

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 663 of 1988
T.A. No.

DATE OF DECISION 16.10.1989

Smt. Sudesh Kumari

Applicant (s)

Shri S.D. Sharma

Advocate for the Applicant (s)

Versus

Union of India & Others

Respondent (s)

Shri D.P. Gupta

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. B.C. Mathur, Vice-Chairman.

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

This is an application under Section 19 of the Administrative Tribunals Act, 1985, filed by Smt. Sudesh Kumari, widow of the late Shri Pyare Lal, Safaiwala, working under Respondent No. 3 (Controller of Defence Accounts (Northern Command), Jammu Cantt), against non-payment of pension/death-cum-retirement gratuity.

2. The case of the applicant is that her husband, late Shri Pyare Lal, was working as Safaiwala in the office of Respondent No. 3 at Jullundhur and during the service, had died on 1.3.83 leaving behind the applicant as his legally wedded widow and two minor children, named, Kum. Manju and Ravi Kumar as his legal heirs. On the death of her husband, the applicant submitted her claim for the payment of 'Death-cum-Retirement Benefits' from the office of Respondent No. 2 (C.G.D.A., New Delhi), but she was informed that according to the record available in the office there were three ladies, namely, (i) Smt. Lajwanti, (ii) Smt. Sudesh Kumari - applicant and (iii) Smt. Sheela Devi, who could claim the family pension. Respondent No. 3 asked all the three above mentioned ladies to obtain Succession Certificate in their favour and submit the same

for further action. The applicant obtained a Succession Certificate from the Additional District Judge, Meerut, vide order dated 26.9.86 (Annexure-1 to the application).

3. According to the applicant, Smt. Lajwanti Devi was mutually divorced by the deceased Pyare Lal and had no issue with the said first wife, Smt. Lajwanti. It is also stated that Smt. Lajwanti married with one Deep Chand of Meerut and is living with him as his wife and has born children from the wedlock of her second husband. According to the applicant, as she is the only legal heir of the deceased Pyare Lal and has also obtained a Succession Certificate, she should be granted the relief asked for, namely, payment of all pensionary benefits, including family pension, in her favour.

4. The respondents in their reply have raised an objection to the Tribunal having jurisdiction in this matter as no fundamental right of the applicant has been violated. According to the respondents the late Shri Pyare Lal, Safaiwala, who died on 2.3.1983 while serving with the respondents, had mentioned the name of the nominee as Smt. Lajwanti and the applicant, Smt. Sudesh Kumari, did not exist as nominee in the service record of the deceased held by the respondents. As many as three claimants have been claiming themselves as widows of the late Pyare Lal, whereas according to the record maintained by the respondents only Smt. Lajwanti stands as nominated. The respondents asked all the three claimants to obtain Succession Certificates from the proper competent court of law so that the amount of death-cum-gratuity/pension could be disbursed to the de-facto and de-jure claimant as per the rules. Smt. Sudesh Kumari obtained the said Succession Certificate from the court at Meerut, but the respondents could not pay her as according to the service record, the late Pyare Lal, had nominated Smt. Lajwanti as his nominee and under the Hindu Marriage Act, she is only entitled to the death-cum-pension/gratuity. According to Hindu law, only the first wife was entitled to this benefit. The respondents do not know whether the late Pyare Lal during his life time contracted marriage with Ms. Sheela Devi and Sudesh Kumari and are not in a position to disburse the death-cum-gratuity and pension until it was proved

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and shown that the applicant was the only legally wedded wife of the late Pyare Lal.

5. During arguments, the learned counsel for the respondents said that the respondents are willing to pay the pensionary benefit to anyone who is declared as the legal heir by this Tribunal, but they do not want to take the risk of making payment to the applicant only on the basis of the Succession Certificate filed by her as it has not been established before them that the first wife, namely, Smt. Lajwanti had been divorced from the deceased Pyare Lal and that she had remarried during the life time of the deceased. When Smt. Lajwanti was asked to produce a Succession Certificate, a reply was sent on her behalf that no succession certificate was required from a legally wedded wife under the Hindu Marriage Act and as such she had not filed any Certificate or Affidavit to this effect. The fact is that only the applicant has filed a Succession Certificate from the court of Additional District Judge, Meerut, whereas the two other ladies, Smt. Lajwanti and Smt. Sheela Devi have not done so inspite of notices. Under Rule 54(7) of CCS (Pension) Rules, 1972, only the first wife is entitled to the pension and the second wife, if the first wife is living, is not entitled to the same and as the late Shri Pyare Lal in his papers had nominated Smt. Lajwanti as the nominee and as the name of the applicant, Smt. Sudesh Kumari, does not exist in the records of the deceased held by the respondents, they have been finding it very difficult to make payment to the applicant. The respondents are willing to pay the dues, but they are not clear of the legal title and want court orders regarding the amounts to be paid to various claimants. According to rules, if a person died leaving more than one widow, the family pension awards have to be shared by all until February, 1987, when a clarification was issued that family pension could be granted only to the first wife.

6. The points involved are (i) whether Smt. Lajwanti, the first wife, has got a divorce from the late Shri Pyare Lal which can be recognised as such by the Tribunal; (ii) whether any proof is required that Smt. Lajwanti actually remarried and has children from the second husband; (iii) whether the case should be governed by a Succession

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Certificate or by the nomination papers filed by the late Pyare Lal with the respondents and whether the respondents have any right to deviate from these nomination papers. In this connection it has to be seen that when the relationship in the nomination papers as wife was mentioned ^{in favour of} ~~against~~ Smt. Lajwanti, whether any money can be paid to Smt. Lajwanti ^{or only} as long as she remains a wife or a widow of the late Shri Pyare Lal. (iv) Whether a Succession Certificate got by the applicant, Smt. Sudesh Kumari, can be considered adequate for making payments, including the dues of arrears of salary, GPF account as well as family pension benefits or whether till 1987, the dues have to be divided between the three widows or as many widows ^{at the time of} who have not remarried ~~after~~ the death of Shri Pyare Lal. It is also noticed that the alleged third wife Smt. Sheela Devi had also obtained a Succession Certificate which was quashed by the Court when objected to by the applicant, namely, the second wife. In the application for revocation of the Succession Certificate obtained by Smt. Sheela Devi, the third wife, it has been mentioned that she was not known to the applicant and that she was not married to Shri Pyare Lal at all. In the official records, while the name of Smt. Lajwanti only has been mentioned as 'wife', there is no record either of the applicant or of Smt. Sheela Devi having married Shri Pyare Lal.

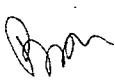
7. During the course of arguments, the learned counsel for the respondents argued that in the interest of justice it would be proper to give notice to all the three ladies involved to appear in person or file their application justifying their claim. ^{The} Two other ladies may also ^{be} informed that the applicant has obtained a Succession Certificate from a District Court at Meerut. This course was objected to by the learned counsel for the applicant who said that the Tribunal had no competence to issue notice to the other parties as the Succession Certificate decides the question as to who is the real claimant. Once the District Court at Meerut had issued a Succession Certificate in favour of the applicant, the matter is settled. He cited the case of Charan Das Vs. Nathumal (AIR 1934 Lahore 79) and AIR 1965 Allahabad 61 dealing with sections 381, 383 and 384 of the Succession Act. Smt. Lajwanti was asked by the Controller

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of Defence Accounts to substantiate her claim, but she declined ~~was not required~~ to do so saying that under the Hindu Marriage Act and that she being a nominee of her late husband nominated in the prescribed form, no question should be raised about her being the real successor by the respondents.

8. As far as the competence of this Tribunal is concerned, I have held that the payment of DCRG is a service matter and, therefore, the Tribunal has full competence to deal with the matter. It was also felt necessary that the court should ascertain from Smt. Lajwanti and Smt. Sheela Devi about the merit of their cases. It was essential to know whether they were married to the late Shri Pyare Lal and whether anyone of them had actually divorced and remarried and, if so, when. Registered notices were issued to both Smt. Lajwanti and Smt. Sheela Devi to file their affidavits justifying their claim to get family pension of the late Shri Pyare Lal. They were also asked to specify whether they continued to be the wives of the late Shri Pyare Lal and what was their present ^{status} ~~position~~. They were to state how they were entitled to get the family pension in respect of the late Shri Pyare Lal, specifically with reference to a Succession Certificate ^{obtained} by the applicant, Smt. Sudesh Kumari. The applicant was also asked to file a statement regarding the status of Smt. Lajwanti and Smt. Sheela Devi.

9. Inspite of the registered notices to Smt. Lajwanti and Smt. Sheela Devi, which were acknowledged, no statement or affidavit has been filed on their behalf. The applicant was directed to file a fresh affidavit to state she was the only widow who is entitled to all pensionary benefits, that Smt. Lajwanti had divorced Shri Pyare Lal within the lifetime of Shri Pyare Lal and that she had no legal stake in the assets of the late Shri Pyare Lal and that Smt. Sheela Devi was either never married to Shri Pyare Lal or was divorced within the lifetime of Shri Pyare Lal. An affidavit has been filed by the applicant in which she has stated ^{that} she was lawfully married to Shri Pyare Lal in the month of September, 1969 at Meerut according to Hindu rites and customs. In the affidavit it has been stated




that the late Shri Pyare Lal was married to one Smt. Lajwanti in his childhood without performing any ceremonies and they divorced in the month of December, 1968 as per the custom of his 'Biradari', namely, Balmikis, and that after taking divorce before the 'Biradari', the said Smt. Lajwanti remarried herself with one Shri Deep Chand, resident of Mohalla Ram Bagh, Meerut, in the month of February, 1969, in the life time of the late Shri Pyare Lal and is still living in the house of the said Deep Chand from whose wedlock, Smt. Lajwant has given birth to two children. In the affidavit the applicant has mentioned that there was no issue from the wedlock of the late Shri Pyare Lal and Smt. Lajwanti. As far as Smt. Sheela Devi is concerned, the applicant in her affidavit has stated that she was already married with some one else and she had not solemnised any marriage with the deceased Pyare Lal and that she has no legal status in the estate of the late Shri Pyare Lal. The applicant has affirmed that she and her two minor children are the only legal heirs of the late Shri Pyare Lal and she alone is entitled to the estate of the deceased Pyare Lal as claimed in the application.

10. The respondents have not filed any counter to the affidavit filed by the applicant in spite of time allowed to them. It has been the case of the respondents that they are willing to pay the pensionary benefits to anyone who can show her legal right to the estate of the late Shri Pyare Lal and they would not be interested in taking sides of any party as such. In view of the Succession Certificate obtained by the applicant, Smt. Sudesh Kumari, from the District Court, Meerut, and in view of the fact that Smt. Lajwanti and Shri Sheela Devi have failed to file any application or affidavit in support of their claims and in view of the specific affidavit filed by the applicant stating that Smt. Lajwanti had actually divorced and remarried within the lifetime of her deceased husband, it appears clear that when the late Shri Pyare Lal died, there was only one widow or living wife, namely, the applicant. When the papers for pensionary benefits etc. would have been signed by the late Shri Pyare Lal, perhaps at that time, the only person who could be given the estate

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of Shri Pyare Lal was Smt. Lajwanti, but once she married another person during the life time of the deceased Shri Pyare Lal, she ceases to have any claim. In the circumstances, the application is allowed and the respondents are directed to make payment of all the dues in respect of the estate of the late Shri Pyare Lal to the applicant, Smt. Sudesh Kumari.

11. Normally, the question of making any interest payment to the applicant would not arise as there has been no deliberate delay on the part of the respondents in making the payment. They had been awaiting an order from the court to decide to whom they should make the payment. In any case, the money which should have gone to the applicant has remained with the respondents for all these years and this money has earned interest for the Government. It is, therefore, directed that the applicant would be entitled to receive all the dues from the respondents with interest at the rate of 7% per annum from the date the payments became due upto the date the entire amount due to her is paid. It is directed that the amount ~~of death-cum-~~^{retirement} gratuity/penion due to the applicant should be calculated and paid to her within three months of the receipt of these orders. The parties to bear their own costs.

B.C. Mathur
16.10.1988
(B.C. Mathur)
Vice-Chairman