

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00336/2018

Jabalpur, this Thursday, the 05th day of December, 2019

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Jaya Bai Age 75 years
W/o Shri Ganpati S/o Goma
Occupation: NIL
R/o Ward No.8 Govind Colony
Amla Distt. Betul PIN 460551
Mo. 9009523073

-Applicant

(By Advocate –**Shri Balwant Rai**)

V e r s u s

1. Union of India
Through General Manager
Central Railway
CST Mumbai PIN 400008

2. Divisional Railway Manager,
Central Railway
Nagpur PIN 440001

3. Loco Foreman Central Railway
Amla Distt. Betul
(MP) PIN 460551

-Respondents

(By Advocate –**Shri Sapan Usrethe**)
(Date of reserving the order: 22.08.2019)

ORDER

This Original Application has been filed by the applicant against the inaction on the part of the respondents in not paying the family pension and other terminal dues to the applicant.

2. The brief facts of the case are that the husband of the applicant Late Ganpati was working as a Pump Fitter in Loco Shed Amla, District Betul. The applicant got married to Late Ganpati after the death of his first wife Smt. Dwarka Bai. The husband of the applicant got retired on attaining the age of superannuation i.e. on 28.02.1991 and was started getting family pension. At the time of his retirement Late Ganpati entered the names of family members i.e. four children and his wife i.e. applicant mentioned as Dwarka Bai whereas the correct name of the applicant is Jaya Bai. The husband of the applicant died on 23.08.2016. The applicant submitted affidavit dated 20.09.2016 (Annexure A/5) declaring herself as wife of Late Ganpati. She also filed one certificate dated

15.02.2017 (Annexure A-6) issued by Gram Panchayat Sawangi in which it is certified that Ganpati S/o Goma was resident of Sawangi and after the death of his first wife, Dwarka Bai in 1967 he married the present applicant Jaya Bai on 10.05.1969. Another certificate dated 10.02.2017 (Annexure A/7) issued by Sarpanch of the Gram Panchayat Narkhed, Janpad Panchayat Prabhatpattan wherein it was certified that the applicant married to Late Ganpati on 10.05.1969. In Pension Payment Order of late Ganpati dated 10.08.1999 the name of wife Smt. Dwarika Bai was wrongly mentioned. The applicant filed family card/ration card dated 22.05.2008, passbook of joint bank account, voter card, Adhaar Card wherein the name of spouse is written as Jaya Bai. The applicant has not been getting any family pension after the death of her husband Late Ganpati. The applicant filed representation dated 30.01.2017 (Annexure A/1) which has not been paid any heed by the respondent-department. Hence this Original Application.

3. The applicant has prayed for the following reliefs:-

“8.1 To order the respondents to pay the family pension and all other amounts of Late Ganpati to the applicant being the wife of Late Ganpati w.e.f. the date of death of Late Ganpati S/o Goma i.e. 23.08.2016 till date;

8.2 To further order the respondents to pay all the arrears of the amounts due to applicant being the wife of Late Ganpati out of his service benefits, with interest at the rate of 18% p.a. from the dates from which the respective amounts fell due till actual payment;

8.3 To continue to pay the said family pension to the applicant till her life;

8.4 To pass such order / orders as it may deem fit in the circumstances of the case.”

4. The respondents in their reply have submitted that the present case is not maintainable as applicant is not the wife of the deceased employee as per the records produced by the applicant i.e. Pension Payment Order No.CR/10618/1040844 (Annexure A-8) and Annexure A/2 (Page 13) DRM (P) letter dated 27.06.1991 for issuing post-retirement complimentary passes. The deceased employee namely Late Ganpati was working as Pump Fitter in Loco Shed and was superannuated in the year

1991 and after retirement he was regularly getting pension till his death vide PPO No. CR/10618/140844 (Annexure A/8). It is submitted by the respondents that in the said PPO name of wife mentioned is Smt. Dwarka on the basis of booklet "c" i.e. G.402B, which is filled and signed and by the employee himself at the time of his retirement. Further to this as per Annexure A/2 DRM (P) letter dated 27.06.1991 for issuing post retirement complimentary passes, the name of ex-employee is mentioned as Smt. Dwarika Bai, and the said letter has also been addressed to ex-employee Shri Ganpati. It is further submitted by the respondents that the Original Application is barred by limitation as it was filed within limitation as prescribed in Section 20 of the Administrative Tribunal Act. It is further submitted by the respondents that there is no record that Smt. Dwarika Bai died on 10.11.1967 and deceased employee has married to other lady. It is submitted that as per Railway record i.e. Pension Payment Order, Smt. Dwarika Bai is a only legal wife of deceased employee.

Respondents submitted even if applicant was entered in identity card does not prove that she was legally wedded wife of the deceased. As per PPO Smt. Dwarika Bai is the only legal wife of deceased employee and it was issued in the year 1991 whereas contention of the applicant that she died in the year 1967 appears to be incorrect statement. Annexure A/2 in which the family details is mentioned the name of Dwarka Bai was written and signed by Late Ganpati. It is further submitted that as per Railway Service (Conduct) Rules, Rule 21 reads as under:-

“No Railway servant shall enter into or contract a marriage with person having spouse living or having a spouse living shall enter into or contract marriage with any person.”

Further there is no proof of death of Smt. Dwarka Bai, wife of deceased employee and the documents filed by the applicant is not part of railway record and cannot be relied upon.

5. The applicant has filed rejoinder to the reply filed by the respondents. It is submitted by the applicant that the applicant's husband retired from service on 28.02.1991

and as per provisions contained under Pension Rules 59(1)(c) and 61(1) the Head of office is duty bound to obtain Form 5 from the retiring Government Servant (six months before the date of retirement) and to submit check list of documents to be submitted along with form 5. The said check list consists of three copies of passport size joint photograph with wife or husband, where it is not possible for a Government servant to submit a photograph with his wife or her husband, he or she may submit separate photographs. The photographs shall be attested by Head of Office. Three copies of passport size photograph of disable child/siblings/dependent parents, if applicable (to be attested by Head of Office). The respondents before granting pension in favor of applicant's husband must have complied with the said mandatory requirement. The applicant further submitted that after the death of applicant's husband on 23.08.2016 (Annexure A/3) the applicant submitted her representation on 30.01.2017 i.e. after about 5 months 12 days of death of deceased

employee marked as Annexure A/1 to O.A. whereas per the provisions contained under Section 21(1) (a) of Administrative Tribunal Act the limitation period is one year from the date of cause of action arose and there is reoccurring cause of action relating to payment of monthly pension to the applicant. It is further submitted by the applicant that the marriage of applicant took place on 10.05.1969 as shown in Annexure A/6 and A/7 of O.A. Annexure A/2 containing family details is of subsequent date of retirement of deceased employee and the deceased employee being illiterate, the said declaration appears to have been filled up by someone else in the office and the corrections has also been carried in the column of date of birth of dependents.

6. Heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

7. From the pleadings it is admitted that the husband of the applicant Late Ganpati was working as a Pump Fitter and got retired on attaining the age of superannuation i.e. on 28.02.1991 and thereafter he was getting pension. At the time of his retirement Late Ganpati the names of family members i.e. four children and wife i.e. applicant mentioned as Dwarka Bai was entered. The husband of the applicant died on 23.08.2016. The applicant submitted affidavit dated 20.09.2016 (Annexure A/5) declaring herself as wife of Late Ganpati. The applicant has also filed certificate dated 15.02.2017 (Annexure A-6) which has been issued by Gram Panchayat Sawangi indicating that Ganpati S/o Goma was resident of Sawangi and after the death of his first wife, Dwarka Bai in 1967 he married the present applicant Jaya Bai on 10.05.1969 and she is widow of Late Ganpati. Not only this another certificate dated 10.02.2017 (Annexure A/7) has been issued by Sarpanch of the Gram Panchayat Narkhed, Janpad Panchayat Prabhatpattan wherein it was certified that the

applicant married to Late Ganpati on 10.05.1969. It is also admitted fact that Pension Payment Order of late Ganpati issued on 10.08.1999 the name of wife has been indicated as Smt. Dwarika Bai wrongly, such averment has been made by the applicant. The applicant has also filed family card/ration card dated 22.05.2008, passbook of joint bank account, Identity Card, Adhaar Card wherein the name of spouse is written as Jaya Bai but no response has been given by respondents. On the other side, the respondents have submitted that the applicant is not the wife of the deceased employee as per records. As per record, name of Dwarka Bai is mentioned in PPO of Late Ganpati which is clear at Page 25 of the O.A. It is admitted by the replying respondents that the applicant superannuated on 28.02.1991 as Pump Fitter in Loco Shed Amla. Ultimately on death of the deceased employee PPO Annexure A/8 has been issued and in the said PPO the name of wife has been mentioned as Smt. Dwarka Bai. Respondents have specifically submitted that Dwarka Bai is the only legal

wedded wife of the deceased employee and there is no record that Smt. Dwarka Bai died on 10.11.1967. The respondents have raised the question of limitation. On the other hand the applicant has reiterated its stand in the rejoinder and has specifically submitted that as per provisions contained under Pension Rules 59(1)(c) and 61(1), the Head of office is duty bound to obtain Form 5 from the retiring Government Servant (six months before the date of retirement) and to submit check list of documents to be submitted along with form 5. The respondents before granting pension in favour of applicant's husband is bound to comply with the said mandatory requirement.

8. The point for determination is that who is the legal wedded wife of the deceased employee. From Annexure A/5 affidavit has been filed indicating Smt. Jaya Bai is the wife of Ganpati Goma, another document which has been notarized under the Notary Act whereby the affidavit has been executed by Smt. Jaya Bai wife of Late Ganpati has

been indicated. In the relevant affidavit detail averments have been made by Jaya Bai indicating that she the widow of deceased employee. Further as per Annexure A/6 dated 15.02.2017 has been issued by the Panchayat indicating that Smt. Jaya Bai is widow of Late Ganpati. Further as per Annexure A/7 dated 10.02.2017 the Panchayat has issued the certificate to the fact that the marriage of Jaya Bai was solemnised on 10.05.1969 with Ganpati as per local custom. As per Annexure A/8 PPO of Late Ganpati has been issued by the respondent-department and the name of Dwarka Bai appeared as wife of Ganpati. As per Annexure A/11, Identity Card of Election Commission of India in respect of Late Ganpati has been annexed. Annexure A/12 the name of the applicant Jaya Bai has shown as wife.

9. The applicant has relied upon the judgment passed by Principal Bench in O.A. No.2917/2014 (***Ram Roop Ram vs. Union of India and others***) decided on 02.08.2018 whereby it has been held that for the purpose

of effective implementation of the CCS (Pension) Rules, 1972, the Court/Tribunal can pass order qua the substitution of name of second wife in the records of the pensioner. It is clear from the evidence placed on record that the applicant had married to Late Shri Ganpati on 10.05.1969 as per local customs which is clear from Annexure A/6 and A/7. It is also clear from Annexure A/9 which is a ration card issued by Department of Food and Supply and the name of applicant Smt. Jaya Bai has appeared as wife of Ganpati. It is pertinent to mention that this ration card has been issued on 22.05.2008. Further as per Annexure A/12 which is an identity card issued by Election Commission of India, the name of applicant Jaya is shown as wife of Ganpati. From these evidences placed on record it is proved by the applicant that applicant was the wife of deceased employee at the time of his death. Though the applicant has submitted that Dwarka Bai had died on 10.11.1967 and thereafter the applicant had married to Ganpati. The relevant application Annexure A/1

has been sent to the respondent-department along with the various documents namely death certificate of Ganpati.

10. In view of the above discussion, I am of the view that the applicant is entitled for family pension being a legal wedded wife. On the other side the respondents have failed to prove that Dwarka Bai was in existence in the year 1969 when the applicant had married to Ganpati. Hence, this Original Application is allowed. The respondents are directed to grant the family pension from the due date within a period of 60 days from the date of receiving the order of this Tribunal. No order as to costs.

(Ramesh Singh Thakur)
Judicial Member

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