

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/01632/2016

Date of order : 16.8.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Rabindra Nath Mohanty,
Son of Late Udaya Kar Mohanty,
Aged about 70 years,
Retired Cabin Master,
Eastern Railway, Sealdah Division,
Residing at C/o. Benoy Kumar Mohanty,
54, G.T. Road, Flat No. 1/A, Bally, P.O. Bally,
Dist. Howrah, Pin : 711 201.

.. Applicant

- V E R S U S -

1. Union of India through the Secretary to
The General Manager, Eastern Railway,
17, N.S. Road, Kolkata – 700 001.
2. The Chief Personnel Officer,
Eastern Railway, 17, N.S. Road,
Kolkat – 700 001.
3. The Divisional Railway Manager,
Eastern Railway, Sealdah Division,
Sealdah,
Kolkata – 700 014.
4. The Senior Divisional Personnel Officer,
Eastern Railway, Sealdah Division,
Sealdah,
Kolkata – 700 014.

.. Respondents

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. S.K. Das, Counsel

O R D E R

Per Dr. Nandita Chatterjee, Administrative Member:

An application has been filed under Section 19 of the Administrative
Tribunal Act, 1985 seeking the following relief:-

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"(a) An order holding that the respondent authorities ought to have recorded the name of Smt. Sefali Mohanty and/or Smt. Sefali Mohany in the concerned Railway records as legally married wife of the applicant and acts of omissions on the part of the said authorities in not inserting the name of Smt. Sefali Mohanty in the concerned Railway records as per request of the applicant are bad in law and arbitrary.

(b) An order directing the respondent authorities to insert Smt. Sefali Mohanty as legally married wife of the applicant by deleting the name of Smt. Bhagabati Mohanty from the records who was recorded as wife of the applicant.

(c) An order directing the respondents to produce/case production of all relevant records.

(d) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

2. Heard Ld. Counsel for both sides; perused documents and pleadings on record.

3. The case of the applicant, as canvassed by his Ld. Counsel, is that the applicant, who is a retired employee, had superannuated w.e.f. 28.2.2006 (AVN).

That, prior to retirement, he had filed a Matrimonial Suit against his wife Smt. Bhagabati Mohanty which had been decreed ex parte, resulting in an order of dissolution of marriage and a Misc. case filed by Smt. Bhagabati Mohanty, was dismissed subsequently.

That, thereafter, the applicant contracted a marriage with one Smt. Sefali Roy, who after marriage came to be known as "Sefali Mohanty" and thereafter the applicant, along with the evidence of his dissolution of marriage with Smt. Bhagabati Mohanty as well as evidence of his marriage with Smt. Sefali Mohanty, requested the authority to incorporate the name of Smt. Sefali Mohanty as his wife. Despite inspections made to ascertain the genuineness of Smt. Sefali Mohanty, however, the said incorporation has not been made in the concerned records and that, the applicant, who is suffering from various ailments has, therefore, approached the Tribunal for redressal of his grievances.

In his original application, the applicant has advanced the rationale that the respondents are behaving in an arbitrary and unlawful manner in not

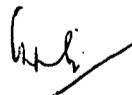
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incorporating the name of Smt. Sefali Mohanty in the records so that in the event the applicant pre-deceased the said Smt. Sefali Mohanty, the latter should not be deprived from family pension.

4. The respondents' arguments, briefly put, is that the applicant was an Ex. Cabin Master/CYM/CP who retired from Railway Service on superannuation on 28.2.2006. At the time of retirement, he had submitted the filled up requisite form for release of settlement dues for family pension, particularly Form No. 6 (Statement showing the details of family members) duly signed by himself wherein he had declared that he had a second wife, one son and one daughter out of the wedlock of second marriage, while his first wife and her sons are living. The applicant did not disclose the fact of his second marriage during his service tenure, but from the ages of son and daughter born out of second marriage, it is clear that he was having two living wives right from 1982 which was against the service conduct rule of a Govt. employee.

That, subsequently the decree of divorce was pronounced on 31.7.2006 between first wife and the applicant and the applicant got his second marriage registered on 22.11.2006 suppressing the factual aspect of second marriage and two children as on that date. Hence, although, the date of second marriage appears to have occurred after decree of divorce with first wife on 31.7.2006, in reality the occurrence of second marriage happened long ago while the first wife was alive.

Hence, according to the respondents the applicant is not entitled to the relief as claimed and the original application deserves to be dismissed.



ISSUE

The sole point for determination in the case of this O.A. is whether the name of Smt. Sefali Mohanty is to be incorporated in the records of the respondent authorities whereby Smt. Sefali Mohanty will become entitled to family pension upon the demise of the applicant.

FINDINGS

The applicant, prior to retirement, had furnished a statement showing details of family members for the purpose of Family Pension Scheme, 1964 (Annexure A-4 to the O.A.) as well as (Annexure R-1 to the reply).

"Statement showing the details of family member for purpose of family Pension Scheme 1964.

(MARITAL STATUS)

The following are the members of my family and I declare that information given is correct.

Sl. No.	Name	Relationship with the Rly. servant	Date of birth	Remarks
1.	Smt. Bhagabati Mohanty	Wife (1 st)	6.6.54	
2.	Sri Sanjoy Kr. Mohanty	Son	19.9.74	Out of 1 st wife Smt. Bhagabati Mohanty
3.	Sri Ajoy Kr. Mohanty	Son	11.10.78	
4.	Sri Binoy Kr. Mohanty	Son	13.3.82	Out of 2 nd wife Smt. Sefali Mohanty
5.	Kmr. Dipti Mohanty	U/M Daughter	21.7.83	

N.B. My first wife Smt. Bhagabati Mohanty is living separately and Divorce Suit against her is now subjudiced. In this connection one declaration is attached.

Sd/-

Rabindra Nath Mohanty

The applicant had therein clearly admitted that he had four children, two from his first wife and two with Smt. Sefali Mohanty, who he had recorded as his second wife although stating in a "nota bene" that Divorce proceedings with the first wife was in an ongoing stage and the matter is subjudiced.

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The applicant had erroneously noted in the statement that Smt. Sefali Mohanty was his legally wedded wife at the time of declaration as it was admitted that the divorce proceedings were on going with his first wife and consequently he was not eligible to marry Smt. Sefali Mohanty at the time of declaring the details of family members.

Hence, the children from Smt. Sefali Mohanty were clearly born out of the wedlock and even if Smt. Sefali Mohanty was living with him at that point of time, she was under no circumstances, the legally wedded wife of the applicant.

The applicant superannuated on 28.2.2006. He obtained the divorce decree on 31.7.2006 and the Misc. Case filed against the decree by Smt. Bhagabati Mohanty was reportedly dismissed for non-prosecution on 1.12.2006 as recorded vide information slip on 16.04.2013 (Annexure A-2 to the O.A.).

The applicant formally married Smt. Sefali Mohanty on 30.12.2010 (Annexure A-3 to the O.A.). Hence, chronologically speaking, at no point of time, the applicant was guilty of bigamy while he was in service of the respondents. His marriage with Smt. Sefali Mohanty was executed nearly four years after his superannuation.

The applicant applied for substitution of the name of Smt. Sefali Mohanty as his legally married wife on 21.2.2011. A procedure was initiated by the respondents and reportedly the genuineness of Smt. Sefali Mohanty was proved.

Thereafter the respondents did not take any further action in this matter and the amendments / substitution was not carried out in the statement of family members as eligible for family pension.

Accordingly, in our view, although averred by the respondents, the applicant is not guilty of bigamy as because he legally married Smt. Sefali Mohanty well after his superannuation and the fact that he recorded Smt. Sefali Mohanty as his second wife in the statement of family prior to his superannuation

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was perhaps an attempt to bestow certain respectability to his children born out of wedlock. As undoubtedly, Smt. Sefali Mohanty was not his second wife prior to his superannuation or while he was in service, the applicant could not be held guilty of bigamy as averred by the respondents in their reply. Whether Smt. Sefali Mohanty was living with the applicant out of wedlock and whether children have resulted from the said relationship is not a matter for consideration of this Tribunal.

Herein, we seek guidance from the observations of Hon'ble Apex Court in **Smt. Bhagwanti vs. UOI** (AIR 1989 SCC 2088) which has been referred to in Smt. Nanji T. Sangma vs. State of Meghalaya (vide orders dated 20th October, 2016 of Hon'ble High Court of Meghalaya) as under:

"11. It is not necessary to examine the concept of pension in the present case as it has already been observed by Hon'ble Supreme Court in a catena judgements that pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone is entitled to pension under the rule can claim it as a matter of right. In this regard reliance can be placed on the judgements 'Deokinandan Prasad vs The State of Bihar, AIR 1971 SC 1409' and 'State of Punjab and another vs Iqbal Singh, AIR 1976 SC 667'.

12. The Hon'ble Supreme Court in the case of "Smt. Bhagawanti" (supra) dealt with the issue of family pension and struck down the part of the rule which excluded the marriage after retirement from the definition of "family". The Court considered the question whether the spouse- man or woman, as the case may be- married after the retirement of the concerned Government servant can be kept out of the definition so as to deprive him from the benefit of the family pension. It was held by the Supreme Court as under:-

"8. Admittedly, the definition of family" as it stands after amendment excludes that the scope of the Government servant after his/her retirement and the children born after retirement also stands excluded. Petitioners have challenged the stand of the Union of India and the definition in the Pension Rules as arbitrary and discriminatory. It has been contented that if family pension is payable to the widow or the husband as the case may be, of the Government servant, the category which the definition keeps out, namely, those who have married after retirement and offsprings of regular marriage born after retirement, is discriminatory.

9. Pension is payable, as pointed out in several judgments of this Court, on the consideration of past service rendered by the Government servant. Payability of the family pension is basically on the self-same consideration. Since pension is linked with past service and avowed purpose of the Pension Rules is to provide sustenance in old age, distinction between marriage during service and marriage after retirement appears to be indeed arbitrary".

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The same view has been reiterated by Hon'ble Apex Court in **Laxmi Kunwar (Smt.) vs. State of Rajasthan** 1994 Supp (1) SCC 303, wherein it was held as below:

"3. This Court in „Smt. Bhagawanti v. Union of India“ had an occasion to deal with identical situation under the Central Services Rules which are pari-materia to the Rajasthan Rules. This Court struck down part of the rule which excluded the marriage after retirement from the definition of "Family". We adopt the reasoning of this Court in Bhagawanti case and hold that Note 2 to Rule 268-D reproduced above is arbitrary and as such ultra vires Article 14 of the Constitution of India. We, therefore, allow the petition, direct the respondents to consider the case of the petitioner for grant of family pension ignoring Note 2 to Rule 268-D which we have struck down. The family pension be finalised within three months from today. All the arrears of the pension shall be paid to the petitioner within one month thereafter."

In the context of the above findings and ratio decided upon by the Hon'ble Apex Court, we direct the respondents to conclude the process of Substitution / Amendment in the family records of the applicant within a period of six weeks from the date of receipt of a copy of this order in accordance with law and in the light of the provisions of Family Pension Scheme for Railway Servants, 1964 as well as the ratio laid down by Hon'ble Apex Court in Bhagwanti (supra), Laxmi Kunwar (Smt) (supra) as well as in **Binalish M. Sangma vs. State of Meghalaya & Ors.** 2009 (3) GLT 569 and to intimate the decision forthwith to the applicant thereafter.

With this, the O.A. is disposed of. There will be no order as to costs.

(Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

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