

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

MA/310/00207/2018 in & OA/310/00020/2018
Dated Friday the 24th day of August Two Thousand Eighteen

PRESENT

HON'BLE MR. R. RAMANUJAM, Member (A)

Mrs. Vijaya. A,
W/o. Late Augustine Xavier,
No. 181, New Colony,
Chinnavalavanur,
Kooteriput,
Villupuram Dist. Pin 604302.Applicant

By Advocate M/s. P. Rajesh

Vs

1. Union of India
rep by the General Manager,
Southern Railway,
Park Town, Chennai 600003.
2. The Senior Divisional Personnel Manager MAS,
Chennai Division,
Southern Railway, Park Town,
Chennai 600003.
3. Assistant Divisional Finance Manager,
Chennai Division,
Southern Railway, Park Town,
Chennai 600003.
4. The Secretary,
Railway Employees Cooperative Society,
Trichy 620001.
5. The Branch Manager,
Canara Bank,
Villupuram District,
Villupuram.

6.Mrs. Lucy Gracy,
No. 2206, AF, 7th Cross Street,
15th Main Road,
Anna Nagar, Chennai 40.Respondents

By Advocates Ms. R. Sathyabama (R1-3)
M/s. T. S. Gopalan (R4)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member(A))

Heard. The applicant has filed this OA seeking the following relief :

"To call for the records of the 2nd respondent dt. 09.11.2012 and quash the same and consequential direction to the respondents 1st and 2nd to sanction family pension from the date of death of applicant's husband based on the legal heir certificate dt. 23.06.2015 and non traceable certificate dt. 09.07.2016 to the applicant and all other pensionary benefits and arrears within three months and pass such other order/orders as this Hon'ble Court Tribunal may deem fit and proper and render justice. "

2. The case of the applicant is that her husband worked as a Loco Driver in the Railway department and was removed from service on 28.01.2000 for unauthorised absence from duty. He was, however, allowed 1/4th of the pension. Further, his 1st wife left him over three decades ago. She, however, filed MC No. 153/1995 and OS No. 11/2000, both of which were decreed as per memo of compromise by which the 1st wife took 55% of his terminal benefits leaving the remaining 45% to the applicant's husband. From 1985 onwards, it was the applicant herein who took care of her husband until his death. All his funeral rites were also performed by the applicant. All hospital expenses were borne by the applicant by raising debt. The applicant and her daughter have obtained a legal heir certificate from Principal District Munsif Court at Tindivanam in Villupuram district. Subsequently, the Inspector of Police at Thirumangalam had also issued a non-traceable certificate with regard to the 1st wife, Lucy Grace. The applicant made a representation to the 2nd respondent seeking family pension which was rejected. Hence, she has preferred this OA.

3. Learned counsel for applicant would submit that the applicant was a legally wedded 2nd wife of the deceased employee. In a compromise struck between the deceased employee and his 1st wife, the latter was given 55% of his terminal benefits. The applicant had been taking care of the deceased employee from 1985 onwards and his funeral rites were also performed by the applicant. The applicant was accordingly entitled to family pension, it is contended.

4. The respondents vehemently oppose the claim stating that the deceased employee, S. Augustine Xavier was empanelled as Khalasi on 05.11.1974 and promoted as Electrical Fitter with effect from 16.12.1977. He was posted as Assistant Driver on 14.12.1982. However, while he was working as a Loco Pilot, he was removed from service on 28.01.2000 for the misconduct of unauthorised absence from duty from 24.04.1998 to 01.09.1998. The penalty was confirmed by the appellate authority. However, in terms of Rule 65 of the Railway Services (Pension) Rules, 1993, he was granted 2/3rd of compassionate pension and gratuity by the disciplinary authority by an order dt. 04.06.2004.

5. A dispute arose between the deceased employee and his 1st wife Smt. Lucy Grace who had filed OS No. 11/2000 before the Additional Family Court seeking a permanent injunction restraining the respondents from disbursing terminal benefits of the said Augustine Xavier. The OS was disposed of on 05.10.2010 in terms of the compromise memo entered

between the parties according to which 55% of the total terminal benefits was to be paid to the wife and the remaining 45% to the employee. The employee died on 16.12.2011. In the family details, the employee had shown the said Lucy Grace as his wife and the applicant's name figured nowhere. The employee had been paid the DCRG compassionate allowance of Rs. 72,238/-, CGIS of Rs. 10,890/- and provident fund of Rs. 2,940/- out of which 55% were paid to Smt. Lucy Grace and balance to the deceased Railway servant. Arrears of compassionate pension was paid to the deceased employee for the period from 29.01.2000 to 31.05.2011 and an amount of Rs. 4,58,694/- was credited to his account in Canara Bank, Villupuram.

6. The deceased employee had been paid a monthly compassionate pension till 30.01.2013 even after his death on 16.12.2011. After noticing that the employee continued to be paid pension even after the death, the overpayment was recovered. It is accordingly submitted that no amount is presently due to the deceased employee and the question of the applicant being paid any share therein does not arise. The respondents further submit that the applicant had filed OS 294/2013 before the District Munsif Court, Tindivanam which had passed an ex-parte order against the respondents therein to the effect that the applicant's daughter was the legal heir. However, the OS in respect of the applicant herself was dismissed. As family pension is paid only to the legally wedded widow of the deceased

employee, the question of the applicant being paid any family pension would not arise.

7. I have considered the submissions. It is not in dispute that the applicant's claim to be declared as a legal heir along with her daughter with consequential benefits was dismissed by the District Munsif Court. The OS No. 294/2013 was dismissed by an order dt. 23.06.2015 with respect to the applicant. Accordingly, I do not see any legal infirmity in the order passed by the respondents rejecting the claim of the applicant for family pension on account of the death of the deceased employee. The remedy if any, for the applicant in such a matter lies in a Civil Court of jurisdiction. This Tribunal could not go into the issue of whether the applicant's marriage with the deceased employee was valid or not. More so, when her OS No. 294/2013 had been dismissed by the District Munsif Court.

8. OA is dismissed. MA for condonation of delay stands disposed of in the light of this order.

(R. Ramanujam)
Member(A)
24.08.2018

SKSI