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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

O.A. NO. 350/00775 OF 2017

In the matter of :

Ritusree Das, aged about 43 years, adopted
daughter of Late Dr. Usha Gupta, Ex-Additional
Divisional Medical Officer, Eastern Railway,
Sealdah Division, who was bachelor expired on
17.05.1989 and presently residing at Allor
Bhaban, Hrishi Arobinda Pally, Street No. 2,
House No. 28, Durgapur – 713201, District –
Burdwan.

..... Applicant

- Versus -

1. Union of India, service through the General
Manager, Eastern Railway, 17, N.S. Road,
Fairlie Place, Kolkata – 700001.

2. The Divisional Railway Manager, Eastern
Railway, Sealdah Division, Kolkata 700014.

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3. The Senior Divisional Personnel Officer,
Eastern Railway, Sealdah Division,
Sealdah, Kolkata 700014.

..... Respondents

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CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. OA 350/00775/2017

Date of Order: 10/8/2018

Coram : Hon'ble Mr. A.K.Patnaik, Judicial Member

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Ritusree Das Vs. Union of India & Ors.

For the Applicant : Mr. P.C.Das & Mr. T.Maity, Counsel

For the Respondents : Mr. A.K.Guha, Counsel

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ORDER

A.K.PATNAIK, MEMBER(Judl.):

Applicant, Ritushree Gupta claiming to be the adopted daughter of late Dr.

Usha Gupta has moved this Tribunal in this O.A. under Section 19 of the A.T.Act,

1985, praying for the following reliefs:

" (a) To quash and/or set aside the impugned speaking order dated 27.04.17 issued by the Senior Divisional Personnel Officer, Eastern Railway, Sealdah Division which communicated to the present applicant vide letter dated 28.04.2017 by which the claim of the applicant has been rejected despite the fact that your applicant has produced the succession certificate which was issued by the Learned District Delegate at Serampore in favour of the applicant on 23.09.2016 which is appearing I Annexure A-9 of this O.A. and after producing such certificate the rejection order passed by the Railway Authority in respect of disbursing the DCRG money as well as family pension which your applicant is legally entitled to is wholly unjustified and illegal.

(b) To pass an appropriate order directing upon the Respondent authority to release the half share of the DCRG money of Late Dr. Usha Gupta, Ex-ADMO, Eastern Railway, Sealdah Division with interest @ 12% from June, 1982 till the date of actual payment in favour of the present applicant in the light of the direction issued by this Hon'ble Tribunal vide order dated 18.5.2001 affirmed by the Hon'ble High Court at Calcutta dated 23.05.2002 wherein it is clearly proved that half of the share of the DCRG money is still now outstanding before the Railway Authority of Dr. Usha Gupta and also in the light of the Succession Certificate issued by the Learned Court of District Delegate at Serampore, District-Hoogly under Act, 39 Case No. 09 of 2015 in favour of the present applicant.

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(c) To pass an appropriate order directing upon the respondent authority to pay the family pension of Late Dr. Usha Gupta, Ex-ADMO, Eastern Railway, Sealdah Division in favour of the present applicant who is an adopted daughter of Late Dr. Usha Gupta and who executed Adoption Deed on 09.07.1982 in favour of the applicant and being adopted daughter your applicant is entitled to get the same as per the rules.

(d) Costs;

(e) Any other appropriate relief or reliefs as Your Lordship may deem fit and proper."

The facts in a nutshell are that one Dr. Usha Gupta while serving Additional Divisional Medical Officer, Eastern Railway, Sealdah Division and had retired from Railway Service on 30.06.1982. She died bachelor on 17.05.1989. Half of the share towards DCRT amount was released by the Railway Administration to one Subrata Gupta, the brother of late Dr. Usha Gupta in pursuance of the order of this Tribunal dated 18.05.2001 in O.A.No. 226 of 1999 as upheld by the Hon'ble High Court of Calcutta in WPCT No.578 of 2002 dated 23.05.2002. It is the case of the applicant that she being the adopted daughter of late Dr. Usha Gupta submitted a representation to the Railway authorities for releasing the rest 50% of the DCRG amount as well as family pension in her favour. Since the Respondents-Railway did not take any action, she approached this Tribunal in O.A.No. 1832 of 2016 which was disposed of vide order dated 02.01.2017 with direction to respondents to dispose of the representation dated 30.09.2016 by passing a reasoned and speaking order. In compliance of the above direction, the Railways disposed of the representation of the applicant vide communication dated 27.04.2017 rejecting her request for grant of 50% DCRG and family pension. Aggrieved by this, the applicant has filed this O.A. praying for the reliefs as mentioned above.

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The ground on which the relief has been sought is that when the Court of Learned District Delegate at Serampore decided the issue and declared the applicant to be the adopted daughter of late Dr. Usha Gupta, there was no reason for the respondents to deny 50% DCRG and family pension in her favour. According to applicant, the plea taken by the respondents that the adoption took place after the retirement of late Dr. Usha Gupta and therefore, she is not entitled to 50% DCRG and family pension is illegal and bad in law since the competent Civil Court has decided the applicant to be an adopted daughter and sole legal heir of late Dr. Usha Gupta, the applicant is entitled to relief sought for.

The Respondent-Railways by filing a detailed counter have contested the claim of the applicant. According to Respondents, the adoption deed does not reveal age or date of birth of the adopted child, i.e., applicant which is an essential ingredient of the statute. According to them, late Dr. Usha Gupta retired from Railway Service on 30.06.1982 and the adoption took place on 13.07.1982, i.e., after the retirement of late Dr. Usha Gupta. Moreover, late Dr. Usha Gupta had not made any nomination favour of the applicant. As per Para 702(Note-2) of the Manual of Railway Pension Rules, 1950, in case there is no family member and also nomination has not been made in favour of any other person or persons, the amount of gratuity will lapse to Government. According to Respondents as per Manual of Railway Pension Rules, 1950, Para-801(14), the term "family" will include – (i) Wife in case of Male Railway Servant, (ii) Husband, in case of Female Railway Servant, (iii) Minor Son and (iv) Unmarried minor daughter including children adopted legally before retirement. Since the adoption took place after the retirement of the Railway employee, the applicant is not entitled to get family

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pension. Hence, according to Respondents, the O.A. being devoid of merit is liable to be dismissed.

I have heard the learned counsels for both the sides and perused the records. Admittedly, late Dr. Usha Gupta before retirement had not adopted the applicant as her daughter. Therefore, the question of nominating the applicant prior to her retirement does not arise. It is the case of the Respondents that the Adoption Deed does not contain the age or date of birth of the applicant. This statement has not been refuted by the applicant. Therefore, the entire question hinges on the point as to whether by the operation of Para 702(Note-2) of the Manual of Railway Pension Rules, 1950 where there is no family member and also nomination has not been made in favour of any other person or persons, the amount of gratuity will lapse to Government. As it reveals from the O.A. applicant has not challenged the vires of this rule. It also reveals from the record that late Dr. Usha Gupta who had retired from Railway Service on 30.06.1982 had adopted the applicant as her daughter on 13.07.1982. It also further reveals from the record that Dr. Usha Gupta passed away on 17.05.1989. Even if late Dr. Usha Gupta had not nominated the applicant before her retirement, there was nothing in the way to bring the fact of Adoption Deed dated 13.07.1982 to the notice of the Railway authorities in the time between of about five years. There is nothing on record to show as why late Dr. Usha Gupta despite her adopting the applicant in the year 1982 did not intimate this to the Respondents before her death in the year 1989. Since there is an embargo of Para-702(Note-2) of the Manual of Railway Pension Rules, 1950 which stands in the way, I am not inclined to grant

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any relief to the applicant. The O.A., therefore, being devoid of merit is dismissed,
with no order as to costs.

(A.K.PATNAIK)
MEMBER (Judl.)

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