

Reserved  
(On 05.04.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **10<sup>th</sup>** day of **April** 2019

**Original Application No. 330/01582 of 2012**

**Hon'ble Ms. Ajanta Dayalan, Member – A**

Manoj Kumar, S/o Late Jai Prakash Sharma, R/o Village & Post Sultanpur, Khera, District Rai Bareilly.

. . . Applicant

By Adv: Shri Ashish Srivastava

V E R S U S

1. Union of India through General Manager, North Central Railway, Head Quarters Subedarganj, Allahabad.
2. Divisional Railway Manager, Jhansi, North Central Railway, Jhansi.
3. Sr. Divisional Personnel Officer, Jhansi Division, North Central Railway, Jhansi.

. . . Respondents

By Adv: Shri S.K. Srivastava

**O R D E R**

The present OA has been filed by the applicant Manoj Kumar, son of late Jai Prakash Sharma seeking quashing of impugned order dated 08.08.2012 (Annexure A-1) to the extent that it gives liberty to Rajmani to produce a decision of court of law of her marriage with applicant's father late Jai Prakash for the purpose of settlement of her claim over retiral dues of the applicant's father. The applicant has also sought direction to the respondents to make payment of terminal dues alongwith interest to the applicant, being the only legal heir of late Jai Prakash.

2. That the applicant's father late Jai Prakash Sharma was working as Chowkidar under PWI Orai in the respondents department. He expired on

08.02.2012 due to sudden cardiac arrest. According to the applicant, he left behind his widow Roopwati, one son and two daughters as legal heirs. The applicant made a representation for his compassionate appointment (Annexure A-5). In response, the respondents' department asked the applicant and his mother to appear in the office of respondent No. 3. On visiting the office, the applicant was informed that his claim for terminal dues and other claims has been disputed by one Rajmani claiming herself to be the wife of late Jai Prakash. The applicant, thereafter, approached this Tribunal vide OA No. 828 of 2012 alongwith his mother Roowati. This Tribunal vide order dated 14.06.2012, directed the respondents to decide the claim of the applicants as per law governing such cases and on the basis of all legally admissible documents within a period of three months (Annexure A-6). In compliance thereof, the respondents on 08.08.2012 passed the impugned order, which is under challenge in this OA.

3. Vide this order, the respondents have denied the claim of the applicant's mother on the ground that Roopwati was divorced by the applicant's father through ex-parte divorce decree dated 10.12.1987. The order further states that this fact was never brought to their knowledge even during the enquiry made by the Welfare Inspector and was hidden from the department. The department was also not informed whether the applicant's mother had approached any higher court against this divorce decree. The order further states that in view of the divorce decree, neither Roopwati nor her two married daughters were eligible for any share in the terminal dues of late Jai Prakash. However, Manoj Kumar being son of late Jai Prakash was eligible for one share of terminal dues. The order further states that as per ikrarnama dated 31.10.1987, late Jai Prakash

was remarried. As the ikrarnama was not duly registered, the department vide order dated 21.05.2012 directed Rajmani to produce decision of competent court declaring her as legally wedded wife after making the Railways as one of the parties. However, no such order has been produced. The order further states that it is only after receiving such order that the matter of payment of terminal dues to Manoj Kumar and Rajmani Sharma and her son Rishabh can be decided. Further, the matter regarding compassionate appointment can also be decided only after receipt of the Court's order.

4. The case of the applicant is that even as per impugned order, ikrarnama was dated 31.10.1987, whereas the divorce decree with applicant's mother Roopwati is dated 10.12.1987. Thus, on the date of ikrarnama of marriage between late Jai Prakash and Rajmani Sharma i.e. on 31.10.1987, the applicant's mother Roopwati was still legally wedded wife of late Jai Prakash. Moreover, ikrarnama was not duly registered and as such, it does not have any legal sanctity. Thus, the applicant, being son of the legally wedded wife of late Jai Prakash, is the sole heir of the deceased employee and is entitled for terminal dues as well as for compassionate appointment. The applicant has further argued that the impugned order seeking decree of the competent court for showing that Rajmani is the legally wedded wife of Jai Prakash is illegal as such order cannot be passed after the death of Jai Prakash and respondent No. 3 cannot invite outsiders who are not legally entitled for terminal dues.

5. The learned counsel for the applicant has further argued that the applicant was made nominee for other facilities like LTC, privilege passes

and PTOs and copy of the privilege pass is enclosed as Annexure A-7 in support of his claim. The applicant has further stated that the respondents have not produced any evidence regarding re-marriage of late Jai Prakash with Rajmani and as such, there is no ground for denial of benefits to the applicant. It is also stated that even after ex-parte divorce decree, it does not entitle other claimants for terminal dues. Dues are to be paid as per nomination or at most, the dues are to be equally shared amongst legal heirs of the deceased and are in no way payable to the claimant Rajmani. Learned counsel for the applicant has, therefore, concluded that the family pension needs to be paid to Roopwati without any succession certificate and cannot be questioned on the basis of misconceived claim raised by Rajmani Sharma. It is averred that the respondents should decide 'payment of dues amongst existing claimants and can not open it for others to establish their claim by obtaining authority of law at this stage'.

6. The respondents in their counter reply have contested the claim of the applicant and have stated that while the department was processing for settlement of the pensionary dues to Roopwati and her son Manoj Kumar, another lady Rajmani claimed herself to be the widow and submitted applications dated 12.03.2012, 23.04.2012 and 01.05.2012 (Annexure CA-1) for payment of dues in her favour. Rajmani also disclosed that Jai Prakash had already divorced Roopwati on 10.12.1987 (Annexure CA-3) when the Court of Additional District and Session Judge, Jhansi passed the judgment in matrimonial suit. Rajmani stated that she is the only widow of late Jai Prakash and submitted ikrarnama dated 31.10.1987 (Annexure CA-2). She also submitted documents like ration card, pass book, insurance policy, birth certificate and transfer certificate

of her son Riahabh which show Rajmani as wife and Rishabh as son of Jai Prakash. These documents are also annexed as Annexure CA-2. The respondents have also averred that the Court in its judgment dated 10.12.1987 clearly mentioned that summon was served to opposite party but she never appeared herself and did not submit any statement in the Court and as such the judgment dated 10.12.1987 was passed ex parte by the Court.

7. In view of these facts, the respondents department was unable to finalize payment of terminal dues in favour of any of the claimants. Keeping in mind these facts and after conducting enquiry and awarding opportunity of personal hearing to both claimants, order dated 21.05.2012 (Annexure CA-4) was issued to Rajmani stating that as ikrarnama submitted by her was not legally registered, she needs to produce copy of the order of competent court to establish herself as wife, after impleading Railways as a party. They have further stated that as Rajmani has not yet submitted the order of competent court, the respondents' department is unable to decide the case of terminal dues of late Jai Prakash. The respondents have concluded that they have not committed any mistake in passing impugned order dated 08.08.2012 in compliance of the earlier direction of this Tribunal and as such, the OA is devoid of merits and is liable to be dismissed.

8. The respondents have argued that after the disclosure of fact of the divorce decree, there was no occasion for payment of terminal dues to Roopwati. The circumstances under which the competent court proceeded ex-party to grant divorce decree are explained in the judgment itself.

Consequent to divorce, all rights of Roopwati on terminal dues ceased as she was legally divorced. Both the married daughters of Smt. Roopwati are also not entitled for dues, being married. Only the son Manoj Kumar i.e. the applicant is left as legal heir from her side and is entitled to get a share in benefits. But his share can be determined only after eligibility of Rajmani and her son Rishabh are finalized. The facts brought forward by Rajmani cannot be ignored and share of the applicant cannot be decided until and unless issue regarding Rajmani and her son Rishabh are decided. They have also stated that even though ikrarnama produced by Rajmani was not registered, but in view of other documents submitted by her in support of her claim, it was necessary to give an opportunity to her to prove herself as wife of late Jai Prakash. Hence, she was advised vide letter dated 21.05.2012 to produce order of the competent court. It was also stated that there is no legal bar for filing such suit before competent court, even after death of deceased employee. The respondents' department further stated that it was the duty of the deceased employee to inform the department about his divorce with Roopwati and for changing his nomination after his marriage with Rajmani. But he failed to do so. However, it is not possible now to take action against him. Also, Rajmani cannot be held responsible for mistakes committed by the deceased employee. In view of all the documents submitted by Rajmani, in which she has been shown as wife of deceased employee, her claim as wife cannot be ignored. As such, judicial interference is a must and she has been correctly invited to produce order of the competent court declaring her as wife.

9. We have heard both the parties and have also gone through the pleadings of the case. We have also given thoughtful consideration to the entire matter.

10. The facts of the case are not in dispute. The claim relates to terminal dues (not retiral dues mentioned in O.A.) of late Jai Prakash, who died on 08.02.2012 in harness. The present applicant is Manoj Kumar, son of Roopwati. An ex-party divorce decree was already granted on 10.12.1987 with regard to Roopwati's marriage with Jai Prakash. Another claimant Rajmani also made applications to the respondents' department, claiming to be the wife of late Jai Prakash and produced ikrarnama dated 31.10.1987. Though this ikrarnama was produced before notary, but the same is not duly registered and as such, it does not have any legal sanctity. But Rajmani has also produced many other documents including ration card, bank passbook, life insurance and transfer certificate showing her as wife and Rishabh as son of late Jai Prakash. She has, however, not produced any order or decree of competent court showing her to be legally wedded wife of Jai Prakash despite the respondents' department advising her to produce the same vide office letter dated 21.05.2012. Vide impugned order, the respondents' department has made the whole position clear to the applicant's mother Roopwati that in view of competing claim of Rajmani, they are not able to settle the claim. It is also stated therein that only after production of order of competent court regarding her marriage with late Jai Prakash, they will be able to take a view on terminal dues as well as compassionate appointment. They have also sought information from Roopwati whether she ever approached any higher court in appeal against divorce decree dated 10.12.1987. This

information has not also been made available by Roopwati i.e. the applicant's mother.

11. We observe from the above clear cut and undisputed facts that there are two computing claims – one of Roopwati and her son Manoj Kumar and on the other side of Rajmani and her son Rishabh. In case of Roopwati, there is already a decree of competent court in favour of her husband granting ex-party divorce to her. In this decree, the Railways was not a party. But, Roopwati was a party and order itself states that even though she was informed through serving of summon that she has to appear herself or through representative, but she did not appear or submit any statement before the court. In view of this, ex-party decree of divorce was granted by the court. In all the pleadings in the OA and during the course of arguments at bar, it has never been stated that Roopwati ever appealed against this order in any higher court. In absence of this information, the respondents department had no option but to proceed based on this decree. It is settled law that right of the wife ceases after divorce with regard to terminal dues etc. of her husband. Hence, it is settled that Roopwati was not entitled for any terminal dues of late Jai Prakash. Her two married daughters also do not have any right to terminal dues or family pension. Her son from Jai Prakash i.e. Manoj Kumar is the only legal heir from the side of Roopwati. This is also the stand taken by the respondents and, therefore, we do not find any fault in this stand.

12. As regards Rajmani and her claim, we note that she has produced an ikrarnama which is not duly registered. Hence, it does not have any

legal sanctity. However, other documents have been produced by her, which include ration card, bank passbook, transfer certificate and life insurance policies taken by late Jai Prakash. All these documents clearly indicate Rajmani as wife and Rishabh as son of Jai Prakash. These documents make it absolutely clear that claim of Rajmani as wife of Jai Prakash and Rishabh as their son cannot be ignored or wished away. This claim has to be decided prior to any decision on the share for which Manoj Kumar shall be entitled to in the dues of Jai Prakash or for compassionate appointment. As such, we find that stand taken by the department in this regard vide impugned order dated 08.08.2012 is also correct.

13. As regards ikrarnama being prior to divorce decree, this is true based on available documents. The ikrarnama is dated 31.10.1987 while divorce decree is dated 10.12.1987. Hence, on the date of ikrarnama Roopwati was still legally wedded wife of Jai Prakash. To that extent, Rajmani's claim to be wife of late Jai Prakash comes under question. One aspect of this is improper conduct of Jai Prakash. This is because as a government servant, he cannot remarry while his first wife is alive and he is still married to her. But for this conduct, the remedy was departmental action against Jai Prakash, which is not possible now after his death. But due to this lapse on the part of Jai Prakash, claim of Rajmani cannot be ignored. Another aspect is that even subsequent to divorce of 10.12.1987, Jai Prakash and Rajmani were living together and had a son Rishabh, whose date of birth is recorded as 22.09.2000 in the transfer certificate (Annexure CA-2). The applicant has not contested these facts. Hence, the claim of Rajmani being legally wedded cannot be ignored.

14. From the above discussions, it is clear that there are competing claims between divorced wife Roopwati and her son Manoj Kumar on the one side and on the other side Rajmani claiming to be wife of Jai Prakash and her son Rishabh. A decree of competent court is, therefore, clearly required to declare legal heirs of the deceased employee and the department cannot take final decision in absence of such decree. Hence, stand of the department in this regard is correct. We, therefore, do not find any need for interference in the impugned order dated 08.08.2012 passed by the department.

15. In view of the above, the OA lacks merit and needs to be dismissed on merit.

16. Beside above, the OA also needs to be dismissed for non-joinder of necessary parties as Rajmani has not been impleaded as party in the OA. Even later, vide this Tribunal's order dated 11.10.2017, the applicant was directed to include Rajmani and her son as well as two married sisters and his own mother in the OA. The counsel for the applicant prayed for time to do so. Again on 24.01.2018, the applicant was directed to implead his mother and his married sisters and second wife of his deceased father and her son. On 07.03.2018, the learned counsel for the applicant sought more time to comply with the order of this Tribunal dated 24.01.2018 to implead other parties. Now on 04.04.2018, we note that despite of lapse of over one year and after giving three opportunities, the order of this Tribunal for impleadment of parties, the learned counsel for the applicant failed to implead them as parties. We, therefore, feel that the applicant is

not interested in impleading them as parties. We observe that the claim of divorced wife and allegedly married wife and their sons are competing claims. As such, alleged wife and her son are necessary parties in this case. The applicant has failed to implead them as parties despite repeated directions of this Tribunal. As such, we find that this is a clear case of wilful non-joinder of necessary parties and non compliance of this Tribunal's order. Hence, the OA needs to be dismissed purely on this count alone.

17. In view all above, the OA is dismissed both on merits as well as non-joinder of necessary parties. There is no order as to costs.

**(Ajanta Dayalan)**  
Member – A

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