

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:775/98

DATE OF DECISION: 2nd MAY 2000

Smt. Kalawati Khubchand Applicant.

Shri K.B.Talreja. Advocate for
Applicant.

Versus

Union of India and others. Respondents.

Shri A.I.Bhatkar for respondent No.1 and 2. Advocate for
Shri K.R. Yelwe for respondent No.3 Respondents

CORAM

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

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

(2) Whether it needs to be circulated to other Benches of the Tribunal? No.

(3) Library. yes.

S.L. Jain
(S.L.Jain)
Member (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:775/98

the 2nd day of MAY 2000

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

Smt. Kalawati Khubchand
P. Tanwani
C/o Shri K.B. Talreja
Advocate High Court
Phulwadi, Plot No.16
Dev Samaj Road,
Ulhasnagar.

...Applicant.

By Advocate Shri K.B. Talreja.

V/s

1. The Union of India, through
The General Manager,
Central Railway,
Mumbai CSTM
2. The Divisional Railway Manager,
Central Railway, Mumbai CSTM

By Advocate Shri A.I. Bhatkar.

3. Smt. Nirmala D. Menghani
Barrack No. 1533/3,
Section 29,
Ulhasnagar.

...Respondents

By Advocate Shri K.R. Yelwe.

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 a direction to the respondents for release P.F., D.C.R.G., G.I.S. as agreed in the written statement filed in OA 39/96 alongwith interest at the rate of 18% per annum from 1.9.1979 i.e. from the date of death of Shri Daulatram applicant's first husband alongwith cost of application.

Signature

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2. Smt. Nirmala D. Menghani filed OA 39/96 before this Tribunal against the respondents i.e. say Union of India through General Manager, Central Railway Bombay V.T. and Divisional Railway Manager, Central Railway Bombay VT. which was decided on 18.7.1996 with a direction to the applicant, Smt. Nirmala D. Menghani to produce the succession Certificate from the Competent Court of law and include first wife as one of the party to the succession certificate. On receipt of the same the respondents were directed to settle the claim of the applicant accordingly.

3. After the said order, the said Smt. Nirmala obtained the succession certificate, filed the same before the respondents and in compliance of the same the respondents paid the pension alongwith arrears to Smt. Nirmala on

4. The applicant Smt. Kalawati was married to Shri Daulatram, due to inavoidable circumstances left her husband Shri Daulatram and re-married to Shri Khubchand P. Tanwani of Ahmedabad from whom she got three children. Shri Daulatram was appointed in the operating department under Divisional Railway Manager, Central Railway Bombay CSTM on 8.4.1963 and expired in the Railway Hospital at Byculla on 1.9.1979. After completion of 16 years, 4 months and 23 days of service. Shri Daulatram remarried with one Nirmala in July 1976 and was blessed with two sons. About the facts stated above there is no dispute between the parties.

5. The respondents in OA 39/96 stated that "they are ready and willing to hand over the DCRG, PF and GIS to the first wife Smt. Kalawati in whose name the nomination for the said amount

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stands subject to her completing the required formalities. Since on the date of death of her husband the applicant is trying to get her dues but all in vain. Hence this OA for the above said relief.

6. Originally the present OA was filed against Union of India through General Manager, Central Railway, CSTM and the Divisional Railway Manager, Central Railway, CSTM. Later on in compliance of the order of this Tribunal Smt. Nirmala was added as respondent No.3.

7. The learned counsel for the applicant, Shri K.B. Talreja has also filed the written statement for and on behalf of respondent No.3, Smt. Nirmala. After noticing the said fact when no vakalatnama of the counsel for the applicant Shri K.B. Talreja was on record for Smt. Nirmala an order was passed by this Tribunal on 21.2.2000. After the said order respondent No.3 filed a fresh written statement through Shri K.R. Yelwe, Advocate which is taken on record.

8. Respondent No.3 denied the right of the applicant for DCRG, GIS and P.F. and alleged that in view of Rule 74 nomination in favour of the first wife i.e. applicant becomes invalid and she is not entitled to any of the amounts claimed.

9. Respondent No.1 and 2 also resisted the claim of the first wife - The applicant on the ground that when written statement in earlier OA 39/96 was filed, they were not knowing the issue about the status of Smt. Nirmala. After production of the succession certificate in view of Rule 74 of Railway Servants Pension Rules 1993, earlier nomination becomes invalid and the first wife - the applicant is not entitled to seek the relief on the same basis.

P.A. D.

10. On perusal of the facts stated above it is established that in OA 39/96 the applicant was not a party to the same. In fact Rule 74 of Railway Servants Pension Rule 1993 is not applicable to the present case as it came in force on 3.12.1993, while Shri Daulatram who was an employee of the respondents expired on 1.9.1979. Hence the law which was not in existence cannot be applied in the present case.

11. Rule 905 of the Manual of Railway Pension Rules 1950 is as under:

The nomination made by a Railway servant who has no family at the time of making it, or a provision made in a nomination under Para 904 by a Railway servant whose family consists, at the date of making the nomination, of only one member, shall become invalid in the event of the Railway servant subsequently acquiring a family, or an additional member in the family as the case may be.

On perusal of the same it is clear that if a Railway servant acquires a family or additional member in the family as the case may be, the nomination made by him earlier becomes invalid.

12. The respondent No.1 and 2 are duty bound to pay PF, DCRG, and GIS to the person entitled for the same, but before payment it is to be ascertained that who is entitled for the same as their liability stands discharged only on payment of the same to the validly entitled person.

13. In the circumstances entitlement of the rival claims cannot be decided by this Tribunal as it is not a service matter, it is to be decided who is entitled for the same means there

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applicant - Kailash who ^{is} married to P. Khubchand, i.e.
exists any right to the subsequently continues to be the married
wife of Shri Daulatram, Nirmala and her two sons,
jurisdiction in this respect entirely rests with Civil Court.

14. In the result the OA is disposed of with the direction
that the first wife - the applicant, Smt. Kalawati or Respondent
No.3, Smt.Nirmala and her two sons not party before this Tribunal
may get their rights declared for entitlement in respect of PF,
DCRG and GIS from Competent Court having jurisdiction in this
respect as advised and after the same respondent No.1 and 2 shall
pay the said retiral benefit of PF, DCRG and GIS to the person
concerned. No order as to costs.

S.L. Jain
(S.L.Jain)
Member (J)

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