

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH,
LUCKNOW**

O.A. No. 332/00016/2018

Order Reserved on: 14.08.2018.

Order Pronounced on: 21.08.2018

The Hon'ble Mr. Devendra Chaudhry, Member (A),

Smt. Rubi Khan @ Lubna, aged about 36 years, wife of Late Sagir Hussain, resident of Village-Besa, T.P. Nagar, Post Office-32, Battalion P.A.C., Lucknow, presently residing at House No. 75, South Jahanabad Khinni Tala, District- Raebareli.

....Applicant

By Advocate: Sri Kanhaiya Lal Verma.

Versus

1. Union of India, through General Manager, Northern Railway, Barauda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. Chief Manager Workshop, Passenger and Luggage Compartment, Northern Railway, Alambagh, Lucknow.
4. Smt. Humaira Bano resident of House No. 485/2, Mohan Makings Road, Daliganj, Lucknow.

....Respondents

By Advocate: Sri Ashutosh Pathak- 1 to 3.
Sri Praveen Kumar-4.

ORDER

The Hon'ble Mr. Devendra Chaudhry, Member-A

This Original Application has challenged the order dated 27.10.2017 passed by the Chief Manager, Workshop Passenger and Luggage Compartment Northern Railway, Alambagh, Lucknow directing the Applicant to seek a declaratory order with respect to her legal status as wife of demised employee Shri Sagir Hussain not paying the Gratuity, G.P.F., Family Pension and other consequential benefits to the Applicant being the only legally wedded wife of the demised employee

Shri Sagir Hussain.

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

Sri Sagir Hussain (deceased) was appointed on 12.01.1981 on the post of Senior Technical Painter (Class-IV) permanent employee in the office of Chief Manager Workshop, Passenger and Luggage Compartment, Alambagh, Lucknow under Divisional Railway Manager, Lucknow Division, Lucknow. That Sri Sagir Hussain's first marriage was solemnized with one Humaira Bano, resident of House No. 485/2, Mohen Meekins Road, Daliganj, Lucknow (Respondent-4). This marriage was by way of Nikahnama and thereafter due to some reason there was a divorce (Talak) with mutual consent on 29.12.1994 under Muslim Law. With respect to this divorce, expenses of Maher as per Muslim Law procedure as well as jewellery etc. were returned alongwith Rs. 8,000/- as compassionate compensation for the Iddat period. That after this process of Talak was accepted between the parties on 29.12.1994 as per the Talaknama (Annexure-5 of O.A.), thereafter, Sri Sagir Hussain made new Nikahnama with Rubi Khan @ Lubna, daughter of Mansoor Khan on 18.03.2001 (Annexure No. 6 of O.A.). The Applicant Rubi Khan @ Lubna has stated that she was living happily with her husband Sri Sagir Hussain but after sometime her husband Sri Sagir Hussain was diagnosed with critical Cancer disease and despite her taking care of him honestly and diligently during time sickness, he passed away on 08.12.2016. That the Applicant has no legal heir to give financial support after demise of her husband and the fact that she was the legally wedded wife, therefore, she made an application to Chief Manager Workshop (R-3) for fulfillment of required formalities to enable release of family pension, Gratuity, GPF and other dues to the Applicant. That, she thereafter completed the various formalities required for release of the retiral dues. That before his demise, Sri Sagir Hussain had made applications dated 21.03.2005 /28.10.2009 regarding Provident Fund Nomination in which Applicant's name as Rubi Khan, wife was mentioned therein(Annexure-10 of OA). Further her husband had vide application dated 21.10.2016 (Annexure-9 of OA) sought

voluntary retirement due to his affliction from the disease of Cancer and in that application he had been clearly stated that if before voluntary retirement there is any accident his wife Smt. Rubi Khan daughter of Mansoor Khan may be granted employment and also various Governmental dues. Applicant has further pleaded that since Applicant is the legal wife of the demised Sri Sagir Hussain after 2nd marriage and the Respondent No. 1 to 3 are not paying the retiral dues inspite of her repeated applications she had approached this Tribunal with said grievances. That, the Learned Tribunal had been pleased to pass the order vide dated 07.07.2017 whereby the petition was finally disposed off and it was ordered that the claim of the Applicant (Rubi Khan @ Lubna) shall be disposed off within a period of 3 months on production of certified copy of the order dated 07.07.2017 after giving opportunity of hearing. That since the Respondents have not granted any opportunity of hearing and instead of that, they have vide order dated 27.10.2017 (Impugned order) directed her to get a declaratory suit with respect to the dispute of divorce between her and R-4; hence, being aggrieved of above said order juxtaposed with the direction of this Tribunal dated 07.07.2017, therefore, the Applicant has prayed for setting aside of the order dated 27.10.2017 passed by Respondent no. 3 and to direct Respondent No. 1 to 3 to pay the amount of Family Pension, Gratuity and GPF etc. and other benefits due after the death of her husband Sri Sagir Hussain.

3. As against this OA, the Respondent-4 has filed Counter Reply claiming to be legally wedded wife of the demised employee Sri Sagir Hussain and has stated that in support of her claim as the legally wedded wife, that she was given maintenance compensation in pursuance of the order of the Competent Court vide order dated 09.01.2007 of Uppar Pradhan Nayayadish, Parivarik Nyayalaya, Lucknow. That after the demise of her husband Sri Sagir Hussain, she applied for release of pension benefits and appointment for her son, Sri Amir Hussain on compassionate ground vide application dated 09.01.2017. Against this application, the department issued a letter dated 27.03.2017 asking for some documentation followed by another

letter dated 09.04.2017 regarding requirement of other documentation for releasing of pension, retiral dues etc. That thereafter one Smt. Rubi Khan approached this Tribunal vide OA No. 199 of 2017 which was disposed of vide order dated 07.07.2017 directing the Respondents to hear both the parties and then pass a reasoned order with respect to their claims. That the Respondent-3 thereafter passed the order vide dated 27.10.2017 which required a declaratory suit order with respect to their counter claims of being the legally wedded wife of the demised employee and since she (Humaira Bano) is legally wedded wife and that at no point she entered into any divorce with respect to demised employee, therefore prayer has been made that the Hon'ble Tribunal may be pleased to dismiss the present OA filed by Applicant Smt. Rubi Khan.

4. As regards the Counter Reply on behalf of Respondent No. 1 to 3, filed by Deputy Chief Personal Officer, Carriage & Wagon Workshop, Alambagh, Lucknow (Sri Ashok Sharma son of Late M.P. Sharma), it has been stated that the deceased employee namely Sri Sagir Hussain demised on 08.12.2016 during service and that, after his death the department as received two different applications for obtaining Death-cum-Retirement Gratuity (DCRG) etc. The department has carefully examined the applications filed by Applicant in this OA and Respondent-4 in this OA. That as per inquiry report of the Welfare Inspector, it has come to knowledge that Humaira Bano (R-4) was getting maintenance vide direction of a Family Court even though the deceased employee had granted status as wife to Smt. Rubi Khan (Applicant) and because of this confusing circumstances, the department cannot release the DCRG to anyone in absence of a undisputed claim with respect to the DCRG. In view of above the Applicant is not entitled for any relief.

5. I have heard Learned Counsel for the Parties at length and carefully examined the material on record.

6. It is evident that both the persons namely Smt. Rubi Khan @ Lubna and Smt. Humaira Bano are contesting as to the status of being legally

wedded wife of the demised employee Sri Sagir Hussain. In this context, it is agreed that an OA No. 199 of 2017 was filed in Central Administrative Tribunal, Lucknow Bench, Lucknow by Smt. Rubi Khan, the present Applicant in OA No. 16 of 2018, and that this Tribunal vide order dated 07.07.2017 disposed off the Original Application with direction to the Respondents to give opportunity of hearing to the contesting parties for final settlement of the claim after the death of employee Sri Sagir Hussain under intimation to the parties. Para-4 and 5 of the aforesaid order dated 07.07.2017 are reproduced here for ready reference:

"4. Hence, in view of the above, this petition is finally disposed of with the consent of the parties that the claim of the applicant shall be disposed of within a period of three months from the date of production of certified copy of this order after giving an opportunity of hearing to both the parties who are claiming the benefits after the death of Sagir Hassain under intimation to the parties.

5. Accordingly the O.A. is disposed of at the admission stage. There shall be no order as to cost.

(Justice V. C. Gupta
Member (J)"

7. An examination of the order dated 27.10.2017 issued from the office of Chief Workshop Manager, Alambagh Workshop, Lucknow makes abundantly clear that following the order of the Tribunal dated 07.07.2017, the Respondents consulted the Chief Legal Advisor and according to the advice of rendered thereupon directed the contesting parties to get a declaratory suit with respect to the dispute regarding the divorce issue from the competent court. The above order dated 27.10.2017 has not mentioned grant of any opportunity of hearing being given to either of the parties as clearly directed vide order of the Tribunal dated 07.07.2017. In fact, in a certain sense the order dated 27.10.2017 therefore can tantamount to be contempt of the order of this Tribunal dated 07.07.2017 as hearing of both the contesting parties was not done in any manner. Apart from the possibility to the contempt it is abundantly clear that the Respondents have not complied with express direction of the Tribunal to give an opportunity of hearing to both the contesting parties, namely Original Applicant of the order of Tribunal dated 07.07.2017 and now the Respondent-4, earlier not arrayed as

Respondent in the OA concerning the judgment of 07.07.2017. The Tribunal had rightfully disposed of the OA at admission stage itself and directed the Respondents to take a decision with respect to the claims made vide various representations after and only after giving opportunity of hearing to both the parties. It is a clear case of upholding the principle of ***Audi Alteram Partem*** with respect to contesting parties claiming as being as wife of the demised employee. I have found no material on record and Respondent No. 1 to 3 have been unable to show any during the course of arguments and hearing as to compliance of the order of 07.07.2017 which required to Respondent No. 1 to 3 to give the opportunity of hearing to both the parties before taking any decision with respect to their claims. In event therefore, it is that the Respondent no. 1 to 3 have not complied with the order of this Tribunal dated 07.07.2017 and passed the order dated 27.10.2017 without compliance of the same. This obviously is patently wrong and illegal.

8. It would be useful to recall the various pronouncements (started in Vol.3 on pages 3166 to 3168) in the compilation- "Dr. Gurubax Singh's Supreme Court & Service Laws, Third Edition by Hon'ble High Court/Apex Court in matter of Natural Justice:

i- In essence it is meant to assure that the party concerned has an opportunity of being heard, the principle of *audi alteram partem*.

[Shadi Lal Gupta v State of Punjab, 1973 (1) SLR 913, p.920: 1973 (3) SCR 637: 1973 (1) SCC 680: AIR 1973 SC 1124: 1973 SLJ 478.]

ii-At times and particularly in continental countries the form "*audietur et altera pars*" is used, meaning very much the same thing. A corollary has been reduced from the above two rules and particularly the *audi alteram partem* rule, namely, "*qui aliquid statuerit parte inaudita, altera, aequum licet dixerit, haud aequum fecerit*", that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have done what is right" (see Boswell's case, (1006) 6 Co. Rep. 48 b, 520 or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done".

[Union of India v Tulsiram Patel, 1985 (2) SLR 576, p.633: 1985 (2) SLJ 145: 1985 Lab. IC 1393: AIR 1985 SC 1416: (1985) 3 SCC 398: 1985 Supp (2) SCR 131: 1985 (2) LLN 488: 1985 (51) FLR 362: 1985 (2) SCALE133: 1985 (2) LLJ 206.]

iii- Since the decision in *A.K. Kraipak V Union of India*, (1969) 2 SCC 262 : AIR 1970 SC 150 one golden rule that stands firmly established is that the doctrine of natural justice is not only to

secure justice but to prevent miscarriage of justice. What, however, does this doctrine exactly mean? Lord Reid about four decades ago in *Ridge v Baldwin*, (1964) AC 40 very succinctly described it as not being capable of exact definition but what a reasonable man would regard as a fair procedure in particular circumstances- who then is a reasonable man – the man on the calpham omnibus ? In India, however, a reasonable man cannot but be a common man similarly placed. The effort of Lord Reid in *Ridge v Baldwin* (supra) in not attributing a definite meaning to the doctrine but attributing it to be representing a fair procedure still holds good even in the millennium year. As a matter of fact the Supreme Court in the case of *Keshav Mills Co. Ltd. v Union of India*, (1973) 1 SCC 380 : AIR 1973 SC 389 upon reliance on the attributes of the doctrine as above stated as below (at pp. 393 and 394 of AIR):

“The second question, however, as to what are the principles of natural justice that should regulate an administrative act, order is a much more difficult one to answer. We do not think it either feasible or even desirable to lay down any fixed rigorous yard-stick in this manner. The concept of natural justice cannot be put into a straight-jacket. It is futile, therefore, to look for definitions or standards of natural justice from various decisions and then try to apply them to the facts of a given case. The only essential point that has to be kept in mind in all cases is that the person concerned should have a reasonable opportunity of presenting his case and that the administrative authority concerned should act fairly, impartially and reasonably. Where administrative officers are concerned, the duty is not so much to act judicially as to act fairly.....”

While it is true that over the years there has been a steady refinement as regards this particular doctrine, but no attempt has been made and cannot be made to define the doctrine in a specific manner or method. Straight-jacket formula cannot be made applicable but compliance of the doctrine is solely dependant upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light and the executive action suffers from the vice of non-compliance of the doctrine, the law courts in that event ought to set right the wrong inflicted upon the concerned person and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action.

[*Kumaon Mandol Vikas Nigam Ltd. v Girja Shankar Pant*, AIR 2001 SC 24: 2001 (1) SCC 182: 2000 (Supp.-2) JT 206: 2000 (7) SCALE 19: 2000 (7) Supreme 112: 2000 (87) FLR 877: 2000 (8) SLR 769.]

A.K. Kraipak v Union of India, 1969 SLR 455 (SC); Ridge v Baldwin, 1964 Appeal cases 40; Keshav Mills Co. Ltd. v Union of India, 1973 (1) SCC 380; Rusell v Duke of Norfolk, (1949) 1 AIR ER 109; Jones Bros. (Hunstanton) v Steven, 1995 (1) Q.B. 275; Apparel Export Promotion Council v A.K. Chopra, 1999 (1) SCC 759; Sayeedur Rehman v State of Bihar, 1973 (3) SSC 333; Channbasappa Basappa Happali v State of Mysore, AIR, 1972 SC 32; Denby (willam) and Sons Ltd. v Minister of Health, 1936 (1) K.B. 337; sharp v Wakefield, 1891 A.C. 173; S. Parthsarthy v State of A.P., 1974 (1) SLR 427 (SC); Metropolitan Properties Co. (F.G.) Ltd. v Lannon, (1968) 3 WLR 694; Franklin v Minister of town and Country Planning, (1948) AC 87; Reg. v Bow Street Metralitin Stiphendiary Magistrate, Ex. Parte Pinochet Ugate (No. 2), 2000 (1) A.C. 119; Locabai (U.K.) Ltd. v Bayfield Properties Ltd., 2000 Q.B. 451; Reg. V Gough, 1993 A.C. 646; President of the Republic of Sourth Africa v South African Rugby Football Union, 1999(4) S.A. 147; Vikuta v Kelly, 1989 (167) C.L.R. 568 REFERRED.

9. In view of the above rulings and the facts of the case, I hereby set-aside the order dated 27.10.2017 of Chief Workshop Manager, Passenger and Luggage, Alambagh Workshop, Northern Railway, Lucknow and direct the Respondents to give adequate and complete opportunity of hearing to both the contesting parties Smt. Rubi Khan @ Lubna and Smt. Humaira Bano (R-4) in the present OA and pass a well reasoned order with respect to their claim. This exercise shall be done not later than a period of two months from the date of this order. Copies of this order may be made available to all the parties concerned in this OA immediately.
9. Accordingly, the Original Application is finally disposed off. There shall be no order as to costs.

(Devendra Chaudhry)
Member (A)

JNS