

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 1762 of 2002

New Delhi, this the 10th day of March, 2003

(19)

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Smt. Sulochana Devi
W/o Late Shri Brahaspati Prasad Shukla
retired Sorting Assistant Delhi Sorting Division
Delhi
R/o X/8/27 G-6 Brahmputri X Block Delhi-53
address for service of notices
C/o Shri Sant Lal Advocate
C-21 (B) New Multan Nagar,
Delhi-110 056.

-APPLICANT

(By Advocate: Shri Sant Lal)

Versus

1. The Union of India through the
Secretary,
Ministry of Communications,
Department of Posts,
Dak Bhawan,
New Delhi-110 001.

2. The Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi.

3. The Sr. Supdt. Delhi Sorting Division
RMS Bhawan, Kashmeri Gate,
Delhi-110 006.

-RESPONDENTS

(By Advocate: Shri B.S. Jain)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicant claims to be widow of late Shri B.P. Shukla. Shri Shukla was employed as Sorting Assistant in Delhi under Delhi Postal Circle and retired from Government service on the After-Noon of 30.6.88. He was sanctioned his retiral dues including pension etc.

2. After his retirement applicant had married said Shri Shukla and it is also stated that three children from the wedlock of applicant and deceased Shri Shukla were born.

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3. She further alleges that as told to her by her husband, his first wife Smt. Shanti Devi had died during 1975. There were two sons from his first wife who were also stated to have died during the years 1991-93. His daughter from the first wife, namely, Smt. Kiran Devi is married and well settled and is living with his family at Lucknow. Shri Shukla had been drawing his pension and he last drew his pension on 13.3.2001 till February, 2001 and thereafter he expired on 12.4.2001 leaving behind his three minor children from the applicant and one married daughter from his pre-deceased first wife.

4. The applicant made an application to the Sr. Supdt. Delhi Sorting Division Delhi and also requested for grant of family pension to which she claims to be entitled.

5. The applicant claims that even the wife who had married a retired employee and has got children is entitled for family pension though no order was passed on the request, so the applicant approached this Court for grant of pension. The application was filed on 9.7.2002. But it appears that after the OA was filed, the department had passed an order as on 20.8.2002. According to the plea of the applicant it is mentioned in the letter that it is regretted that you cannot be accepted as post retiral spouse of Late Shri B.P. Shukla as such she has no claim for family pension. While rejecting her representation, the respondents have taken a ground as per their record that the deceased pensioner had no family at the time of retirement on 30.6.88. His family pension was not authorised as his wife was not alive and the deceased had not informed about his



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post-retiral marriage in the prescribed form to the department nor he had informed about the children born after his retirement. Hence, the plea of the applicant for grant of pension was not accepted.

6. The respondents in their counter-affidavit denied that the applicant is a legally wedded wife of the deceased employee rather they pleaded that the documents itself filed by the applicant have been filed to circumvent with regard to their marital status. Besides that there is a difference of dates on different affidavits. In one of the affidavit the date of marriage was declared as 25.7.88, i.e., 25 days after the retirement and in another affidavit the date of marriage was declared as 29.7.88. But as per record of the department, there was no record with regard to the marriage of the deceased employee. Thus in nutshell, the respondents are denying the marital status of the applicant or that the applicant is legally wedded wife of the deceased.

7. Though in the rejoinder the applicant has submitted that the mentioning of the dates as per their counter-affidavit and as mentioned in the affidavits filed by the applicant on different occasions show that there is some clerical mistake. But the applicant submitted that she is the legally wedded wife as the attendant circumstances would show that the deceased had executed a Power of Attorney in favour of the applicant with regard to his house situated at Brahmepuri in the area of Village Ghonda Gujran Khadar, Shahdara where the deceased and the applicant were residing. Then the applicant also relied upon an Identity Card issued by Election Commission wherein the applicant is shown as



wife of Shri B.P. Shukla and their residential address is also shown of the same house. The applicant then also referred to a Ration Card which also shows that earlier the Head of the Family was Late Shri B.P. Shukla and the name of the applicant stands at S.No.2 as his wife and after his death correction has been made and the head of the family is now the applicant, so the applicant claims that these documents show that the applicant is the wife of the deceased. The applicant then also relied upon Government instructions where it has been mentioned that even the Post retirement spouses are eligible for grant of family pension.

8. The counsel for the respondents has also filed an application wherein the applicant has prayed that the OA is not maintainable and is liable to be dismissed in limine on the plea that the grant of family pension depends upon the determination of the marital status of the applicant whether she is the wife of the deceased B.P. Shukla or not which is not a service matter so the application should be dismissed as being not maintainable.

9. In support of his contention the counsel for the respondents has also relied upon the judgment in OA 2599/2001 wherein the court had observed that the applicant's claim for release of post-death service and allied benefits of Late Shri K.K. Sikri is basically a claim of title to the property of Late Shri Sikri and not in the nature of service dispute so it was held that the court has no jurisdiction.

10. As against this the counsel for the applicant has referred to another judgment of Central Administrative Tribunal, Jabalpur Bench in the case of Subodh Shrivastava and Another Vs. General Manager, Vehicle



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Factory Estate (OA 205/1998) and submitted that this is not a matter of property rather it is matter of family pension which is a service condition.

11. The counsel for the applicant has also submitted that as per the Government instructions even the illegitimate children of a retired employee are entitled to the family pension so the fact that the children mentioned in the ration card show that their father is Late Shri B.P. Shukla so they are entitled for grant of family pension.

12. Besides that the counsel for the applicant submitted that on her representation the department had got conducted an enquiry and the applicant had summoned that enquiry report and the Inquiry Officer had suggested that the applicant is the wife of Late Shri B.P. Shukla and she is entitled to family pension.

13. I have considered the contentions raised by the counsel for the parties and gone through the record.

14. The definition of family under Rule 54(14)(b) (1) means family in relation to Government servant means "wife in the case of male Government servant and husband in the case of female Government servant.....". A reading of this rule suggest that the applicant claiming to be wife has to prove first that she is the wife of the Government servant and only then she can claim family pension. In this case there is a dispute about the marital status of the applicant itself so that should not be decided by this Tribunal because it is not a service matter. Though the counsel for the applicant has referred to a judgment of the Co-ordinate Bench of this Tribunal in the Central Administrative Tribunal, Jabalpur Bench where claim of the children from first wife was



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preferred and since Shri Chandra Bai, respondent in that case was separately living with one another person, the court had drawn a presumption that as he she is living with another person so she is the wife of that person and that is why her family pension was stopped.

15. In this case I find that merely on the ground that the applicant had started living with Late Shri B.P. Shukla after his retirement, no presumption can be drawn that the applicant is the legally wedded wife of the B.P. Shukla and is entitled to family pension.

16. Section 3(q) of the A.T. Act defines service matters which is reproduced as under:-

"3(q) 'service matters', in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India, or as the case may be, of any corporation (or society) owned or controlled by the Government as respects-

(i) remuneration (including allowances), pension and other retirement benefits;

(ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;

(iii) leave of any kind;

(iv) disciplinary matters; or

(v) any other matter whatsoever".

17. The Tribunal is required to deal with service matters as illustrated in Section 3(q). Now the question arises when on the face of the facts the respondents have denied the relationship of the applicant with the deceased as husband and wife, whether the same can be decided by this Tribunal or not. Since the respondents had not denied to release family pension in case the applicant's submit a sufficient proof with regard to her



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marital status of being wife of Late Shri Shukla. Though applicant has referred to a judgment of Central Administrative Tribunal, Jabalpur Bench (Supra). In that case the fact that the court had drawn a presumption against the applicant therein that she is living with a third person after the death of the Government employee and as she is the wife of the third person, she is not entitled to family pension. But in the present case as far as the rule position is concerned, there is no denial on the part of the department to sanction family pension to the wife of a Government employee who even married after retirement, but the fact remains that the said wife has to prove that she is the wife of the late Government servant and only then she becomes entitled for family pension. In this case since the factum of marriage is being denied by the respondents despite the fact that the respondents own department had conducted an enquiry which went in favour of the applicant, still the department was not satisfied and has not accepted the fact of marriage of the applicant with the deceased employee. So on these peculiar circumstances whether the applicant is the wife of the Late Government employee cannot be decided by this Court. That has to be decided by the appropriate civil court and this issue of marriage is also not covered under the definition of service matters.

18. So I find that at this stage that the OA is not maintainable till the applicant is entitled to get a declaration from a competent court to the effect that she is the wife of late Shri B.P. Shukla and only then she can claim family pension.

19. In view of the above, OA is not maintainable and the same is dismissed.


(KULDIP SINGH)
MEMBER (J)