

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

Original Application No.290/00213/2017

Reserved on : 09.08.2018
Pronounced on : 23.08.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Smt. Rabia Widow of Late Sh. Safi Mohamad, Train Driver, Merta Road, Staff No.1548 resident of C/o Saiyo Ka Mohalla, Bassi, Merta Road, Dist. Nagaur.

...Applicant

(By Advocate: Shri N.K.Khandelwal)

Versus

1. Union of India through the General Manager, NWR Head Quarters Office, Jaipur
2. Divisional Railway Manager, NWR, Jodhpur Division, Jodhpur
3. Sr. Divisional Personnel Officer, NWR, Jodhpur Division, Jodhpur
4. Sr. Divisional Mechanical Engg. NWR, Jodhpur
5. Smt. Sugra widow of Late Sh. Safi Mohamad, Train Driver, Merta Road, R/o Saiyo Ka Mohalla, Bassi, Merta Road, Dist. Nagaur.

...Respondents

(By Advocate: Shri Vinay Chhipa for resp. 1 to 4
Shri Prasant Tattia for resp. No.5)

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

(i) By an appropriate writ, order or direction the respondents be directed to pay the applicant half of the family pension and Fixed Medical Allowance w.e.f. 29.09.2016 with 10% of the interest on the arrears.

(ii) By an appropriate writ, order or direction the respondents be directed to pay half of the Fixed Medical Allowance w.e.f. 29.09.2016.

(iii) Accrued interest and costs may also be allowed to the applicant.

2. Brief facts of the case are as under:-

The applicant stated to be widow of late Shri Shafi Mohammad, Train Driver, who was married on 6.10.1972 with late Shri Shafi Mohammad at Faizabad according to Mulsim Law. Nikahnama to this effect has been

annexed at Ann.A/7. The applicant states that she had two sons and one daughter out of the aforesaid marriage and one son Shri Shakil Mohammad is disabled since birth. Death certificate of Shri Shafi Mohammad is Annexed at Ann.A/1, who expired on 28.9.2016. The applicant states that representation/ Advocate notice dated 10.11.2016 has been sent to the respondents that she may be allowed half of the pension for herself as well as disabled son, so that they can sustain. The contention of the applicant is that she is legally entitled for half of the family pension as per Rule 75 of the Railway Services (Pension) Rules, 1993. She is also entitled for payment of half of fixed Medical Allowance w.e.f.

29.09.2016. The applicant states that action of the respondents in denying her half of the family pension and instead giving the same to respondent No.5 Smt. Sugra is wholly illegal and against the principles of natural justice. Also non-payment of family pension is violative of Article 21 of the Constitution of India. The applicant further states that as per Form-6 containing details of the family of the railway servant, her name has been very much included in the said form mentioning details of family which is at Ann.A/4. This form is kept in the custody of HOD (Loco Foreman MTD) as the applicant's husband was a class-III employee.

The applicant relied heavily on the judgment in the case of S.K.Mastan Bee vs. General Manager, South Central Railway and Anr. (2003) 1 SCC 184 stating that Hon'ble Apex Court has held in that case that it is the duty of the Railway Department to prepare family pension and pay the same to the widow.

3. The official respondents in their reply dated 10.01.2018 have categorically raised preliminary objection pertaining to maintainability of the OA as well as on the ground of limitation. With regard to maintainability of the present case, the official respondents stated that the applicant is claiming herself to be a wedded wife of late Shri Shafi Mohammad and is seeking relief of payment of half of the family pension, but as far as the question whether the applicant is wedded wife of late Shri Shafi Mohammad or not, the same is disputed question of facts and no inquiry about the facts can be made by this Tribunal. The question of applicant's marriage with late Shri Shafi Mohammad and her being his wife is disputed question of facts which can be debated upon by a Civil Court only and this Tribunal has no jurisdiction to decide such question of fact. On the said submission, the respondents have relied on the judgment in OA no. 213/1999 - Prasani Devi vs. Union of India and Ors. decided on 18.4.2000 by this Tribunal. In the said judgment, similar grounds were raised and in that case also there were no record to show that the applicant therein was married to the deceased Ram Singh as in the records available with the Railways, name of Kartar Singh only appeared. The Tribunal held in para-4 of the said judgment that the applicant had to secure a declaration in respect of her being wife of deceased Ram Singh from the competent court before she can claim pensionary benefits i.e. family pension from the Railways. On the basis of voter list and ration card entry, it cannot be concluded that she is legally wedded wife of Shri Ram Singh. Therefore, this Tribunal clearly stated that the only remedy available to the applicant in the said case was to seek a declaration of her right to claim family pension from the respondents as a widowed wife to the deceased Ram Singh and, therefore, the said OA was found not maintainable in the absence of such declaration and accordingly the same was dismissed (Ann.R/1).

The next objection raised by the official respondents pertains to limitation. The submission of the respondents is that as per Section 21 of the Administrative Tribunals Act, 1985, the applicant should have approached the Tribunal for a grievance at the relevant time and seeking

relief of family pension is no ground to approach belatedly. The respondents further state that the applicant had kept mum for almost two decades and, therefore, seeking Fixed Medical Allowance also cannot be of help to the applicant to overcome latches and hurdles in approaching this Tribunal, therefore, the present case is *ex-facie* barred by limitation. The official respondents further stated that no application for condonation of delay has been filed by the applicant along with the OA and they relied upon the judgment of the Hon'ble Apex Court in *Ramesh Chand Sharma Vs. Udhamp Singh Kamal and Ors.* reported in 1999 (8) SCC 304. As per the said judgment, the Apex Court held that the Tribunal was not right in deciding the same on merit overlooking the statutory provisions contained in Section 21 (1) and (3) of the Administrative Tribunals Act, 1985. Therefore, the present OA is liable to be dismissed on limitation.

4. The respondent No.5 has also filed reply dated 9th August, 2018 and stated that as per Rule 21 of the Railway Services (Conduct) Rules, 1966, it is very clear that no railway servant having spouse living shall enter into or contract a marriage with any person, provided that the Government may permit to a Government servant to enter into or contract such marriage if it is satisfied that such marriage is permissible under personal law applicable to such railway servant or other party to the marriage and there are other grounds for so doing. The respondent No.5 further stated that her deceased husband late Shri Shafi Mohammad has never sought any permission before contracting with the so called marriage with the applicant as claimed by her nor any information at any stage was provided to the respondent department. Therefore, it is very clear that the applicant cannot be said to be a legally wedded wife of late Shri Shafi Mohammad.

Respondent No.5 also raised an objection stating that it is settled proposition of law pertaining to marriage that the disputed fact cannot be adjudicated before this Tribunal as the same requires a detailed inquiry, evidence etc. She, further stated that as no information was provided by Shri Shafi Mohammad pertaining to his marriage with the present applicant during his life time, it makes abundantly clear that respondent No.5 is the only wife of late Shri Shafi Mohammad. Therefore, PPO was rightly issued in favour of respondent No.5 and the applicant cannot claim half of the family pension on the basis of so called Nikahnama. Therefore, the said OA deserves to be dismissed being devoid of merit.

5. The applicant in rejoinder reiterated the grounds raised in the OA and stated that Rule 75(7)(i)(a) of Railway Services (Pension) Rules, 1993 is very clear and, therefore, she is entitled for payment of half of the family pension. The applicant stated that as per form-6 details of the family has been submitted to the Loco Foreman and it clearly shows the name of the applicant along with other members. The applicant has relied on Ann.A/8, which is affidavit of Akil Mohammad, son of late Shri Saffi Mohammad stating that he is son of the present applicant. Also the birth certificate Ann.A/9 shows the name of the mother as well as that of his father. The applicant stated that there is no disputed question of fact since there is a Nikahnama at Ann.A/7 which clearly show that the applicant is the wedded wife of late Shri Shafi Mohammad.

6. The official respondents in the additional affidavit have further reiterated the submissions made in the reply to the OA.

7. Heard Shri N.K.Khandelwal, counsel for the applicant, Shri Vinay Chhipa for respondent No. 1 to 4 and Shri Prasant Tolia for respondent No.5 and perused the material placed on record.

8. The learned counsel for the applicant relied upon the judgment of *Kailash Devi vs. UOI*, which is at Ann.A/6 where similar situation arose. In the Writ Petition filed by the respondents against the said order, the

Hon'ble Rajasthan High Court at Jodhpur held that railway cannot accept respondent as wife of the deceased employee for certain purposes and refuse her wife for other purposes and, therefore, as the said judgment is squarely covers the present case, the applicant is also entitled for half of the family pension.

9. The learned counsel for official respondents contended that as per Rule 21 of the Railway Services (Conduct) Rules, 1966 permission is required by late Shri Shafi Mohammad and the information has to be provided to the department pertaining to his second marriage and, therefore, the respondents averred that since the applicant retired in 1989 and the present OA has been filed by the applicant in 2016 for family pension as well as Fixed Medical Allowances cannot be accepted and therefore, on the ground of maintainability as well as on limitation, the present OA is required to be dismissed.

The learned counsel for official respondents relied on the averments that the applicant in the rejoinder has clearly stated that "Sh. Saffi Mohammad has not given the true facts for the purpose of family pension and for complimentary passes. It was obligatory for the Saffi Mohammad to give the names of his both the wives for the family pension as well as for the complimentary passes but he has utterly failed to fulfil his legal duties."

The respondents further relied on the judgment of Rameshwari Devi vs. State of Bihar and ors. decided on 27th January, 2000 reported in 2000(2) SCC 431 wherein the case of two wives was there and the question pertains to payment of family pension. The Hon'ble Apex Court upheld the decision of the High Court on the plea raised that second marriage was in violation of the Conduct Rules applicable to the employee and have stated that doors of civil courts are always open to any party after and even before a decision is reached by the Government as to who is entitled for pensionary benefits. The respondents state that the said case covers the present issue. The learned counsel further relied on the case of WP No.7780/12 of Smt. P.Mohana vs. Principal Account General (A&E) & Ors., decided on 9.9.2014 by the Hon'ble Madras High Court, wherein also similar issue was raised and the Hon'ble High Court of Madras has held that as per the Government rules, if there is a second marriage during subsistence of the first marriage, it is a misconduct and it clearly show that the petitioners husband in order to safeguard his interest has excluded the name of the petitioner. Unless otherwise there is a proper nomination or a valid marriage, the petitioner cannot seek for the benefit of family pension. Further reliance is placed on the decision in OA No.324/2013 in the case of Smt. Reena vs UOI and Ors. decided by CAT-Lucknow Bench on 24th April, 2017 wherein the Tribunal held that the family Court only has jurisdiction to decide validity of marriage and matrimonial status of a person. The respondents also relied upon a judgment of the Hon'ble Supreme Court in Balaram Yadav vs. Fulmaniya Yadav in Civil Appeal No.4500 of 2016 decided on 27th April, 2016 in a similar issue wherein the court held that, as per section 7(1) explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, since under Section 8 all those jurisdictions covered under Section 7 are excluded from the purview of Civil Court. Therefore, in case there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court and the said appeal was thereby allowed.

The respondents contended that in the case of Kailashi Devi, a Review Petition has been filed, which is pending before the Hon'ble Rajasthan High Court.

The respondents further pointed out that Shri Shafi Mohammad during his life time has only furnished information about Smt. Sugra i.e. respondent No.5 and Sh. Shakil Mohd. as being his family members. The respondents referred to page 20 of the OA that complimentary pass has been given in the name of Shri and Smt. Shafi Mohammad which clearly show that the same has not been given to the present applicant. To substantiate this claim, the respondents submitted that as per railway record, the applicant's name does not fall in the list of family details provided to the department (Ann.R/5). Therefore, from the complimentary/railway passes it is very much clear that the same has not been given to the present applicant. The respondents further contended that all the documents submitted by the present applicant are prepared only after retirement of late Shri Shafi Mohammad. The official respondents also state that the question of applicant's marriage with late Shri Shafi Mohammad and her being his wife is a question of fact which can be adjudicated only by a Civil Court and stated that this Tribunal has no jurisdiction to decide the said question of fact, therefore, the Nikahnama submitted by the applicant at Ann.R/7 cannot be relied.

10. The learned counsel for respondent No.5 submitted that the document giving details of the family showing name of the applicant cannot be relied as a genuine document as seeing the date of the document and considering ages mentioned of the son of the applicant, the same cannot be relied upon. Also the said document does not bear valid seal and also no such document is available in the official record. The applicant's name in the official record available in the respondent department at Ann.R/3 clearly show the name of family member as Mrs. Sugra i.e. respondent No.5 and Shakil Mohammad, son. This amply makes it clear that if the applicant No.5 was wedded wife of late Shri Shafi Mohammad of late Shri Shafi Mohammad should have disclosed the fact of second marriage to the respondent department so that it could have been clear that applicant was wedded wife of late Shri Shafi Mohammad.

11. After hearing the parties, it is clear from the documents available on record that late Shri Shafi Mohammad after his retirement on 28.2.1989 has not included name of the applicant as his wedded wife in the railway record. The document Ann.A/4, which itself is a duplicate copy cannot be said to be a conclusive document after seeing the date and ages of the persons mentioned on the same. Also there is no valid seal of the official respondents on the said document to be relied upon. The Nikahnama submitted by the applicant also cannot be commented as the question of marriage of the applicant with late Shri Shafi Mohammad and her being his wife is a question of fact, which can be adjudicated only by a competent court and this Tribunal has no jurisdiction to decide such facts. The judgment of Prasanna Devi vs. UOI (supra) covers the present issue wherein it was clarified that the applicant therein had to secure declaration in respect of her being wife of the deceased from the competent court before claiming pensionary benefits i.e. family pension from the railways and the Tribunal had directed the applicant therein to seek a declaration of her right to claim family pension from the respondents as the widow of the deceased. The said OA was dismissed on the ground of maintainability. In the case of Smt. Samshad Banu vs. UOI decided on 8th December, 2016, this Tribunal held that the applicant was unable to make out a convincing case (pertaining to second marriage) in absence of valid succession certificate and the said OA was dismissed as being devoid of merit.

12. In view of the above discussions and after going through the aforesaid judgments mentioned and considering the facts and circumstances of the present case, it is clear that this Tribunal has no jurisdiction

to decide the question of facts pertaining to marriage of the applicant with Shri Shafi Mohammad thereby claiming to be wedded wife of late Shri Shafi Mohammad. Therefore, the question of payment of half of family pension as well as Fixed Medical Allowance to the applicant cannot be granted till the issue of the said marriage is decided by the competent court.

13. OA is accordingly dismissed on the ground of maintainability. No order as to costs.

(HINA P.SHAH)

MEMBER (J)

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