

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/00078/2018

Dated the 13th day of November, Two Thousand Nineteen

CORAM : HON'BLE MR. T. JACOB, Member (A)

Smt. R. Saraswathi,
W/o. Late P. Ramasamy,
No. 9/32, Mudaliar Street,
K.V.Palayam, Podhanur P.O.,
Coimbatore Dist 641023.

....Applicant

By Advocate M/s. Ratio Legis

Vs

1.Union of India rep by,
The General Manager,
Southern Railway,
Park Town, Chennai 600003.

2.The Workshop Personnel Officer,
S&T Workshop,
Southern Railway, Podhanur.

....Respondents

By Advocate Mr. P. Srinivasan

ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA seeking the following reliefs :

"To call for the records related to the impugned order No. SGW/P.535/OA 842/2017/MAS dated 14.08.2017 made by the 2nd respondent and to quash the same and further to direct the respondent to extend family pension with effect from the date of death of her husband with all the attendant benefits with admissible interest and to make further order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

2. The facts of the case as submitted by the applicant are as follows:

The applicant is the widow of late P. Ramasamy who retired on voluntary request from the Railway service as a Moulder in the year 1989 and he did not include the name of the applicant in the pension papers. Later, the applicant's husband died on 13.11.2015 and therefore, the applicant represented for the mandatory family pension which was submitted on 18.02.2016 but of no avail and hence OA.No. 842/2017 was preferred and this Tribunal by order dated 13.06.2017 directed the respondents to dispose of the pending representation of the applicant, in pursuance of which, the respondents examined her request but however, rejected the same through the impugned order dated 14.08.2017. Hence, the applicant has filed this O.A seeking the above reliefs inter alia on the following grounds :-

- i. The act of the respondents in rejecting the request of the applicant to extend family pension is arbitrary and an act coupled with colourable exercise of authority which is non-est in law.
- ii. The act of the respondents in rejecting the request of the applicant for family pension on the plea that the deceased employee has declared his mother only as a nominee in all the records and none else is in gross violation of Rule 75(2)

(c) of the Railway Services Pension Rules, 1993 and hence liable to be set aside.

iii. In as much as Rule 92 (3) (a) of the Railway Services Pension Rules 1993 stipulates for, where the family of the deceased railway servant eligible under Rule 75 for the family pension, 1964 the Head of Office shall address the widow or widower in Form 14 for making a claim in Form 10, and therefore, the act of the respondents in not resorting to such an action but rejecting the request from the applicant for family pension is inconsistent with Rule 92 (3) (a) of the Pension Rules and hence liable to be quashed.

iv. In so far as the statutory instructions under the Railway Services Pension Rules 1993 made under Proviso to Art 309 of the Indian Constitution and other mandatory provisions made in the supplementary Railway Board letters vide Rule 123 of the Indian Railway Establishment Code postulates for family pension under the said circumstances, the act of the respondents in rejecting the request of the applicant for family pension and driving her for initiating litigation is contrary to the legal principle and therefore impermissible in law.

3. Per contra, the respondents in their reply statement have stated that the applicant is not the widow of the applicant. The deceased railway employee has not declared anybody including the applicant during his entire service as his legally wedded wife and also not made any nomination at the time of his voluntary retirement from service with effect from 31.10.1989. Further, there is no legally valid documents available to state that the applicant is the legally wedded wife of Late P.Ramasamy/ Ex.Technician/ GR.II/Moulder in the official records including his Service Register. Further, the legal heirship certificate submitted by the applicant, reveals that the first wife of the deceased employee Smt Palaniammal died on

07.05.2013. Hence it is presumed that the marriage between the deceased employee and the applicant was solemnized at the time when the first marriage of the deceased employee with Smt Palaniammal was in subsistence. Hence the applicant is not eligible for any benefits. Further, the applicant had filed O.A No 842/2017 before this Tribunal praying for a direction to the respondents to extend family pension with effect from the date of death of her husband with all attendant benefits with admissible interest, etc. This Tribunal vide order dated 13.06.2017 disposed of the said OA at the admission stage itself directing the Respondent (Railways) to dispose of the representation dated 18.02.2016 submitted by the applicant in accordance with the rules and pass a reasoned and speaking order. Even though the representation dated 18.02.2016 neither addressed nor submitted to the Railways, the request of the applicant had been examined and disposed of by the respondent No.2 vide impugned order dated 14.08.2017.

4. The respondents have relied upon the following decisions in support of their case:-

- (1) Apex Court Judgement in the case of Ishwar Singh vs. Smt Hukum Kaur, (AIR 1965 AII 465);
- (2) Apex Court Judgement in the case of Naurang Singh vs. Sapla Devi (AIR 1968 AII 1958);
- (3) Apex Court Judgement in the case of Tejinder Kaur vs. Gurmit Singh (1988 (2) SCC 90;
- (4) Bombay High Court Judgement in the case of Mangala Bhivaji Lad vs. Dhondiba Rambhau Aher (AIR 2010 Bom 122);

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. At the outset the respondents have raised preliminary objection on the ground that when the first marriage was in subsistence, the second wife cannot be recognised as the legally wedded wife of the deceased employee. Hence the applicant is not entitled to any benefits arising out of the demise of the ex-employee as per Sec.5 and 15 of the Hindu Marriage Act.

7. Admittedly this is the second round of litigation before this Tribunal. Earlier the applicant had filed OA.842/2017 seeking similar relief and this Tribunal by order dated 13.06.2017 disposed of the OA directing the respondents to pass a reasoned and speaking order on her representation whereafter on rejection of her representation by the respondent No.2 the applicant has filed this OA in the second round of litigation seeking the above reliefs.

8. It is mandatory for every Railway employee to declare the members of his/her family in the Family Composition Register for the purpose of availing Privilege passes and extend other benefits every year. On Perusal of the Service Register and other records, it is seen that the deceased (Retired) Railway employee has not declared anyone as his "wife". Further, he has nominated only Smt. P. Kaliammal, his mother, as nominee. Due to the reasons stated, no one is included as Family Pension beneficiary in his Pension Payment Order. It is also pertinent to note that no orders from any Competent Court of law has been produced declaring her as the second wife of the deceased retired Railway employee. Further, in the OA she has prayed for

grant of Family Pension as per Rule 75(6) (i) of Railway Services (Pension) Rules 1993. But, Rule 75(6) (i) will be applicable only after establishment of the fact that the applicant is a legally wedded second wife of late P. Ramasamy.

9. In terms of Rule 21(2) of Railway Service (Conduct) Rules 1966, no Railway Servant having a spouse shall enter in to or contract a marriage with any person. In the instant case, according to the respondents, the deceased Government employee had contracted second marriage during his life time which amounts to violation of Railway Service (Conduct) Rules, 1966 and the said marriage becomes void. Further the Legal Heir Certificate dated 27.06.2016 produced by the applicant reveals that the applicant (second wife) is aged 53 years and that she has three children namely Sudha (eldest daughter - married) is aged 32 years. Priya (second daughter - married) is aged 29 years, Kannan (third son) is aged 26 years and Mrs Palaniammal (first wife of the deceased) died on 07.05.2013). Relying on the above Legal Heir Certificate, the applicant prays for grant of family pension with all attendant benefits with admissible interest from the date of death of the Government employee. I am of the considered view that in the absence of any valid proof or documents such as marriage certificate, ration card, declaratory order obtained from the competent Court of Law, the applicant's claim cannot be entertained. Hence, the applicant is given liberty to furnish the documents sought for by the respondents along with the declaratory order obtained from the competent Court of Law declaring her as the legally wedded second wife of the deceased Government employee and produce the same to the respondents along with a detailed representation and whereupon receipt of such order

and representation from the applicant, the respondents are directed to examine the documents produced by the applicant and the relief sought by the applicant for extension of family pension with effect from the date of death of the Government employee with all attendant benefits and pass a detailed and speaking order in accordance with law within a period of three months from the date of receipt of a copy of this order.

10. The OA is disposed of accordingly. However, there shall be no order as to costs.

(T. JACOB)
MEMBER (A)
13-11-2019

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