

RESERVED ON 22.02.2018

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

This the **13th** day of MARCH **2018**.

PRESENT:

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER- A

ORIGINAL APPLICATION NO. 799 of 2013

1. Jholai Ram Son of Late Ram Lagan Ram.
 2. Mohan Ram Son of Late Ram Lagan Ram.
- Both are resident of Village-Chakaisa (Bakrabad) Post-Maharajganj, District-Ghazipur.
- (Both are real younger brother of Late Molai Ram S/o Late Ram Lagan Ram, R/o Village-Chakaisa, Post-Maharajganj, District-Ghazipur).

.....Applicants.

V E R S U S

1. Union of India through Secretary, (Post and Telegraph Department), New Delhi.
2. The Chief Post Master General, Uttar Pradesh Division, Lucknow.
3. Senior Superintendent, Railway Mail Service, Gorakhpur Division, Gorakhpur.
4. The Inspector, Railway Mail Service, Sub Division, District-Mau.
5. Smt. Bachani Devi alleged wife of Late Molai Ram, Resident of Village-Chakaisa, Post-Maharajganj, District-Ghazipur

.....Respondents

Advocate for applicants	:	Shri Sudama Ram Shri S.N. Chatterji
Advocate for the respondents	:	Shri V.K. Pandey for official respondent Ms. Saumya Mandhyan for private respondents.

O R D E R

By way of the instant O.A., the applicant has prayed for following main reliefs: -

- "(i) That by means of suitable order or direction in the nature of mandamus commanding the respondents to make the payment of all retiral dues of deceased employee Late Molai Ram S/o Late Ram Lagan Ram, to the applicants as they are legally validly has been opted as nominee.**
- (ii) That by means of suitable order or direction in the nature of mandamus commanding the respondents not to make any payment relating to retiral dues of deceased employee Late Molai Ram to the respondent no. 5 Smt. Bachani Devi and Anubhav Kumar (alleged Wife and son)"**

2. The brief facts as stated in the O.A. are that the applicants herein are the brothers of Late Molai Ram, who died while in service in the Railway Mail Service. After the death of their brother Molai Ram, the applicants approached the respondents by filing a representation dated 26.06.2012 (Annexure No. A-9 to the O.A.) for payment of all dues under rules. Subsequently, one Smt Bachani Devi, claiming to be the wife of Late Molai Ram also approached the respondents for providing compassionate appointment to her son namely Anubhav Kumar. The respondents vide order dated 27.11.2012 (Annexure No. A-10 to the O.A.) directed the applicants to produce the relevant document to prove that Smt. Bachani Devi was not the legally wedded wife of Late Molai Ram. The applicants furnished representation dated 14.03.2013 (Annexure 12-A to the O.A.) and 21.03.2013 (Annexure A-13) along with relevant papers showing that Smt. Bachani Devi was not the wife of Late Molai Ram.

3. Earlier, the applicants had filed O.A. No. 318 of 2013 before this Tribunal. However, as inadvertently the word "unmarried" was mentioned in the said O.A. instead of "married" the applicant requested that the said O.A. may be dismissed as withdrawn and vide order dated 26.04.2013 (Annexure No. A-15 to the O.A.) this Court permitted the withdrawal of the O.A. with the liberty to file fresh O.A.

4. It has been stated in the O.A. that the marriage between Late Molai Ram and Smt Bachani Devi took place when Molai Ram was about 8 or 9 years. Hence, under law, it cannot be termed as a marriage. It has also been stated that in a case filed by Smt. Bachani Devi, Late Molai Ram had specifically stated before the Court that Smt. Bachani Devi was not his wife, nor Shri Anubhav Kumar was his son. The District Court vide order dated 03.06.1996 (Annexure No. A-3 to the O.A.) observed that Smt. Bachani Devi failed to provide any documentary or oral evidence to prove that she was the wife of Molai Ram. Late Molai Ram during the course of employment had opted to nominate the name of his mother as nominee. The same has been entered by the respondents in the service book. After her death Molai Ram had given the name of Shri Jholai Ram and Shri Mohan Ram as his real brothers whose names have been mentioned in Column 1 of the nomination form filled on 04.09.2010 (Annexure No. A-4 to the O.A.) It has been further stated that Smt. Bachani Devi had manipulated the parivar register with the help of concerned authority and obtained the copy of parivar register and included their names in the parivar register (Annexure No. A-14) after the death of Molai Ram on 07.06.2012. Prior to that there was no entry of her and her son.

5. Learned counsel for the official respondents filed counter affidavit by which it has been stated that Molai Ram had never indicated that Smt. Bachani devi is his wife and Shri Anubhav Kumar is his son during his service period as per in the relevant records. The applicants had submitted application dated 26.06.2012 for payment for all benefits. They again submitted an application dated 29.06.2012 along with copy of death certificate of said Shri Molai Ram, family register, sale letter Bihari Bahak Bachani Devi, copy of second upper District Judge Ghazipur in case no. 100/1993 Bachani Devi Vs. Molai Ram, copy of order dated 20.03.1996 of

the said court and the copy of order dated 03.06.1996 in case no. 665 of 1996 passed by Upper Judicial Magistrate District Ghazupur, wherein the plea of Smt. Bachani Devi and Anubhav Kumar to get the livelihood was rejected was also submitted by the applicants.

6. Subsequently, Smt Bachani devi claiming to be the wife of Late Molai Ram has also submitted an application dated 25.06.2012 for payment of all benefits including compassionate appointment for her son Shri Anubhav Kumar. She had annexed a copy of death certificate of Late Molai Ram, family register dated 23.06.2012, family membership certificate issued by Tehsildar Sadar. The applications of the applicants were sent to Inspector RMS Mau for submitting the enquiry report in the instant matter. The enquiry report was received by office letter dated 31.10.2012 which was sent to Post Master General Gorakhpur along with relevant records for suitable directions and orders vide office letter dated 10.12.2012.

7. It has also been stated in the counter affidavit that the brothers of Late Molai Ram are not eligible to get to retirement benefits as per rules provided. As sub rule (6) of rule-50 the brother below aged 18 years is eligible for death gratuity and rule-52 of CCS (Pension) Rules-1972, wherein it is clearly stated that succession certificate in respect of gratuity is required otherwise it shall lapse to the Government. Again the whole case was forwarded to the Director of Accounts (Postal) Aliganj, Lucknow vide office letter dated 17.01.2013 and copy to Post Master General Gorakhpur, Chief Post Master General U.P. Circle Lucknow for suitable direction in the case. The Account Officer (Pension) O/o Director Accounts (Postal) Aliganj, Lucknow vide his letter dated 06.03.2013 has intimated that the case may be settled as per legal opinion of DGC.

8. Learned counsel for the private respondent no. 5 has filed preliminary objection in which it is stated that this matter in the O.A. does not come within the definition of service matter to bring it within the jurisdiction of this Tribunal. The dispute in this O.A. is with regard to who is entitled to the retiral dues i.e., the brothers of the deceased Molai Ram or his legally wedded wife and this dispute is a civil dispute and only a Civil Court of competent jurisdiction can decide the respective rights of the parties and thereafter the issue of release of retiral dues would come in whose favour. Therefore, at this stage the O.A. is not maintainable for release of retiral dues in their favour and not in favour of Smt Bachani Devi i.e., wife of the deceased Molai Ram. It was submitted that the electoral voter list for legislative assembly for the year 2003, 2004 and 2012 (Annexure No. A-6 to the preliminary objection) reveal that the respondent no. 5 is wife of Late Molai Ram and Anubhav Kumar is the son of Molai Ram. Even, in the revenue record name of the respondent no. 5 and her son has been entered into in place of deceased Molai Ram. After the death of Molai Ram, his Bank accounts have been transferred jointly in the name of respondent no. 5 and her son.

9. Heard learned counsel for the applicants, who argued that as nominees under provident fund, Group Insurance and DCRG dues of their deceased brother, their claim is for payment of these dues on the strength of the nomination form filed by their deceased brother who was a government servant under the official respondents. He clarified that the applicants are not making any claim to family pension. He pointed out that the counter filed by the official respondents, it is stated that the nominations of the deceased for GPF, CGEGIS and DCRG are in favour of the applicants vide para 3 of the counter. It was further stated in the

counter that the respondent No. 5 was never indicated as the wife of late government servant as per his service records and hence.

10. Ms. Saumya Mandhyan, learned counsel for the respondent No. 5 submitted that the applicants are not included in the definition of the 'family' as per the CCS (Pension) Rules, 1972 and that as per the said rules, any nomination in favour of person outside the family is void. It was also submitted that the respondent No. 5 has filed a Preliminary Objection affidavit attaching the legal heir certificates of the deceased employee (late Molai Ram) at Annexure A-4 of the Objection affidavit filed by the respondent No. 5. Learned counsel also submitted that the present dispute is a civil dispute as to who is the legal heir of late Molai Ram for receiving the retiral dues and hence, the OA is not maintainable.

11. Learned counsel for the official respondents reiterated the stand as per the counter reply filed by the official respondents.

12. The submissions and the pleadings by the parties have been duly considered by me. Admittedly, the applicants are the nominee of late Molai Ram as per the service records to receive DCRG, GPF and CGEGIS dues, for which the respondent No. 5 has also filed her claims. In the counter filed by the official respondents, it is stated that the applicants, being brothers, who are more than 18 years of age, are not eligible for retiral dues of Late Molai Ram. On the other hand, the applicants have submitted that their brother's marriage to the respondent No. 5 was null and void as would appear from the order dated 3.06.1996 (Annexure A-3), where the case for maintenance under section 125 Cr.P.C. filed by the respondent No. 5 was dismissed by the competent court.

13. As far as the claim of the applicants for retiral dues of Late Molai Ram is concerned, it is rightly stated by the official respondents that the applicants being brothers of the late employee with more than 18 years of age is not included in the definition of the 'family' under the appropriate rules. Learned counsel for the applicants claimed to receive the dues as per the nomination forms which is not possible. It is noted that legal precedent for similar type of controversy is in the case of **S. Sandhya vs. The Chief General Manger in W.P. No. 29894 of 2002** , which was decided by Hon'ble Madras High Court with following observations:-

"51. As discussed in the foregoing paragraphs, this Court after referring to the relevant provisions relating to General Provident Fund, Gratuity, Leave Encashment Salary and Insurance Scheme, has noticed the specific exclusion of the brother of the deceased who had attained the age of 18 years and above, from inclusion in the definition 'family', as one of the nominees, entitled to the beneficial interest, in the property, after the death of the person concerned. Therefore, when the statutory provisions relating to GPF, Family Pension, Gratuity, or the Group Insurance Scheme, 1980, do not contemplate nomination of the brother of the deceased who had attained the age of 18 years and above, the intention of the framers to restrict the beneficial interest in the property only to the members of the family, in the respective rules, is clear and in such circumstances, the very nomination made in favour of the brother of the deceased 4th respondent herein, is questionable and therefore, his contention that on the basis of the nomination made by his deceased brother, he alone is entitled to receive the retiral benefits and the lump sum amount under the Group Insurance Scheme, 1980, cannot be countenanced. Material on record discloses that the marriage between the petitioners' parents had been dissolved and for some reasons, best known to him, during the life time, father of the petitioners had nominated his brother, 4th respondent herein, to receive the terminal benefits."

14. In view of above, the applicant's claim on the basis of nomination form only is not admissible. The OA has no merit and is, therefore, liable to be dismissed. Accordingly, the O.A. is dismissed. It is made clear that this Court has not expressed any view regarding the persons to whom the retiral dues of late Molai Ram are to be disbursed and the respondents are free to decide this issue as per provisions of law.

(GOKUL CHANDRA PATI)
MEMBER-A

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