

**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**

No. O.A. 350/00877/2016

Date of order: 13/12/2018

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

Smt. Gouri Shee,
Widow of Late Himangshu Shee,
Aged about 58 years,
Residing at South Inda,
P.O. Kharagpur,
Dist. Paschim Medinipur,
Pin - 721 301.

... Applicant

Versus

1. The Union of India,
Through the General Manager,
South Eastern Railway,
Garden Reach,
Kolkata - 700 043.
2. The Sr. Divisional Personnel Officer,
S.E. Railway,
Chakradharpur - 833 102.
3. Smt. Saniya Shee,
Widow of Late Himangshu Shee,
Residing at Timber Colony,
Near Shiv Mandir,
P.O. Plantside,
Rourkela,
Dist. Sundargarh,
Orissa - 759 122.

... Respondents.

For the Applicant : Mr. A. Chakraborty, Counsel
Ms. P. Mondal, Counsel

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

ORDER (Oral)

Per Dr. Nandita Chatterjee, Administrative Member:

The instant Original Application has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

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"(a) An order do issue directing the respondents to grant family pension and other pensionary benefits with interest as admissible under the rules since her husband died while he was in service."

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The applicant's submissions, as made through her Ld. Counsel, is that the applicant's spouse, who passed away on 14.2.2015 while in service, was working as a Cook in CKP Division of the respondent authorities. When the ex-employee expired, he was survived by his wife who is the applicant, two daughters and one son and that their names are recorded in the medical card issued by the respondent authorities.

That the applicant had pleaded for the settlement of death benefits but the respondent authorities not having taken any action, being aggrieved, the applicant has approached the Tribunal.

4. The respondents in their affidavit in reply as well as in their oral submissions, have stated that although the applicant has prayed for receipt of family pension as well as other benefits on account of her husband's expiry, another lady, Smt. Saniya Shee claiming to be wife of the ex-employee, has also claimed settlement dues and that Smt. Saniya Shee has also produced the birth certificate of her son stating that the ex-employee was the father of her son and that, upon enquiry, the said birth certificate was found to be valid. Consequently, the applicant, i.e. the first wife of the ex-employee, had been asked to obtain succession certificate from the competent Court of Law and that such advice had been rendered to her vide a communication dated 12.3.2016 (Annexure A-3 to the O.A.).

5. The respondents have categorically stated that the ex-employee has not left any nominations in favour of his family members. The medical card produced as proof by the applicant is only a card for availing of medical benefits under the respondent authorities and under no circumstances acts as a substitute for a formal family declaration / nomination to be submitted by an employee during his

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lifetime for the purpose of grant of his death cum retirement benefits. Although a PF nomination form in favour of the applicant has been submitted purportedly verified as on 1988, the second wife has also referred to the same PF account in her application claiming the death benefits.

The applicant has argued that the claim of the so called second wife is not tenable. The second wife's claim (as certified in 2015) is that she was 38 years when she married the deceased employee and since the daughter of the deceased employee is older in age to the so-called second wife, the latter's claim is not tenable. This argument is not acceptable because it is quite possible that the deceased employee could have married a woman much younger to him without the knowledge of his first wife / children from the first wife.

6. To adjudicate on the issue at hand, we rely on Railway Service (Pension) Rules, 1993 and particularly Rule 75 of the same which states as follows:-

"75. Family Pension Scheme for railway servants, 1964.

(1) The provisions of this rule shall apply:-

- (a) To a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and
- (b) To a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for railway employees, 1964, contained in the Railway Board's letter No. F(P) 63 PN-1/40, dated the 2nd January, 1964 as in force immediately before the commencement of these rules.

xx xx xx xx xx xx

7(i)(a) Where the family pension is payable to more widows than one, the family pension shall be paid to the widows in equal shares."

Rule 92(1) and 92(2) of the Railway Service (Pension) Rules, 1993

lays down the procedure for processing of claims for family pension and gratuity when a Railway servant dies while in service without any nomination.

7. Accordingly, we hereby direct the competent respondent authority, namely the Head of Office as noted in Rule 92(1) and 92(2) of the Railway Service (Pension) Rules, 1993 to settle the family pension and associated benefits as per law and as per the decision of Hon'ble Apex Court in **Rameshwari Devi v. State**

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of *Bihar & ors. JT 2000 (1) SC 328* that "even if the second marriage is void under law the second wife is not entitled to anything but the children from second wife would equally share the benefits till they attain majority."

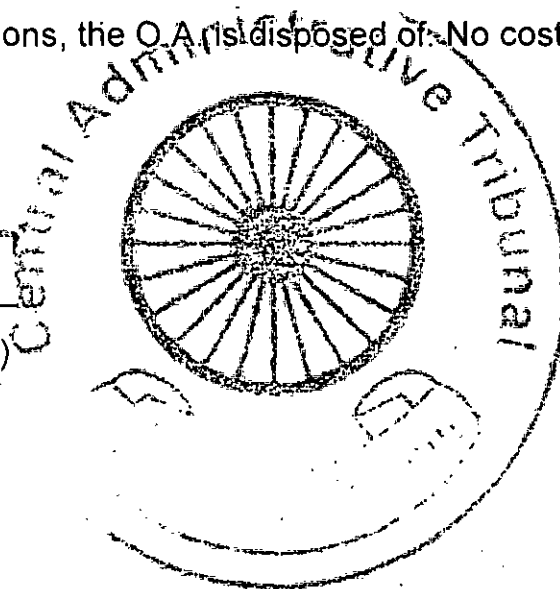
In case the competent respondent authority calls for documents required as per Rules in order to ascertain the person or persons to whom death benefits are payable, the applicant will furnish the same to substantiate her claim and once made available, the competent respondent authority will decide the claim within four weeks of receipt of such documents.

8. The entire exercise of sanction and disbursement of family pension and death gratuity to the eligible claimants should be completed within six months of receipt of a copy of this order, subject to directions in para 7 above.

9. With these directions, the O.A. is disposed of. No costs.


(Dr. Nandita Chatterjee)
Administrative Member

SP




(Bidisha Banerjee)
Judicial Member