

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 18TH day of MAY 2007

Original Application No. 614 of 2002

Hon'ble Mr. Justice Khem Karan, Vice-Chairman

Smt. Sunita Devi, W/o late Sh. R.K. Gautam, D/o Sh. Makdum Prasad Tiwari, Presently R/o Madhwa Maie P.O. Saursabad Per & Tehsil Sirathu, Distt: Kaushambi.

.....Applicant
By Adv: Sri A. Rajendra

V E R S U S

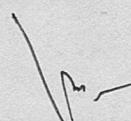
1. Union of India through Comptroller and Auditor General of India, New Delhi.
2. The Accountant General (A/C)-1, UP, AG Office, Sarojini Naidu Marg, Allahabad.
3. Rakesh Sharma, S/o not known, C/o (A/C)-1, UP, AG Office, Sarojini Naidu Marg, Allahabad..

.....Respondents
By Adv: Sri S. Chaturvedi

O R D E R

The applicant claims herself, to be the legally wedded wife of late Shri Rajendra Kishore Gautam, who died on 26.11.2000, while still in service of the respondents. She prays that the order dated 10.03.2002, passed by respondent No. 2, be quashed and he be directed to pay to her monetary benefits and family pension, accruing on death of Shri Gautam.

2. It is claimed by her that she and Sri R.K. Gautam entered into marriage as back as on 18.05.1990, which was duly registered on 23.06.1990



at the office of Dy. Registrar, Chail, Allahabad (Photocopy of registration marriage deed is Annexure-3). She goes on to state after the marriage, she and late Sri R.K. Gautam lived as husband and wife and were blessed with one son. She alleges, on death of late Shri Gautam, she gave an application to respondent No. 2, for payment of pension, provident fund and other monetary benefits as accrued ~~the~~ ¹¹⁵ under rules and for giving compassionate appointment under dying in harness rules. Copy of such application dated 30.04.2001 is annexure-4. She says that representations dated 25.05.2001, 28.05.2001 and 18.07.2001 were also given, but on seeing that nothing was being done, she filed an OA No. 41/02 before this Tribunal, which this Tribunal disposed of vide order dated 18.07.2002 (Annexure 7), directing the respondents to dispose of the representation of the applicant dated 18.07.2001 by reasoned and speaking order. By the impugned order dated 13.03.2002 this representation dated 18.07.2001 has been considered and rejected and aggrieved of it the present OA has been filed for the reliefs mentioned above.

3. The main ground taken in the OA are that alleged nomination by late R.K. Gautam in favour of Rakesh Sharma (respondent No.-3) is false and fabricated and being the legally wedded wife, she, was entitled to all the terminal benefits and to the

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compassionate appointment and the official respondents wrongly released gratuity etc in favour of respondent No.-3, ignoring the claim of the applicant.

4. The official respondents have filed reply contesting the claim. They have denied the allegations that paper relating to the nomination of respondent No.-3 were false and fabricated. They say that late R.K. Gautam had nominated his nephew Rakesh Sharma and accordingly the payments were released to him as per rules and ^{was} nothing wrong was done by them. It has also been stated that late R.K. Gautam had not informed the department about his marriage with the applicant or about his son from the applicant. According to them, earlier to 28.05.2001, no application or representation from the side of the applicant was received in the office of respondent No. 2. They say that the applicant is not entitled to the monetary benefits, that ^{occurred} on the death of Sri R.K. Gautam or to the compassionate appointment. They have tried to justify the impugned order. The respondents have also annexed the photocopies of alleged nomination made by late R.K. Gautam in favour of respondent No.-3.

5. The respondent No. 3 has not appeared inspite of service of notice on him, so the case against him, has proceeded ex parte.



6. Sri Pankaj Srivastava, appearing for respondents No. 1 and 2 has contended that this OA with regard to monetary benefits, that become payable on death of Sri R.K. Gautam, is not maintainable in the facts and circumstances of the case. Shri Srivastava argues, that in view of the provisions contained in S. 14 (3) read with S.3 (g) of Administrative Act 1985 as interpreted by Hon'ble Andhra Pradesh High Court in **R. Rajeshwaramma and others Vs. C. Sada Varalakshmi & Ravuri Soda Varalakshmi and others [2005 (104) FLR 1022]** such complicated questions as to whether the applicant is wife of late Shri Gautam or whether nomination etc. is forged or fabricated, cannot be decided in OA under Section 19 of the A.T. Act, 1985. He has drawn my attention towards para-6 of the said decision, which reads as under:-

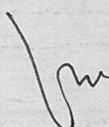
".....However, where there is no dispute as to the benefits payable on account of the death of an employee, and the controversy is as to who, the persons to receive such benefits, are, the same cannot be brought within the purview of service matters, as defined under Section 3 (q). The various persons laying a claim for such benefits have to resolve their dispute in accordance with law of succession, applicable to the employee, or on the basis of any testament, if made by the deceased employee. For this purpose, the concerned parties have to approach the Civil Courts for grant of succession certificate."

7. Sri A. Rajendra has argued that case had different facts and circumstances and so cannot be pressed into service for saying that the OA for monetary benefits is not maintainable. He has also

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contended that firstly, the nomination papers as are being relied upon by official respondents have apparently been forged and fabricated and so there is no basis to say that there are rival claims as regards those monetary benefits. Learned counsel has tried to convince me that the nomination papers were prepared and accepted, after death of late Shri Gautam. His second submission is that being legally wedded wife of late R.K. Gautam, the applicant is always entitled to knock the doors of the Tribunal for asking the respondents to pay monetary benefits, that became payable on death of her husband, and the applicant cannot be forced to undertake long drawn civil litigation, only for getting those benefits. Sri A. Rajendra has vehemently argued that marriage of the applicant with late R.K. Gautam, is evidenced by the registered deed, copy of which is on record and so there cannot be a bonafide dispute as regard her status as legally wedded wife of Sri Gautam. According to him absence of the name of the applicant in the relevant papers of the department as wife of late Shri Gautam will not deprive her of her status as wife of late Shri Gautam.

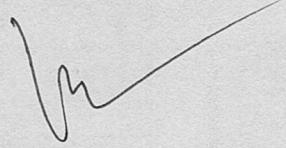
8. Though, no definite finding can be recorded in these proceedings, that the applicant is legally wedded wife of late Shri Gautam, but registered deed of marriage lends support to it. The respondents have already paid those amounts on the basis of nomination. I am of the view that the question as

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to whether nomination papers ~~are~~ forged and fabricated cannot be gone into these proceedings, ^{The} ~~is~~ ^{applicant may} file a Civil Suit for getting those amounts from respondent No. 3 as the department which has already made payment on the basis of alleged nomination, is not in a position to recover that amount from that fellow and handover to the applicant.

9. So what I find is that the OA for monetary benefits, such as GPF, Gratuity etc, which have already passed to respondent No. 3 Rakesh Sharma does not appears to be maintainable, in view of the observations of Hon'ble High Court of Andhra Pradesh as mentioned above.

10. The respondent No. 3 has not disputed the status of the applicant as wife of late Sri Gautam. The department has not accepted her claim as wife simply because late Sri Gautam did not mention her name as wife in the relevant papers. She has registered deed of marriage, evidencing her marriage with late Sri Gautam. So for the purpose of compassionate appointment and family pension her claim as wife of late Sri Gautam can be considered. In representation dated 18.07.2001, the applicant had asked for compassionate appointment, but nothing has been said with regard to the same in the impugned order dated 13.03.2002. There are no good reasons with the respondents, as to why the



applicant cannot get family pension. Non ^l
 maintaining of her names in the papers, as wife of
 late Shri Gautam, cannot be a good ground to deny to
 her family pension. I think, they should consider
 the same and the request for compassionate
 appointment, under dying in harness Rules.

11. So the OA is finally disposed of with the direction that the claims of the applicant as widow of late Sri R.K. Gautam, for compassionate appointment under dying in harness rules as well as for grant of family pension, from the date of death of late Sri Gautam shall be considered by the respondent No. 2, in accordance with rules and the law, within a period of three months from the date a certified copy of this order is received and to this extant the impugned order dated 13.03.2002 will stand quashed. As regards the rest of claims, the applicant may proceed, in accordance with law as observed in the body of this order. No cost.

Vice-Chairman

/pc/

V. J. D.
18.5.07