving behind the applicant as a surviving widow. The applicant made a request for compassionate appointment for herself and the applicant has been granted compassionate appointment. The applicant was also asked to fill up all the relevant forms with regard to the family pension and other retiral benefits. She has submitted all the forms duly filled in in the office. However, no payment of family pension and other retiral benefits has been done. Feeling aggrieved, she has sought a legal remedy for payment of settlement dues through this OA. filed on 19.11.1997. The applicant has submitted that the respondents have advised her that Respondent ^{Smt.} No. 3 / Nagamma Ananda has also put in claim as being wife of Shri Ananda Bhimmana. The applicant contends that she is the legally wedded wife and their marriage was solemnised on 22.4.1985. She further submits that she is not aware of any relation of her husband with Respondent No. 3. She also adds that the applicant has been appointed on compassionate ground after making enquiry about her status as legal wife. The applicant as per the extant rules is entitled for the pension and payment of other retiral benefits. The applicant has relied upon the order of Hyderabad Bench in OA.NO. 342/91 dated 5.2.1993 in the case of C.Kamalakumari & Ors. vs. The Collector Customs and Central Excise, Hyderabad & Ors.

3. The respondents have opposed the application through filing written statement. The respondents submit that apart from the applicant, one Smt. Nagamma Ananda^{has} also submitted the forms claiming the retiral benefits. In view of this, both the claimants have been asked to produce the succession certificate from the competent court. It is further submitted that the respondents have also given the details regarding the dues and recoveries of the applicant's husband to both the claimants to enable them to obtain succession certificate. Since the succession certificate has not been yet submitted, it has ^{not} been possible to arrange payment. With regard to grant of compassionate appointment, the respondents have submitted that as per Railway Board's letter dated 2.1.1992, compassionate appointment is to be given only to first wife or her children but payment of settlement dues could be made to second wife if directed by Court or otherwise. In view of this, the claim of the second wife, i.e. Respondent No. 3 cannot be dismissed out-rightly. The respondents rely upon the order of this Bench dated 31.12.1997 in OA.NO.755/95, Smt.Darsha S.Solanki vs. The General Manager, Central Railway. The respondents based on the submissions in the written statement plead that the applicant is not entitled for the relief prayed for and therefore application deserves to be dismissed.

4. The applicant has not filed any rejoinder reply for the written statement.

5. A notice was issued to Respondent No. 3 which was received back with the remarks "party out of station". Notice was again sent by Registered Post advising Respondent No. 3 of the next date of hearing. Subsequently, one more notice was ^{also} sent by Registered Post. Since the notice was again received back, the respondents were directed to make efforts to serve notice on Respondent No. 3 as she may be in touch with the office with regard to her claim for payment of settlement dues. Registered notice was again sent to Respondent No. 3 and ^a copy was given to Respondents to serve on Respondent No. 3. The respondents submitted that the notice for Respondent No. 3 was sent through an official at the known address but it was given to understand that she has shifted to Andhra Pradesh. Subsequently, the respondents were able to locate the address of Respondent No. 3 in Andhra Pradesh and notice was served on her. However, she has niether appeared in person nor represented herself through a counsel. No written reply has also been filed. In view of this, the matter has been proceeded ex-parte against her.

6. Heard the arguments of Shri K.B.Talreja and Shri Suresh Kumar, learned counsel for the applicant and respondents respectively.

7. As indicated earlier, apart from pension, the applicant has also claimed the other settlement dues, viz. provident fund, DCRG and Group Insurance etc. The respondents in their reply have not brought out specific ^{averment} as to whether any nomination for the

payment of Provident Fund and DCRG had been done by the late Shri Ananda Bhimmana. During the course of arguments, the learned counsel for the applicant also made a submission that the legal heir certificate is available on the record and copy of the same is available with the applicant as per which the applicant has been shown as the legal heir of late Shri Ananda Bhimmana. The respondents, therefore, were directed to check up the position and file an additional affidavit on this aspect. The respondents, however, did not file any written statement but orally submitted that no nomination had been done by the late employee for P.F. and DCRG. It is further submitted that legal heir certificate is available on the personal file of the applicant which was produced during the hearing. On going through the personal file, it is noted that legal heir certificates issued on 23.3.1995 and 2.4.1995 are available on the personal file. Firstly, it is not understood ^{as to} how two legal heir certificates had been issued within a short period of 9 days by the same office and countersigned by the ^{same} officers. Secondly the certificates had been prepared much after the death of applicant in 1994. Further, the legal heir certificates ^{have} been signed by the applicant. On query, the counsel for the respondents was not able to indicate as to on what basis this legal heir certificate was obtained. The counsel for the applicant was also not able to throw any light on this aspect. However, in any way, this legal heir certificate which is available on ^{the} record, cannot be a substitution of nomination for PF and gratuity which was ^{to be} done by the

late employee. In view of this background, the case of the applicant for payment of DCRG and other settlement dues is to be decided upon the fact that there was no nomination available for payment of these settlement dues.

8. The applicant has made a claim of pension and other settlement dues. These two claims have been dealt with separately. Taking the case of pension, the applicant has put forward the plea that she is the legal wife of late Shri Ananda Bhimmana. This is demonstrated by the fact that the respondents have already allowed compassionate appointment to the applicant after making enquiry with regard to the legal status of the applicant. The respondents, on the other hand, have submitted that the Respondent No. 3 Smt. Nagamma Ananda has also put in the claim for pension and other retirement dues by submitting the relevant papers. There are certain documents available on record wherein ^{Smt.} Nagamma appears as a wife of late Shri Ananda Bhimmana. In view of this, there is a dispute with regard to the legal wife. The respondents have contended that merely giving compassionate appointment to the applicant does not establish that the applicant is only entitled for the payment of pension. The respondents have relied upon the Railway Board's letter dated 2.1.1992 at 'Ex.R-II' in support of their contention. On going through this letter, it is noted that Railway Board have laid down that where the late employee dying in harness leaving more than one widow, the compassionate appointment is to be given to the first wife or her children

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while the settlement dues ~~could~~ be shared by both the widows due to Court orders or otherwise on merits of each case. The respondents, therefore, argued that since Respondent No. 3 has also put in claim for pension and other dues claiming the widow of late Shri Ananda Bhimmana, the payment of pension cannot be authorised to the applicant until and unless succession certificate is produced from the relevant court. The counsel for the applicant, on the other hand, strongly contended that the applicant is entitled for the family pension as being the legal wife and relied upon the orders of the Hyderabad Bench of the Tribunal in OA.NO. 342/91 decided on 5.2.1993 in the case of C.Kamalakumari & Ors. vs. The Collector Customs and Central Excise, Hyderabad & Ors. The respondents, on the other hand, have cited the orders of this Bench in the case of OA.NO. 755/95 decided on 31.12.1997 in the case of Smt.Darsha S.Solanki vs. General Manager, Central Railway and OA.Nos. 663/97 & 918/97 decided on 6.1.1999 Vasanta Alias Mariamma vs. Union of India & Ors. On going through the order of the Hyderabad Bench in OA.NO. 342/91, it is noted that though the counsel for the respondents had argued that as per Rule 54(7)(a)(i) OF CCS (Pension) Rules, 1972, the family pension is to be distributed among the two widows, but the Bench did not accept this plea. The Bench referred to the Government of India's Decision No. (13) under the same rule wherein it has been specifically stated that the second wife is not entitled for settlement dues under the Hindu Marriage Act and therefore this decision modifies the rule as

stated earlier. The applicant in the present case belongs to Railway and is therefore governed by the Pension Rules issued by the Ministry of Railways. The counsel for the applicant was asked to state whether similar decision had been conveyed by the Ministry of Railways but he could not show any such communication. On the other hand, the respondents have brought on record the Railway Board's letter dated 2.1.1992 which indicates that the payment of family pension could be shared by widows. In view of this, the ratio of the order in the case of OA.NO. 342/91 is not directly applicable to the case of the applicant. Referring to the order cited by the respondents, in OA.Nos. 663/97 and 918/97, the claim for family pension had been put in by two wives both claiming as the legal widow of the late Railway employee. The Tribunal has held that since there is a dispute with regard to the legal widow of the late Railway employee, ^{then} ~~who~~ is to be entitled for the payment of family pension, is not a service dispute as the status of the applicants in both the cases with regard to the legal wife/widow is to be decided by the competent civil court. In view of this, the OAs. have been decided directing the rival parties in both the OAs. to obtain a succession certificate from civil court and Railway administration to consider the payment of the pension and other settlement dues based on the succession certificate. In case of OA.No. 755/95, the facts of the case are almost similar to the facts in the present OA. Here also there was no nomination for payment of settlement dues and two parties

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claiming to be a legal widow have put in papers claiming the payment of settlement dues. Here also the compassionate appointment had been given to the applicant and the same plea^{was}/put forward that since the compassionate appointment had been given, the applicant is to be treated as legal widow of the late Railway employee and therefore entitled for pension. In this case also, other claimant was made as a respondents but she did not contest either by filing the written statement or appearing in person or through the counsel. Considering the facts and circumstances of the case, it was directed that the official respondents should call upon the second claimant to produce a succession certificate in her favour within a specific time and in case of failure to do so, the payment of pension and other settlement dues may be done to the applicant. Keeping in view the facts and circumstances of the present case and the relevant rules brought on record by the official respondents, I am in respectful agreement with the order passed in OA.NO.755/95. So far as the claim of family pension is concerned, I am of the considered opinion that order, similar to what is passed in the OA.NO. 755/95 should be passed in the present OA. also.

9. As regards the claim for payment of DCRG, P.F. and Group Insurance etc., the respondents were directed to indicate the relevant rules under which the payment of these dues is to be effected in case there is no nomination done by the late employee. The counsel for the applicant referred to the Rules 70,71, 73 and 74 of Railway Services (Pension) Rules, 1993.

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On going through these rules, it is noted that in Rule 70 (5) the definition of family for payment of Death-cum-Retirement Gratuity has been laid down. The category (i) in sub-rule 70 (5) lays down that wife or wives including judicially separated wife or wives in the case of a male railway servant are entitled for payment of gratuity along with sons including step-sons and adopted sons, unmarried daughters, step daughters and adopted daughters. Sub-rule 71 (1) (b) (i) lays down that if no nomination is available, then the gratuity is to be shared equally between the family members as covered under category (i) to (iv) under sub-rule (5) of Rule 70. From this rule, it is clear that gratuity can be paid to more than one wife. Since in the present case, there is dispute with regard to the claim and there is no nomination, the payment of settlement dues cannot be made to the applicant alone without the concerned authority making it sure that who is the legally entitled person for the payment of settlement dues. The same remarks will also apply in case of the Provident Fund. Keeping these facts in view, I am of the view that for payment of settlement dues other than the pension, the same order as indicated earlier for the payment of pension should be laid down.

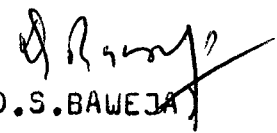
10. In the light of above discussion, the OA. is allowed with the following directions :-

- (a) The official respondents shall call upon Respondent No. 3, i.e. Smt. Nagamma Ananda to produce a succession certificate

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in favour of her within a period of four months from the date of receipt of the order. The official respondents shall also satisfy themselves that the applicant is made as a respondent party for the succession certificate to be obtained by Respondent No. 3.

- (b) In case the Respondent No. 3 is not able to produce the succession certificate within the stipulated period, the respondents may extend the period on a reasonable ground.
- (c) The respondents shall take further steps for payment of pension and other settlement dues based on the succession certificate submitted by Respondent No. 3. In case no succession certificate is submitted by the Respondent No. 3 within the stipulated period, the payment of pension and settlement dues will be done to applicant.
- (d) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)

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