CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2987/2004

New Delhi, this the 4th day of October, 2005

HON'BLE MR. V.K. MAJOTRA, VICE CHAIRMAN (A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)

Pawan Kumar Shukla
S/o late Shri Brahaspati Prasad Shukla
Through his mother Smt. Sulochana Devi,
W/o late Shri Brahaspati Prasad Shukla,
Retd. Sorting Assistant,
Delhi Stg. Dn. Delhi
R/o 8/27, Gali No. 6, Brahampuri,
Delhi-110053. .... Applicant.

(By Advocate Shri Sant Lal)

Versus

1. The Union of India, through the Secretary,
M.O. Communications & I.T. Dept. of Posts,
Dak Bhawan, New Delhi-110001.

2. The Pr. Chief Postmaster General,
Delhi Circle,
Meghdoot Bhawan,
New Delhi-110001.

3. The Sr. Supdt. Delhi Stn. Dn.
RMS Bhawan, Kashmiri Gate,
Delhi-110006. ... Respondents.

(By Advocate Shri Rajeev Bansal)

O R D E R (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J).

By this O.A., applicant, who is minor, has sought quashing of the orders dated 23.4.2004 (sic.) and 23.11.2004 with further direction to the respondents to make payment of family pension to the applicant, forthwith as he is entitled in law being the elder son of the deceased retiree Shri B.P. Shukla and pay the arrears of family pension due from the date of death of his father i.e. 12.4.2001 with interest and also unpaid amount of pension of his father from 1.3.2001 to 12.4.2001. This O.A. has been filed through his mother Smt. Sulochna Devi.

2. It is submitted by the applicant that applicant's father Shri Brahaspati Prasad retired from Govt. Service on 30.6.1988 on attaining the age of

superannuation. He was paid retrial benefits as well as monthly pension w.e.f. 1.7.1988 vide PPO No. DH.33541/1432.

3. The said Shri B.P. Shukla married the mother of applicant on 25.7.1988 and from the said wedlock, they had three children. Applicant is one of them. His father's first wife Smt. Shanti Devi had died in the year 1975. From the said wife, Shri B.P. Shukla had one daughter and two sons but both the sons from first wife had died during the year 1991 and 1993. His daughter from first wife is married and is well settled in her family in Lucknow.

4. His father executed a Deed of Power of Attorney on 14.6.2002 in the name of his mother which is duly registered. This is with regard to the built up Property No. X-8/27, situated in Gali No.6, Block X in Brahampuri, Delhi. His father received the monthly pension up to February, 2001 from Delhi GPO but unfortunately he died on 12.4.2001. Intimation was given by the applicant's mother about the death of her husband to the Department vide application dated 28.6.2001 requesting therein to sanction family pension in her favour but since no reply was given, she filed O.A. No. 1762 of 2002. The said OA was, however, dismissed on 10.3.2003 by observing it is not maintainable till she gets a declaration from competent court to the effect that she is the wife of late Shri B.P. Shukla.

5. It is submitted by the counsel for applicant that wife of the deceased employee was not given family pension as her marriage was disputed but the same would not be applicable to the children as family pension is to be paid even to illegitimate children, therefore, even if applicant herein is termed to be an illegitimate child, he would still be entitled to get the family pension, therefore, they have now filed the present O.A. seeking family pension for the minor child born out of the second marriage. It is submitted by the counsel for applicant that since the minor illegitimate child could not have filed the OA in his own right, therefore, the OA has been filed through his mother. Counsel for the applicant relied on Govt. of India Decision, Para 19 under Rule 54 of the CCS (Pension) Rules. He also relied on the judgment given in the case of **Munni Devi and Ors. Vs. Union of India & Ors.** Reported in 1995 (2) ATJ 272) and judgment given in

the case of **Km. Priti Vs. UOI & Ors.** Reported in 2005 (Vol.2) ATJ 303 and also 2004 (10) Scale Page 530.

6. Respondents, on the other hand, have opposed this O.A. They have submitted that during inquiry mother of applicant had stated that she was married with Brahaspati Prasad on 25.7.1988 i.e. after the date of retirement of the deceased employee, which was 30.6.1988 whereas in another affidavit she has stated her date of marriage to be 25.8.1985 i.e. before the date of retirement of the deceased employee, which creates doubt whether marriage was performed at all or not otherwise she would not have made contradictory statement. Moreover, as per office record, Shri B.P. Shukla retired on 30.6.1988. At that time, there was no claimant of family pension as no member was shown to be part of his family. Accordingly, in Form No.III in the details of family members it was written as Nil as on 16.1.1988 (Annexure R-4) and the same remark was made even in the PPO issued to the deceased employee (Annexure R-5). The deceased employee died on 12.4.2001 and before that he never intimated the Department about his marriage with Smt. Sulochana Devi (after his retirement till his death). Therefore, as far as office records are concerned, the said employee had no family members till his death.

7. Apart from this, Smt. Sulochana Devi had filed OA 1762/2002 claiming family pension and terminal benefits but after considering all the submissions which have been raised even in the present O.A. as well, namely, the inquiry conducted by the Department, the said OA was dismissed treating it as not maintainable till applicant gets a declaration from competent court to the effect that she is the wife of late Shri B.P. Shukla, then only she can claim the family pension. The said Smt. Sulochana Devi neither challenged the order dated 10.3.2003 passed in OA 1762/2002 nor has she got any declaration from the competent court of law, therefore, the factual situation continues to be the same. Hence, the present OA cannot be entertained as factum of marriage of the said Smt. Sulochana Devi is disputed by the respondents and unless that is settled even the children cannot claim family pension. They have thus prayed that there is no merit in the O.A. The same may accordingly be dismissed.

8. We have heard both the counsel and perused the pleadings as well. Perusal of the earlier order passed in O.A. No. 1762/2002 (page 23) shows that the Tribunal had observed as under:

> "...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 canot 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.
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> 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.
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> 19. In view of the above, O.A. is not maintainable and the same is dismissed".

9. Counsel for the applicant strenuously argued that even if marriage of Smt. Sulochana Devi is not proved, at best her child will be declared as an illegitimate child, therefore,the minor child cannot be denied the family pension. Such a contention cannot be accepted. If such a contention is accepted, it will create chaos in the departments. They would be flooded with such requests. In that event, any one will file a case claiming for family pension by stating that he or she is the illegitimate child of the deceased employee. That is not at all the meaning of Govt. of India's Decision in Para 19 under Rule 54 of the CCS (Pension) Rules. Let us examine the scope of Section 16 of the Hindu Marriage Act, which has been referred to in Para 19 under Rule 54 of the CCS (Pension) Rules which, for ready reference, reads as under:

> "Notwithstanding that a marriage is null and void under Section 11, any child of such marriage who would have been legitimate if the marriage had been valid shall be legitimate, whether such child is born before or after the commencement of Marriage Law (Amendment) Act, 1976 and whether or not a decree of nullity is granted in respect of that marriage under this act, and whether or not the marriage is held to be void otherwise than on a petition under this act,"

Section 11 of the Hindu Marriage Act for ready reference reads as under:

> "**Void marriages.**-Any marriage solemnized after the commencement of this Act shall be null and void and may, on the petition presented by either party thereto (against the other party),

be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5".

10. Perusal of the above provisions show that factum of marriage has to be proved even if the said marriage may be null and void under Section 11. In the instant case, since factum of marriage of Smt. Sulochana Devi itself was disputed by the respondents, it was in those circumstances that she was denied the family pension till she gets a declaration from the competent court of law. It is correct that pensionary benefits would have to be granted even to illegitimate children but this illegitimate child is to be seen with reference to a marriage which did take place but due to some legal ground is null and void under Section 11 of Hindu Marriage Act, for example, if a person had contracted a second marriage, during the life time of his first wife, the second marriage would be null and void in the eyes of law yet the children begotten from such marriage would be entitled to get pensionary benefits. It was in this context that Para 19 under Rule 54 of the CCS (Pension) Rules has been clarified. The very heading of Section 16 of Hindu Marriage Act, 1955 reads as under:

"Legitimacy of children of void and voidable marriages".

For application of Section 16, factum of marriage has to be proved. It presupposes that marriage has taken place but even if it be null and void, any child of such marriage would be treated as legitimate. Section 16 of Hindu Marriage Act, 1955 for ready reference reads as under:

> "(1) Notwithstanding that marriage is null and void under section 11, any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate, whether such child is born before or after the commencement of the Marriage Laws (Amendment) Act, 1976 (68 of 1976), and whether or not a decree of nullity is granted in respect of that marriage under this Act and whether or not the marriage is held to be void otherwise than on a petition under this Act.
>
> (2) Where a decree of nullity is granted in respect of a voidable marriage under section 12, any child begotten or conceived before the decree is made, who would have been the legitimate child of the parties to the marriage if at the date of the decree it had been dissolved instead of being annulled, shall be deemed to be their legitimate child notwithstanding the decree of nullity.
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> (3) Nothing contained in sub-section (1) or sub-section (2) shall be construed as conferring upon any child of a marriage which is null and void or which is annulled by a decree of nullity under section 12, any rights in or to the property of any person, other than the

> parents, in any case where, but for the passing of this Act, such child would have been incapable of possessing or acquiring any such rights by reason of his not being the legitimate child of his parents".

It is thus clear that Section 16 talks of only those children who would have been legitimate children had the marriage been valid if not void under Section 11 of the Hindu Marriage Act whereas in the instant case factum of marriage itself is disputed, therefore, applicant cannot have a better right than his mother, whose claim has not been accepted by the court till she gets declaration.

11. Even in the judgment relied upon by the learned counsel for the applicant in the case of **Munni Devi & Ors. Vs. Union of India & Ors.** (1995 (2) ATJ 272), the marriage had very much taken place even though the said marriage was held to be void and invalid whereas in the instant case right from the beginning, respondents have disputed the factum of marriage of Smt. Sulochana Devi with the deceased employee. If her marriage itself is not proved, her alleged child cannot claim family pension on the basis of being her son from the deceased employee. Similarly, in the case of **Km. Priti Vs. State of UP & Ors.** (2005 (2) ATJ 303) also in paragraph 2 itself, it is mentioned "the short question to be decided in this case is whether the daughter of second wife with whom the deceased Government servant had entered into a marriage, while the first wife was alive, is entitled for consideration of the compassionate appointment under U.P. Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974"

12. From the above, it is clear that the facts of that case are also different because the marriage had taken place but it was void having been contracted while the first wife was alive. It was in those circumstances that the child from the second wife was held entitled to be considered for compassionate appointment also keeping in view that the first wife had no issue and both the widows had given affidavits expressing no objection in case the child from second marriage was to be considered for grant of compassionate appointment. Therefore, this judgment also cannot advance the case of applicant.

13. In the instant case, since the factum of marriage itself is disputed and no new fact has been brought to our notice except that the applicant is an

illegitimate child of the deceased employee, we do not think this case calls for any interference as the same situation persists even today. Applicant's mother has not got any declaration from competent court of law. She cannot be allowed to claim the same relief now through her minor son. The claim of applicant is absolutely misconceived. She did not challenge the earlier order passed in her case. Therefore, she can get the family pension only if Smt. Sulochana Devi gets a declaration from the competent court of law that she was married to Shri B.P. Shukla as was already held in the earlier order dated 10.3.2003. In this view of the matter, even this OA is not maintainable, the same is accordingly dismissed. However, liberty is given to the applicant to get appropriate declaration from the competent court of law. In case he/she gets such a declaration, it would be open to them to make their claim before the authorities along with the said declaration.

14. O.A. is accordingly dismissed being not maintainable at this stage. No order as to costs.

4/10/05

(MRS. MEERA CHHIBBER)
MEMBER(J)

(V.K. MAJOTRA)
VICE CHAIRMAN (A)

4.10.05

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