

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 27th day of April, 2011

ORIGINAL APPLICATION NO. 93/2002

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Smt. Shanti Devi wife of Shri Late Ramdeo Harijan, aged about 48 years, C/o Shri B.R. Raghwanshi, 3-Kha-17, Ajai Nagar, Ajmer.

.....Applicant

(By Advocate: None)

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Financial Advisor & Chief Accounts Officer, Western Railway, Churchgate, Mumbai.
3. Deputy Chief Mechanical Engineer, (Carriage & Wagon), Western Railway, Ajmer.
4. State of Rajasthan through Chief Secretary, Secretariat, Rajasthan, Jaipur.
5. Auditor General, Rajasthan, Jaipur.
6. Treasury officer, Ajmer (Rajasthan).

.....Respondents

(By Advocate: Ms. Sonal Singh proxy to Mr. Alok Garg)

ORDER (ORAL)

None appeared on behalf of the applicant even in the second round. We have heard the learned counsel for the respondents.

2. The applicant filed OA No. 93/2002 for releasing his pension and payment of arrears of family pension from July, 1982 alongwith interest. The said OA stands disposed of vide order dated 16.09.2002 having considered the reply submitted by the respondents wherein they have submitted that they are not denying pension to the



applicant. Consequently, the respondents were directed to release the pension to the applicant within a period of one month from the date of passing of the order i.e. 16.09.2002.

3. The respondents have filed Writ Petition No. 9729/2002 before the Hon'ble High Court against the order of this Tribunal dated 16.09.1992 and the Hon'ble Division Bench of the High Court vide its order dated 18.11.2010 had observed as under:-

" In the circumstances we give liberty to the petitioner to file an application before the Tribunal itself to examine the matter whether the facts mentioned in its order are correct. This Court vide order dated 24.3.03 has directed for payment of the current family pension to Smt. Shanti Devi. Thus it appears that Smt. Shanti Devi must be in receipt of the current family pension. Let the question of correctness of facts mentioned in order be examined by the Tribunal and appropriate order be passed on appropriate application to be filed within four weeks.

With the aforesaid direction, the writ petition is dispose of. Since we have not set aside the impugned order of the Tribunal, the current family pension be paid to Smt. Shanti Devi till application is decided by the Tribunal. The arrears are subject to outcome of the order to be passed by the Tribunal."

4. Thereafter the respondents submitted a Review Application No. 1/2011 before this Tribunal for recalling the order dated 16.09.2002 passed in OA No. 93/2002. The Review Application was allowed vide order dated 08.03.2011 and the Registry was directed to issue notices to the applicant for making alternative arrangement on the next date of hearing i.e. 27.04.2011 in order to argue the matter failing which this Tribunal will pass appropriate order.

5. Learned counsel for the respondents had drawn our attention towards the reply submitted on behalf of the answering respondents



nos. 1 to 3 wherein it has been categorically mentioned that the applicant is remarried and as per provisions of law, after remarriage she is not entitled for family pension. As per the applicant's own version, after the death of Late Shri Ramdev, she married with one Shri Gyarsa Safaiwala, working under Chief Health Inspector, Ajmer. The respondents also submitted photo copy of the Voter list, which also indicates that the applicant's husband's name is Gyarsa. Thus evidently, at the time of passing of the order by this Tribunal on 16.09.2002, the reply submitted by the respondents has not been properly considered. When the Review Application was listed before this Tribunal on 17.01.2010, this Tribunal had passed the following order:-

"None present for applicant.

This Review Application has been filed by respondent nos. 1 to 3 pursuant to the order passed by the Hon'ble High Court in DB Civil Writ Petition No. 9729/2002 dated 18.11.2010 whereby the matter was remitted back to this Tribunal with the direction to dispose of the same within a period of one month in order to decide the question of correctness of fact whether the OA was disposed of by this Tribunal after taking into consideration the reply of respondents nos. 1 to 3 in the OA.

From the material placed on record, it is evident that the OA was decided on the basis of reply filed by Accountant General, Rajasthan, Jaipur [Respondent no. 5] whereas no reply was filed on behalf of respondents nos. 1 to 3, as such the judgment rendered by this Tribunal in OA No. 93/2002 decided on 16.09.2002 whereby it has been recorded that respondents are not denying pension of the applicant is required to be recalled. It may be stated here that as per the material placed on record by contestee respondent nos. 1 to 3 before the Hon'ble High Court and in view of the observations made by the Hon'ble High court in the order dated 18.11.2010 passed in DB Civil Writ Petition No. 9729/2002, the applicant was not entitled to family pension as she had re-married and started living with one Shri Gyarsa as his wife. The factum of marriage of the applicant with Shri Gyarsa had been suppressed by the applicant in the OA, which resulted into the passing of the order of pension to her



whereas in terms of provisions contained in Family Pension Scheme for Railway Servants, 1964 which has been incorporated as Rule 75 of Railway Services (Pension) Rules, 1993, the family pension is payable in the case of widow or widower upto the date of death or re-marriage, whichever is earlier.

Thus we are of the view that judgment of this Tribunal dated 16.09.2002 in OA No. 93/2002 is required to be recalled as the same was decided only after taking the reply filed by respondent no. 5 and no reply has been filed by contestee respondents nos. 1 to 3 and also that this Tribunal had wrongly recorded in the judgment that respondents are not denying right of pension to the applicant. Further, as already noticed above, the applicant is also not entitled to family pension in view of the stand taken by the respondents before the Hon'ble High court. Before any order regarding recalling of the judgment dated 16.09.2002 passed in OA No. 93/2002 and dismissing the OA of the applicant is passed, the Registry is directed to issue notice to the applicant returnable within a period of three weeks thereby mentioning that in case none appeared on behalf of the applicant on the next date of hearing, this Tribunal shall pass appropriate order in the light of observations made hereinabove. The copy of this order be also enclosed alongwith the notices.


Let the matter be listed on 08.02.2011."

6. Despite the fact that notices were issued to the applicant and copy of the aforesaid order was also enclosed alongwith the notice, none had appeared on behalf of the applicant, although presence was made before Deputy Registrar on 08.02.2011 when the matter was listed before Deputy Registrar as Division Bench was not available. In view of the time bound direction given by the Hon'ble High Court and the fact that Hon'ble High court had also permitted the original applicant i.e. Smt. Shanti Devi to withdraw family pension to which according to us, she is not entitled to. In view of the observations made hereinabove, we have decided to dispose of this OA and today even in the second round, nobody appeared on behalf of the applicant. It appears that the applicant is not serious to contest her case despite service affected after recalling the order dated 16.09.2002. Thus this

Tribunal provided ample opportunity to the applicant to represent her case.

7. In view of the direction given by the Division Bench of the High Court, we have thoroughly considered and examined the documents and reports submitted before us. As per the reports, as discussed hereinabove, it reveals that the applicant had been remarried with Shri Gyarsa and more particularly, we have examined the direction issued by the Hon'ble High Court, which has been reproduced hereinabove.

8. Earlier this Tribunal on the assumption that the respondents railway, who are the main contesting party are not disputing the claim of the applicant for grant of pension, whereas in fact learned counsel for the respondents had sought time for filing reply as the matter pertains to the year 1982 and the OA was filed after a long delay in the year 2002 almost after a period of 20 years. Without hearing the contesting party, this Tribunal had passed the order dated 16.09.2002 whereas the respondent nos. 4 to 6 were only the formal parties and respondent no. 4 was only the Disbursing Authority. As such the question of the entitlement of the applicant for pension could not be addressed by the Tribunal. Not only this, but in the reply submitted on behalf of the State and the Treasury Officer i.e. respondent no. 4 and 6, they have categorically stated that no counsel appeared for them and they had never engaged Mr. Bhawar Bagri and authorised him to give any undertaking on their behalf and further no reply was filed on their behalf.



9. Having carefully gone through the inquiry report, which was conducted to ascertain the fact whether the applicant was remarried or not and upon perusal of the relevant document, for example, Voter-list and the reply to the OA submitted by the answering respondents as well as the contention raised in the Review Application, it is well established that applicant was remarried with one Shri Gyarsa after the death of her husband, Ramdev and consequent upon remarriage, the applicant is not entitled for family pension from the date of remarriage. She is only entitled for family pension prior to her remarriage.

10. Thus we find no merit in this OA and the same is dismissed with no order as to costs being bereft of merit.

Anil Kumar

(ANIL KUMAR)
MEMBER (A)

J. S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

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