

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI .**

O.A.No.210/00268/2018

Dated this Tuesday the 9th day of October, 2018

Coram: Dr.Bhagwan Sahai, Member (A)

Arunabai Wd/o Bhika Chaudhari,
Age 55 years, Occ: Nil,
R/o.Kumbharwada,
Near Mahadeo Temple,
Desaipura, Nandurbar.

.. Applicant.

(By Advocate Shri Yashodeep Deshmukh) .

Versus

1) Union of India, through
The General Manager,
Western Railway, Mumbai Churchgate,
Mumbai - 400 020.

2. The Divisional Railway Manager/BCT,
Western Railway,
Mumbai Central,
Mumbai-8.

3. The Divisional Personnel Officer
(D.P.O.),
Office of Divisional Railway
Manager, Western Railway,
Mumbai Central,
Mumbai-8.

..Respondents.

(By Advocate Ms.Seema Chopda) .

Order reserved on : 23.08.2018

Order delivered on : 09.10.2018.

O R D E R

1. Through this O.A., the applicant
Smt.Arunabai Bhika Chaudhari seeks -

1(a). quashing and setting aside of the
impugned order dated 15.12.2016 issued by the

respondents; and

1 (b) . declaration that she is entitled to grant of family pension and its arrears with interest in her capacity as legally-wedded second wife of deceased employee i.e. Shri Bhika Budha Chaudhari.

2. Facts of the case stated in brief:-

2 (a) . Late Shri Bhika Budha Chaudhari was employed with Divisional Railway Manager, BCT, Western Railway, Mumbai Central, Mumbai. He was working as Keyman under the S.S.E.(P.Way), Ndv. in Western Railway and took voluntary retirement from 20.08.2005. At the time of his retirement, he submitted information under the Head of Family Pensioners' details in the form of PPO disclosing therein name of only his first wife i.e. Smt.Nirmala Bhika Chaudhari.

2 (b) . By certificate of 31.08.2005, pension of late Shri Bhika Budha Chaudhari was fixed from his date of retirement i.e. 20.08.2005 (Annex A-II). The revised PPO bearing No.WR/21118/189491 was issued after implementation of 6th Central Pay Commission recommendations.

2 (c) . The present applicant claims that late Shri Bhika B. Chaudhari had married her as per Hindu Law on 17.03.1985, and they have 3

daughters and 1 son from that marriage. These children are Dhanashree (year of birth - 1987), Sandip (year of birth - 1988) and twins Bharati and Monica (year of birth - 1990).

2(d). It is claimed that entry in the ration card mentions the present applicant as wife of the deceased employee. The marriage claimed to have taken place on 17.03.1985 was registered only on 24.08.2011. For not registering her marriage earlier, the applicant claims to be an illiterate person and takes the plea of ignorance about requirement of its registration.

2(e). The late Shri Bhika B. Chaudhari had married one Smt.Nirmala before his marriage with the present applicant. But the late Smt.Nirmala died on 09.07.2011. One Shri Dhiraj (born in 1991) is the son of the couple late Shri Bhika B. Chaudhari and Smt.Nirmala Bhika Chaudhari. Shri Bhika B. Chaudhari passed away on 31.07.2012. No one in the family or his legal heirs is getting family pension from the respondents after the death of late Shri Bhika B. Chaudhari and her first wife i.e. Smt.Nirmala and her son Dhiraj being an adult at the relevant time.

2(f). The present applicant claims that she being legally-wedded second wife of the deceased

employee, she is eligible to receive half of the family pension as per Railway Services (Pension) Rules, 1993.

2 (g) . The applicant further claims that as per decision dated 20.11.2014 in Writ Petition No.4467/2014 (Union of India & another Vs. Smt.Jaywantabai R. Kewoo) passed by Nagpur Bench of the Hon.Bombay High Court, she is entitled for receiving family pension. She further submits that this Tribunal in O.A.2094/2006 and Smt.Jayawantabai Vs. Union of India considered Sub-Rule 7(i) (a) of Rule 75 of the Family Pension Scheme of Railway Servants Rules, 1964 and held that second wife of the deceased employee would also be entitled to receive equal share of family pension along with the first wife.

2 (h) . The respondents have informed the applicant vide letter dated 31.01.2015 that her application was found to be not in the prescribed format and for want of necessary details, it could not be processed. The applicant was advised to make a proper application along with necessary documents and particulars.

2 (i) . Thereafter the applicant applied afresh on 10.02.2015. In response to that the respondents replied on 25.02.2015 asking for

additional documents/evidence to be furnished such as family identity card to examine her case. The applicant again replied on 23.03.2015 by submitting true copy of the family identity card with her issued by the S.S.E. (P.Way), Western Railway, Nandurbar dated 30.11.2011. This family identity card is with the respondents who seized it to make inquiries. Although she subsequently submitted reminders on her application, no action or decision has been taken by the respondents.

2(j). Subsequently her case was also considered by the Pension Adalat held in December, 2015. Thereafter the respondent No.2 i.e. D.R.M., BCT has issued a speaking order on 15.12.2016 stating that the deceased employee had not disclosed to the Railway Authorities about his second marriage with the present applicant and in the declaration submitted by late Shri Bhika B. Chaudhari at the time of his voluntary retirement in 2005, he had given name of only Smt.Nirmala in the pension papers.

2(k). The respondents also directed inquiry and sought clarification from subordinate office as to on what grounds the family identity card had been issued to the applicant.

3. Contention of the parties:-

The applicant's counsel has submitted that -

3(a). late Railway employee Shri Bhika B. Chaudhari took voluntary retirement on 20.08.2005. His first wife Smt.Nirmala died on 09.07.2011. Marriage with the present applicant was registered on 24.08.2011 and the ex-employee expired on 31.07.2012. The ration card and voters list include name of the present applicant as wife of the deceased employee. Marriage of the deceased employee with the present applicant took place in 1985, although it was not allowed by his service conduct rules as a public servant;

3(b). the deceased employee never nominated the present applicant for receiving family pension but the applicant was not aware of details brought on the record by him;

3(c). the decision of this Tribunal and of the Nagpur Bench of the Hon. Bombay High Court support the applicant's case for receiving family pension as second wife of the deceased pensioner. The decision of the Hon'ble High Court dated 20.11.2014 has also been confirmed by the Apex Court vide decision dated 08.05.2015;

3(d). the applicant is facing financial

hardship after the death of her husband and pension is a right to life as per Articles 15, 39-A and 39-E of the Constitution. The impugned order dated 15.12.2016 has been passed without considering the relevant provisions of rules relating to pension and particularly Rule 75 which provide for grant of family pension;

3(e). the applicant has also submitted M.A. 204/2018 for condonation of delay of 80 days in filing the O.A. while challenging the order of 15.12.2016. In this the applicant has claimed that being an illiterate person and facing financial difficulties, she could not file the O.A. in time and, therefore, requests that the delay may be condoned.

The counsel for the respondents has submitted that -

3(f). the applicant was well aware of the procedural requirement of filing the O.A. because she had herself filed the earlier O.A.691/2016 which was decided on 07.10.2016;

3(g). in the pension papers submitted by the deceased employee, no child was mentioned and he also did not seek any correction later in those pension papers. If the applicant had married the deceased employee in 1985 as claimed by her now,

then from 1985 to 2005 the ex-employee ought to have informed about his marriage with the present applicant but he never did so;

3(h). the marriage of the deceased employee with the present applicant, if it took place in 17.03.1985, it was a case of clear violation of Railway Services (Conduct) Rules, 1966. Rule 21 of the said rules specifically prohibits marriage of a railway employee with another person when his spouse is living;

3(i). after the decision of this Tribunal in O.A.691/2016, only a family identity card was claimed as evidence in support of her case. However, this so-called family identity card had not been issued by the Divisional Office and that is why during the Pension Adalat, it has been seized as it had been wrongly issued by the subordinate office. Therefore, the claim of the applicant about this family identity card is suspect;

3(j). the case law cited by the applicant's counsel is not applicable to present case and name of the present applicant was never brought on service record by the ex-employee. Therefore, the O.A. deserves to be dismissed; and

3(k). the Personal Law of the applicant and

the ex-employee i.e. Hindu Marriage Law did not permit the deceased employee to marry for the second time in his life time when there was his spouse living i.e. Smt.Nirmala. The family identity card was got issued by the applicant without the mandatory approval of the Divisional Office.

4. Analysis and conclusions:-

4 (a) . I have considered the O.A. memo and annexes A-1 to 15 to it, Misc. Application No.204/2018 filed by the applicant for condonation of delay, the reply of the respondents, arguments submitted by counsel of the applicant and counsel of the respondents, and provisions of the Railway Services (Conduct) Rules, 1966 as well as relevant provisions under the Railway Services (Pension) Rules, 1993 (along with subsequent amendments).

4 (b) . From the consideration as above, in the context of the present O.A. it is clearly brought out that -

(i) . the deceased Railway employee i.e. late Shri Bhika Budha Chaudhari never brought on his service record the name of the present applicant as his wife or as family member;

(ii) . the claim of the present applicant that

late Shri Bhika B. Chaudhari married her on 17.03.1985 and that this marriage was registered on 24.08.2011 appears suspect. This is because Smt.Nirmala Bhika Chaudhari whose name was brought on service record by the ex-employee as his wife died on 09.07.2011 and thereafter the present applicant seems to have cleverly registered her marriage on 24.08.2011. This is also claimed to have taken place only 11 months prior to death of the ex-employee, when he was already 61 years old (his date of birth was 01.06.1950). Had it been a case of marriage of the present applicant with ex-employee as early as in 1985, such a marriage ought to have been registered within a period of 90 days as per Section 6 of Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998, but the present applicant claims to have registered this marriage on 24.08.2011. This only appears to be an attempt to be too clever by half;

(iii). also a copy of the ration card brought on record (page 54 of OA) does not mention the date on which it has been issued. In the normal course when a ration card is issued, date of its issue is invariably mentioned by the issuing

authority. From this it appears that the ration card claimed by the applicant is doubtful;

(iv). as clearly mentioned in the impugned order, the DRM, BCT dated 15.12.2016, the present applicant obtained a family identity card from SSE (P.Way) & DB with the endorsement of her name which also makes its genuineness doubtful;

(v). registration on 24.08.2011 of the marriage claimed by the applicant with the deceased employee after the death of his first wife on 09.07.2011 seems to be a deliberate attempt to somehow prepare documents to support of her claim for family pension of the deceased employee. The plea of the applicant in this regard that although the marriage took place in 1985, she got it registered in 2011 only because of her illiteracy is totally unreliable;

(vi). the case law cited by the applicant's counsel i.e. decision of the Hon. High Court on 20.11.2014 in Writ Petition No.4467/2014 filed against the decision of this Tribunal dated 28.01.2014 in O.A.2094/2006 was for grant of pension to two widows of the deceased Railway employee in equal share. However, the facts of the present case are different as the wife of late Shri Bhika B. Chaudhari i.e. Smt.Nirmala is

no more and she expired before death of the ex-employee. Therefore, here the issue of claim of family pension by two surviving wives of an ex-employee is not there;

(vii). the counsel for the applicant has also tried to take advantage of the High Court decision dated 20.11.2014 in Writ Petition No.4467/2014. However, the decision of the Hon'ble Supreme Court dated 08.05.2015 against the above decision of the High Court has not interfered with the matter in view of death of first wife Smt.Saraswatibai and from that matrimony there were no children alive. Therefore, the claim of second wife Smt.Jaywantabai was allowed for pensionary benefits. However, in the same case law i.e. the above decision of the Hon'ble Supreme Court, it has been very clearly stated that the question of law is left open as to whether the second wife can lay claim to the pensionary benefits or any part thereof, despite Rule 21 of the Railway Services (Conduct) Rules, 1966. From this it is clear that issue of the entitlement of pensionary benefits of a second wife has not yet been finally settled at the level of the Apex Court;

(viii). if the claim of the present applicant about her marriage in 1985 with late Shri Bhika B. Chaudhari is correct, then it was a case of serious violation of Rule 21 of the Railway Services (Conduct) Rules, 1966, thereby making the ex-employee liable for disciplinary action. The facts of the present case reveal that if the marriage of the present applicant with late Shri Bhika B. Chaudhari had taken place in 1985, then it was a clear case of bigamy which is prohibited under the Railway Services (Conduct) Rules, 1966 as well under the Hindu Marriage Act, 1955. So it seems to have been a clever attempt by both of them not to bring it on service record to escape from disciplinary action against him under applicable Conduct Rules;

(ix). the respondents have sincerely examined the case of the present applicant and thereafter in view of the provisions and stipulations under the Railway Services (Pension) Rules, 1993, they have rejected the applicant's claim for family pension after the death of the ex-employee on 31.07.2012. In the course of this, the respondents could also detect the wrongly issued family identity card to the present applicant by the subordinate office, the genuineness of which

obviously seems doubtful; and

(x). over all the attempt of the applicant through this O.A. is a case of unrestrained greed to exploit the public resources in the garb of a second wife of the deceased employee. Therefore, I find the O.A. to be totally devoid of merit and, accordingly it fails.

5. Decision:-

The O.A. is dismissed.

(Dr.Bhagwan Sahai)
Member (A) .

H.