

30th June, 2025
(D/L No. 4)
Court No.4
(AD)

W.P.C.T. 59 of 2025

**Golapi Rajbansi
Vs.
Union of India & Ors.**

Mr. Mahadeb Ghosh,
Mr. Arun Kumar Paul,
Mr. Pritam Ghosh
...for the Petitioner

Mr. Ajay Dasgupta,
Ms. Moumita Mandal
...for the Respondents

1. The petitioner was the applicant before the Central Administrative Tribunal, Kolkata Bench ("CAT" for short) in O.A. No. 974 of 2023. Her O.A. has been dismissed by an order dated 22.05.2024 passed by the CAT, which order is the subject matter of the present writ proceedings.

2. It is the applicant's case that one Biroo Rajbanshi was appointed as a Trackman on 16.02.1966. He retired from service on attaining the age of superannuation on 30.04.2004. Upon his retirement he was receiving pensionary benefits. He passed away on 17.02.2009.

3. The applicant claiming to be wife of Biroo Rajbanshi submitted her claim for family

pension to the Divisional Railway Manager (P) Katihar on 29.08.2014. The claim was rejected by an order dated 20.04.2016 which was put to challenge by the applicant by filing an Original Application before the CAT. The Original Application was numbered as O.A. No. 227 of 2017. In the proceedings the respondent authorities raised an issue regarding the petitioner being a second wife of Biroo Rajbanshi. The second marriage was solemnized during lifetime of the first wife and, therefore, the authorities resisted the claim of the applicant relying on the Railway Service (Pension) Rules 1993, to submit that the second marriage solemnized by the deceased employee was not recognized by the Rules and, therefore, family pension could not be paid to the applicant/ second wife.

- 4.** On behalf of the applicant it was submitted that by a correction slip No. 68 in the manual of Railway Pension Rules para 801(10) provided for disbursal of pension to “more than one widow”. Since the Rule contemplated such a situation where there may be more than one widow claiming a benefit of pension submission on behalf of

the respondents that the second wife is disentitled to pension is unsustainable.

5. The Tribunal upon consideration of the submission and ongoing through the order rejecting the petitioner's claim found that the speaking order dated 20.04.2016 did not consider the provisions contained in the Railway Service (Pension) Rules 1993. It further took note of the fact that the authorities also did not consider the provisions as regards entitlement of the children of the deceased employee. Thus, the speaking order dated 20.04.2016 was quashed by order dated 06.05.2022 passed in O.A. No. 227 of 2017 and the respondent authorities directed to issue a reasoned and speaking order taking into consideration the petitioner's entitlement, eligibility of the children, if any in terms of the manual of Railway Pension Rules, 1950 (Para 801(10)) and in terms of the Railway Service Pension Rules.

6. In compliance with the order dated 06.05.2022 passed in O.A. No. 227 of 2017 the applicant's claim was considered and a rejection dated 02.08.2022 was communicated to her. As per the rejection

order the authorities found that at the time of his retirement Biroo Rajbanshi declared his family through one F.S. docket wherein the applicant was shown as a second wife. One Jitu Rajbanshi was shown as minor son and Chotal Rajbanshi was shown as unmarried son. One Ms. Nanuta Rajbanshi was shown as unmarried daughter. Since the applicant claimed as a second wife the authorities found that such second marriage during lifetime of the first spouse was impermissible under the Service Conduct Rules unless the second marriage was solemnized with due permission of the Central Government.

7. The authority also took into view Section 11 of the Hindu Marriage Act to conclude that such marriage with the applicant was null and void. Also because the second marriage was not with permission of the Central Government the authorities did not entertain the applicant's claim for pensionary benefit. The order records that there is no other family member eligible for grant of family pension.

8. The applicant thus filed the second Original Application bearing O.A. No. 974 of 2023

wherein she claimed issuance of a direction upon the respondent authorities for release of family pension to the applicant. In the Original Application it was the case of the applicant that the authorities did not pass any order in compliance of the directions of the Tribunal in the earlier O.A. No. 227 of 2017. It was also specifically stated by the applicant that the contempt application filed due to non compliance of the order passed in O.A. No. 227 of 2017 was disposed of without notice being issued to the respondents. The speaking order dated 02.08.2022 passed by the authorities in compliance with O.A. No. 227 of 2017, however, was annexed as Annexure/4 to the O.A. before the Tribunal.

- 9.** The respondents reiterated the stand which they had taken in the earlier O.A. to resist the claim of the applicant based on the Railway Service Conduct Rules and Section 11 of the Hindu Marriage Act. It was submitted on behalf of the authorities that the petitioner's marriage cannot be considered as a valid marriage and she cannot be considered as "family" under the Pension Rules. She, therefore, would not be entitled

to any pensionary benefits. The O.A. No. 974 of 2023 was dismissed. The petitioner also filed a review. R.A. No. 17 of 2024 was also dismissed.

10. The order dated 22.05.2024 passed in the O.A. and order dated 30.07.2024 passed in the R.A. have been assailed in the present writ proceedings.

11. The learned Counsel for the petitioner submits that the marriage of the present petitioner with Biroo Rajbanshi was never disputed by any of the legal heirs of Late Biroo Rajbanshi. The first wife of Biroo Rajbanshi, also has never questioned the marriage of the present petitioner with Biroo Rajbanshi. The first wife in fact pre-deceased Biroo Rajbanshi. Since her marriage with Biroo Rajbanshi the present petitioner continued to live in a matrimonial relationship with Biroo Rajbanshi till his demise. The fact of co-habitation of the marriage is also not in dispute. It is also not in dispute that the present petitioner is the sole surviving wife and legal heir claiming the benefit of family pension. A further submission is made that taking the circumstances in totality gives

rise to a strong presumption regarding existence of a valid matrimonial relationship between the petitioner and Late Biroo Rajbanshi. The presumption is a rebuttable one but nonetheless is required to be rebutted. The presumption has not been rebutted till date by anyone in any proceedings whatsoever. Such being the facts and circumstance the petitioner cannot be deprived of the family pension benefits. Since the extant rules/ provisions governing the claim in question gives an option to the authorities to pay retiral dues to more widows than one surviving after the death of the employee, it cannot be said that the Rule is in any way prohibitory in this regard.

- 12.** Though a stand has been taken by the respondent that solemnization of the second marriage by Biroo Rajbanshi amounted to a misconduct, we find that there is no dispute that disciplinary action was never initiated let alone concluded against Biroo Rajbanshi. Such being the facts and circumstances of the present case, the petitioner's claim is governed by decision of a co-ordinate bench of this Court in the case of ***Union of India and***

Others vs. Sushila Devi in ***W.P.C.T. No. 174 of 2016*** wherein the relief claimed by a second wife whose marriage was solemnized during lifetime of the first wife was allowed against the self-same respondents (Railways).

13. In that case also at the time of making the claim there was only one claimant being the second wife (petitioner) and no objection had been raised by first wife. Based on a long standing matrimonial relationship the Court relied upon a strong presumption of valid matrimonial relationship which remained unrebutted. Taking into consideration the avowed objective contained in Articles 15(3) read with Article 39 of the Constitution of India the claim of the widow was allowed by the co-ordinate bench. The petitioner's claim is covered by the co-ordinate bench decision copy of which has been handed over to the Court and is retained on record.

14. The learned Counsel for the respondent Railways, however, submits that solemnization of second marriage by the petitioner during lifetime of the first wife is a null and void marriage which does

not give any right to the petitioner to claim a benefit of family pension claiming to be “family”. The solemnization of second marriage by the petitioner, without permission of the Government of India amounts to a misconduct. The learned Counsel for the respondent has thus resisted the claim of the petitioner. A further submission has been advanced that pursuant to the orders passed on the O.A. No. 227 of 2017 earlier filed by the petitioner the authorities have passed a reasoned and speaking order on 02.08.2022, which was not challenged by the petitioner in the O.A. The Tribunal has taken note of such omission to challenge the speaking order in the order impugned in the present proceedings.

15. We have already taken into consideration the judgment of the co-ordinate bench in the case of **Sushila devi** (Supra) as also the fact that same squarely covers the claim of the writ petitioner.

16. Insofar as the submission of the Railway Counsel that the speaking order has not been challenged we find no

substance in such plea. The relief No. 8(iii) in the O.A. reads as follows:

“8.....

(iii) To pass such order/ orders as the Hon'ble Court may deem fit and proper in the interest of Principle of Natural Justice as well as Rules and law. As the speaking order challenge by the applicant which against law and Rules to be Quash.”

17. Apparently the applicant had sought quashing of the speaking order. The same has also been annexed to the O.A. and the substance of the speaking order has also been take into consideration by the Tribunal in the order impugned in the present proceedings. Such objection of the respondents also is thus untenable and hereby rejected.

18. In view of the consideration above the petitioner's case being covered by the decision of the co-ordinate bench in the case of **Sushila devi** (Supra) we find the petitioner to be entitled to grant of benefits of family pension, subject however to an enquiry being conducted by the respondent authorities to ascertain the veracity of her claim.

19. We, therefore, direct payment of the due and admissible family pension/ retiral

dues to the petitioner as wife of Late Biroo Rajbanshi along with a statement showing detailed calculation of the amounts paid, within a period of 3 months from the date of receipt/ production of this order. Failure to provide such benefits after due enquiry within the time stipulated herein would cast an obligation on the respondents to pay interest on the dues found admissible @8% per annum from the date next after lapse of 3 months from the date of the production of the copy of this order till the date of actual payment.

- 20.** The order of the Tribunal rejecting the petitioner's claim is set aside. The writ petition and O.A. is allowed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)