

26-2-2007

Mr. S. K. Jain counsel for applicant,

Mr. Teg Prakash Sharma counsel for respondent

Arguments heard
Order reserved

(T. P. Shukla)
Administrative Member

(M. K. Gupta)
Jud. Member

27-2-07

The order is pronounced

in the open Court today -

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CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 30/2006.

Jaipur, this the 27th day of February, 2007.

CORAM : Hon'ble Mr. M. K. Gupta, Judicial Member.
Hon'ble Mr. J. P. Shukla, Administrative Member.

1. Smt. Kamli @ Kamla Devi
Widow of Late Shri Hansa,
Aged about 45 years.
2. Banwari,
S/o Late Shri Hansa,
Aged 16 years.
3. Kali
D/o Late Shri Hansa,
Aged 17 years
4. Basbai
D/o Late Shri Hansa,
Aged 14 years.
5. Rajesh @ Raisingh @ Rajsing
S/o Late Shri Hansa,
Aged 11 years.

All the applicants are
R/o Rajpura, GP Jaupada,
Tehsil Dausa,
District Dausa.

... Applicants.

By Advocate : S. K. Jain.

Vs.

1. Union of India through
The General Manager,
North Western Railway,.
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Jaipur Division,
Jaipur.
3. Senior D.P.O.,
North Western Railway,
Jaipur Division,
Jaipur.

4. Divisional Engineer,
North Western Railway,
Jaipur Division,
Jaipur.

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

: O R D E R :

Per M. K. Gupta.

By present application, applicants seek directions to respondents to release payment of due pensionary benefits/family pension forthwith along with interest @ 18% per annum. Direction is also sought to respondents to appoint applicant No.2 in an appropriate category on compassionate grounds after according age relaxation.

2. Admitted facts of the case are that Shri Hansa, Group D, Jaipur Division, North Western Railway, died in harness on 26.4.2005. He had nominated Applicant No.1 as his nominee for PF, GIS and DCRG in September 2002 (Ann.A6).

3. Applicant No.1 is the widow of said Late Shri Hansa while Applicant No.2-5 are the son/daughters of deceased. Their grievance is that Railways had not released any pensionary benefits i.e. family pension, gratuity, P.F., insurance amount etc. without any reasons and justification.

4. Respondents contesting the said claim and raised a preliminary objection regarding maintainability of OA,

stating that present application has been filed without exhausting the alternative and appropriate remedy available under the provision of Section 20 of the Administrative Tribunals Act, 1985. As per records, no application or representations alleged to have been submitted by the applicants for consideration of appointment on compassionate ground is available. Moreover, one Smt. Narvada made a request for appointment to her son i.e. Hanuman & claimed herself to be the legally wedded wife of deceased Hansa. The respondents also disputed Annexure A/2 and A/3 submitted by the deceased Hansa for availing the facility of Railway Passes, wherein the applicants herein were described as wife, daughters and son being the dependents, stating that the said documents are not available on record and the applicants have not disclosed as on what dates the said documents were delivered and filed with respondents. Though the factum of death of the deceased Hansa had not been disputed, but it is stated that no payment of pensionary benefits can be released in the given circumstances. Similarly, though it was not disputed that deceased had mentioned applicant No.1 name as his nominee but pleaded that as Smt. Narvada filed an application before the Learned District and Sessions Judge, Dausa, under Section 372 of Indian Successions Act, declaring herself as well as one Hanuman S/o deceased Hansa as the legal heirs of the deceased, which claim is pending. Therefore, the relief prayed by the

applicant cannot be granted. Said Smt. Narvada filed MAs for getting all the pensionary benefits released. Smt. Narvada and Hanuman, who have claimed themselves to be the legally heirs of deceased Hansa, had not been impleaded in the present application and, therefore, the applicants have not approached this Tribunal with clean hands, contended Shri Tej Prakash Sharma, Learned Counsel for the respondents. It was further urged that the better course of action on the part of applicants would be to make proper and adequate submissions before the said Court with cogent and sufficient grounds establishing that she is the legally wedded wife of deceased Hansa. As the dispute of civil nature is pending before the Court of competent law, this Tribunal would not entertain the present application and the same be dismissed, further contended Learned Counsel.

By filing a detailed rejoinder applicants contested the plea raised by the respondents. It was clarified that the claim laid by Smt. Narvada and Hanuman, claiming themselves to be the legally heirs of deceased Hansa, was unjustified, besides illegal and arbitrary inasmuch as the Ration Card issued in favour of said Smt. Narvada noticed her husband named to be "Mandu Gurjar". Moreover, Food and Supply Department has filed a FIR against said Smt. Narvada under Section 3 and 7 of the Essential Commodities Act on 23.8.2005. The Voter List of the village Rajpura also noticed Narvada's husband

name as "Mandu Gurjar". On the other hand, the Identity Card issued by the Election Commission of India as early as on 3.8.1995 in favour of the applicant No.1 described her husband name as "Hansraj" i.e. the deceased.

In the backdrop of the above, Shri S. K. Jain, Learned Counsel, strenuously urged that this Tribunal should reject the plea advanced by the respondents and allow the applicants claim. If such a claim is kept pending, not only the applicants would suffer but the respondents, after expiry of certain period would also reject their claim for compassionate appointment based on the plea of "stale claim".

5. We have heard the Learned Counsel for the parties and peruse the pleadings carefully.

6. Shri S. K. Jain, Learned Counsel, drew our attention to the reply filed by the respondents herein before the Learned District and Session Judge, Dausa, opposing the petition filed by Smt. Narvada and another under Section 372 of the Indian Successions Act, wherein it has been stated in specific that as per the documents submitted by the deceased and available with the respondents for releasing the Railway passes, applicants namely, Smt. Narvada and another were not been declared & described to be his heir or related persons. The railways had further questioned the claim laid by the said applicants being

false, frivolous and baseless. The plea regarding BPL Census 1997 undertaken by the State government for issuing the Ration Card as well as the Election Voter list indicated that the claim laid by Smt. Narvada was misleading and untenable in law. On the other hand, the Railways have also opposed the claim laid in present OA, without any justification. In other words, the respondents have taken contradictory stand, which is impermissible.

We may note that the Hon'ble Supreme Court in the case of Rameshwari Devi vs. State of Bihar and Others, 2000 SCC (L&S) 276, was confronted with a dispute concerning payment of family pension, death-cum-retirement gratuity to two wives of Narain Lal, who died in 1987, while posted as Managing Director, Rural Development Authority of the State of Bihar. The Appellant was the first wife. Narain Lal is stated to have married second time to Yogmaya Devi on 10.04.1963 while the appellant was still alive. From the first marriage, he had one son and from the second marriage four sons, born in 1964, 1971, 1972 and 1976, respectively. The appellant had disputed the very factum of marriage between Narain Lal and Yogmaya Devi. A plea was raised by the State that as the marriage of Narain Lal with Yogmaya Devi had no legal sanction & justification, Narain Lal had committed a misconduct of having married second time during the life time of his

first wife. In the circumstances, it was contended that the children born out of the wedlock with second wife were not entitled to any pensionary benefits. After noticing the rule position as well as the case law on the subject, Hon'ble Supreme Court held that it was concerned only with the question as to who is entitled to the family pension etc. It was held that :

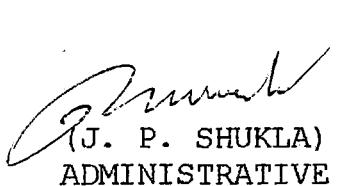
"When there are two claimants to the pensionary benefits of the deceased employee and there is no nomination wherever required the State Government has to hold an inquiry as to rightful claimant. Disbursement of pension cannot wait till a Civil Court pronounces upon the respective rights of the parties. That would certainly be a long-drawn affair. The doors of civil courts are always open to any party after and even before a decision is reached by the State Government as to who is entitled to pensionary benefits. Of course, inquiry conducted by the State Government cannot be a sham affair and it could also not be arbitrary. The decision has to be taken in a bona fide, reasonable and rationale manner."

The above law, in our respective view is squarely applicable to the facts of the present case too. It is not the case of respondents that they had not conducted any inquiry as to the rightful claimant of deceased Hansa. On the other hand, it has been the specific plea raised by the Railways that the said deceased employee had not only nominated the Applicant No.1 as nominee but had also claimed certain service benefits from them disclosing the applicants being his dependents. On the other hand, the very fact that the State Government has lodged a complaint against Smt. Narvada Devi for commission of certain Act and offence under the Essential

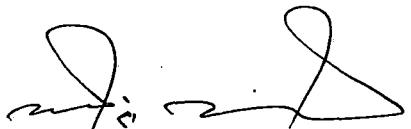
Commodities Act as well as the applicants have been able to prove and establish prima facie that Smt. Narvada Devi's husband name described in the Election Voter List is not of the deceased employee but of someone else. One can say that prima facie the claim laid by said Smt. Narvada Devi is a sham, false and frivolous. Since this Tribunal has no jurisdiction to record such a finding to that effect, without expressing any final opinion on this aspect, we are of the considered view that it would be just, proper and equitable that the respondents should release at least 50% of the retrial benefits due to applicants on provisional basis. This order certainly would have to be revised on determination of the issues raised by Smt. Narvada and another before the Court of Learned District and Session Judge, Dausa, under Section 372 of the Indian Successions Act. The plea raised about the limitation as well as non exhausting of the alternative remedies in the circumstances cannot be accepted, particularly when it is not disclosed or narrated as to what other alternative remedies are available to applicants. We find justification in the contention of Learned Counsel that if such a relief is not granted at this stage, applicants would suffer irreparable loss and injury which cannot be compensated later on in terms of money alone.

7. In view of the discussion made herein above, OA is partly allowed. The respondents are directed to release,

on provisional basis, 50% of the pensionary benefits within a period of 2 months from the date of receipt of a copy of this order. If such order is not complied with within the aforesaid stipulated period, the necessary payment will carry a interest of 9% per annum on the expiry of the period till it is actually paid. The claim of applicants in relation to compassionate ground should be considered on determination of issues pending before the Civil Court. There shall be no order as to costs.



(J. P. SHUKLA)
ADMINISTRATIVE MEMBER



(M. K. GUPTA)
JUDICIAL MEMBER

P.C./