

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 9/12 day of March 2006.

Original Application No. 1006 of 2003.

Hon'ble Mr. K.B.S. Rajan, Member (J)

Smt. Priti Archana Sharma,
Widow of late Sri R.K. Sharma,
I.A.S. (Tamilnadu Cadre),
D/o Pt. Harihar Prasad, at present
R/o Station Road,
MANIPUR.

.....Applicant

By Adv: Sri A.K. Dave & Sri V. Mishra

V E R S U S

1. Union of India through Home Secretary, at NEW DELHI.
2. The Comptroller & Auditor General of India, NEW DELHI.
3. The Deputy Accountant General, Administration Audit and Accounts Department, Office of the Principal Accountant General, (Accounts and Entitlements) Tamilnadu, 361, Anna Salai, CHENNAI.
4. The Additional Secretary to Govt. of Tamilnadu Public (Special E) Department Fort, St. George, CHENNAI.
5. Smt. Maitriya Pathak, Widow of Manoj Pathak, D/o Ram Adhar Pathak, R/o 3, Rashoolpur, Allahabad, at present R/o Care her Mother, Smt. Urmila Tripathi, Widow of Amar Nath Tripathi, 3/2 Mumfordganj, Housing scheme, ALLAHABAD.

.....Respondents

By Adv: Sri L.K. Dwivedi

O R D E R

By K.B.S. Rajan, Member (J)

This is a case of complexity in nature, involving the civil law relating to marriage and divorce on the one hand and payment of terminal benefits and other attendant benefits, which is essentially a 'service matter' as defined in the Administrative Tribunals Act, 1985, on the other. Without touching the "non-service" aspect of the case, this OA is disposed of.

2. The applicant is the wife of Shri R.K. Sharma, I.A.S. of Tamil Nadu Cadre, who died whilst in service. There has been a rival claimant as wife of late R.K. Sharma, who has been arrayed as Respondent No. 5.

3. The facts of the case as narrated by the applicant, the official respondents and the private respondent are as under:-

a. Version as per the Applicant

i. The applicant was married to Sri Ravindra Kumar Sharma, IAS. He was posted at Vellore, Tamilnadu and he died on 13.2.2003. Earlier, Sri R.K. Sharma filed a divorce suit No. 174 of 1977 under Section 13 Hindu Marriage Act at the District Court, Allahabad which was ultimately, on a Transfer Application made, was transferred from Allahabad to Mainpuri by the Hon'ble Supreme Court and at Mainpuri the said suit was dismissed in default on 22.4.1984 and restoration application No. 285 of 1984 was



also dismissed on 15.2.85 and against the same Sri R.K. Sharma did not prosecute any remedy further and thus the divorce petition finally stood rejected. In the year 1996 Sri R.K. Sharma filed another divorce suit under section 13 (1) (ib) of the Hindu Marriage Act, in the court of Sub-ordinate Judge, Vellore, Tamilnadu. The Suit was decreed ex-parte on 28.4.99 and being aggrieved the applicant filed a Civil Misc. Appeal No. 3 of 2002 within time alongwith the stay application and on the stay application, an order of stay the operation of the ex-parte judgment and decree was passed and which continued till final disposal of the appeal and ultimately the appeal was allowed and the case was remanded back to the Trial Court for disposal after hearing both the parties. During the pendency of the suit Sri R.K. Sharma expired on 13.2.2003 and on an application made, the suit was abated and thereby there could be no divorce between the applicant and Sri R. K. Sharma till his death, and the applicant is continuing to be the legally wedded wife and now widow of Sri R. K. Sharma, I.A.S. Earlier an application was made by the applicant under Section 125 Cr. P. C. she was awarded Rs.450/- per month and in the suit for Divorce on an application made and she was awarded Rs.500/- per month as permanent alimony and in the suit at vellore on an application made by the applicant she was awarded Rs.1500/- per month for maintenance and thereafter till Mr. R. K. Sharma died. The applicant was getting Rs.2000/- per month including Rs.500/- per month Under Section 125 Cr. P.C.

ii. Respondent No. 5, Maitri Pathak was married to one Manoj Pathak and a few years

back he died and immediately thereafter Maitri Pathak developed intimacy with R.K. Sharma and he took her and her daughter born from Sri Manoj Pathak to Chennai which was then not in the knowledge of the applicant and she came to know about their affairs much after. Under the circumstances while the first Divorce petition was already dismissed and other at vellore was allowed ex parte but within the limitation an appeal to be filed and the operation of the Divorce decree was stayed, the question of any legal marriage between Sri R. K. Sharma and Smt. Maitri Pathak does not arise. It appears that R. K. Sharma introduced her as his wife at Chennai. The applicant on 16th April 2003 sent a legal notice to the respondents notifying that any amount due and are movable and immovable properties left behind by Sri R. K. Sharma be made paid to the applicant. The Assistant Accountant General, Legal Cell wrote a letter dated 24.4.2003 to the effect that authenticated copies of the Court's order in respect of the claim be forwarded to his office within 15 days. Authorization for payment of pensionary benefits have already been issued on 26.3.2003 in favour of Smt. Maitri Sharma and payment of D.C.R.G. in equal share to Smt. Maitri Sharma and salvey Nandini Sharma through the guardian Maitri Sharma as per nomination filed by the deceased. The applicant sent all the documents relevant for the purpose of verifying the applicant to be legally wedded wife and now widow of Late Sri R. K. Sharma whereas, the respondent appears to be reluctant rather the same in part have been given to Smt. Maitri Sharma, who has also been given job in place of Sri R. K. Sharma.



b. Version on behalf of the Official Respondents

The Accountant General (A&E) Chennai, is entrusted with the job of authorizing pensionary benefits and final balances in the GPF accounts of the retired/deceased members of the All India Service belonging to the Tamil Nadu cadre in accordance with the provisions of the All India Services (Death cum Retirement Benefits) Rules and All India Services (Provident Fund) Rules and on the basis of the proposals received from the Government of Tamil Nadu. Sri Ravindra Kumar Sharma, IAS, served as the Commissioner of Geology and Mining and expired on 13.02.2003 while in service. The Additional Secretary to the Government of Tamil Nadu, forwarded the family pension proposal. In the proposal, the Fourth Respondent enclosed the application for family pension etc. submitted by one Smt. Maitreyi Devi Sharma. Accordingly, necessary authorization for the payment of pensionary benefits were already issued by the Third Respondent on 26.03.2003 as under:-

- i. Payment of family pension to Smt. Maitreyi Sharma (PPO) No. OAC/FC/13002)
- ii. Payment of DCRG in equal shares to Smt. Maitreyi Sharma and Selvi Nandini Sharma (through the guardian Smt. Maitreyi Sharma)

As per the list of family members attached to the application for family Pension of late Sri Ravindra Kumar Sharma and the same was countersigned by the Fourth Respondent also the members are : -



- i. Smt. Maitreyi Sharma - Wife
- ii. Selvi Nandini Sharma - daughter.

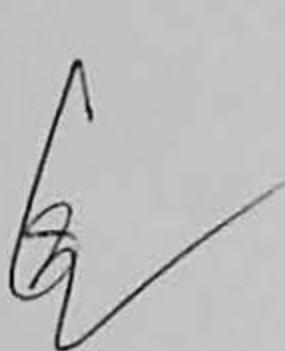
Besides as per the nomination dated 17.11.2000, late Sri R.K. Sharma conferred upon Smt. Maitreyi Sharma the right to receive the full share of the amount standing at the credit of his CPF Account in the event of his death. Selvi Sakshi Sharma and Selvi Nandini Sharma were identified as the alternate nominees. In view of the rival claims the Third Respondent chose to withhold the authorization of final balance in the CPF Account of late Sri R.K. Sharma and also issued a direction to the concerned parties so as not to effect payment of pensionary benefits. Fourth Respondent has communicated that whenever there is a dispute among legal heirs, it is not possible for the Government to decide the legality of their claim and they should be directed to go to a Civil Court and get a declaration. Based on the declaration only, the amount payable to the legal heirs can be disposed off. The payment of final balance in the CPF Account of the deceased is governed by the provisions of the All India Services (Provident Fund) Rules. The amount shall become payable to the nominee/nominees provided the amount shall be payable only to a person who fulfils the character of a member of the family on the date of death of the subscriber [Rule 30] i.e. the wife or wives and children of a subscriber and the widow or widows, and children of a deceased son of the subscriber. Nomination dated 17.11.2000 filed by the deceased in favour of Smt. Maitreyi Sharma would be invalid if she happened to be an illegitimate wife of the deceased. A family pension shall be allowed to the eldest surviving widow if the deceased was a male member of the service. The expression 'eldest surviving widow' shall be construed with reference to the seniority according to

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the date of the marriage with the member of the Service and not with reference to the ages of the surviving widows. As per Rule 22 (8) (a), family pension shall not be payable to more than one member of the family at the same time. As per provisions of Rule 19 (2), the gratuity payable in respect of a deceased member of the Service may be paid to the person or persons on whom the right to receive the gratuity is conferred under Rule 21. If Sri Ravindra Kumar Sharma had married Smt. Maitreyi Sharma during the subsistence of his marriage with Smt. Priti Archana Sharma, the applicant, then Smt. Maitreyi Sharma cannot claim the status of a legally wedded wife and would therefore not be entitled to the terminal benefits accruable in respect of Sri Ravindra Kumar Sharma.

C. As per the version of Respondent No. 5:

Preliminary Objection: Late Ravindra Kumar Sharma belongs to Tamilnadu Cadre. All his services record are under the custody of State of Tamilnadu hence no relief can be granted at Allahabad as it lacks territorial jurisdiction, thus the present OA should be dismissed on this ground that OA is not maintainable at Allahabad. Late Sri R.K. Sharma filed a divorce suit No. 62/96 under Section 13 and the same was allowed on 28.4.1999, dissolving the marriage with the applicant, thereafter late Sri R.K. Sharma after expiry of one month period married the deponent Smt. Maitreyi Sharma on 31.5.99 and a female child viz Km. Nandini Sharma was born under this wed lock on 29.9.2000. Once Sri R.K. Sharma has nominated the deponent of the counter affidavit as his beneficiaries of various funds, the applicant has no right to claim those funds as he was living separately from 1977 onwards and late



R.K. Sharma has full right to nominate his beneficiaries of funds which he did during his life time and nominated Smt. Maitrayi Sharma to receive all funds and she sought to have been respected by all and funds and she ought to have been respected by all and the department will follow the nomination which was made by him before his death.

4. From the above contentions it is clear that certain portion of the terminal benefits has been disbursed to the private respondent.

The question for consideration is what is the extent of right by the applicant in receiving the terminal benefits in respect of late R.K. Sharma, I.A.S. and how the same has to be effected.

5. Though within the jurisdiction available to this Tribunal, a particular document cannot be interpreted as to render a finding in respect of matters relating to marriage or divorce, the legal position can always be taken into account. For example, what is the law relating to divorce and subsequent marriage after such divorce could be unhesitatingly considered. For, the same is only the legal position and that position is to be telescoped upon the facts of the case if necessary. Otherwise, the case of the applicant cannot be decided.

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6. Now, the sequence of events as admitted by the applicant and the private respondent.

- (a) The applicant is the legally wedded wife of Late R.K. Sharma. (Para 4.3 of OA and Para 13 of CA of Private Respondent)
- (b) A divorce suit No. 174/1977 was filed at Allahabad, by Late R.K. Sharma, which on transfer landed at Mainpuri and the same was dismissed on default on 22-04-1984. Restoration application filed by Late R.K. Sharma was also dismissed on 15-02-1985. (Para 4.5 of OA and Para 15 of CA of Private Respondent)
- (c) Late R.K. Sharma filed another divorce suit in 1996 and the same was at Vellore, T.N. which was decreed ex parte on 28-04-1999. The applicant herein filed an appeal on time and the same was allowed and the decree was set aside and the matter remanded back to the Trial Court. Till then the ex parte decree was also stayed. However, during the pendency of the said divorce suit, R.K. Sharma expired and as such, the suit abated. (Para 4.6 of OA and Para 16 of CA of Private Respondent)
- (d) Now, Respondent No. 5 had moved an application for revival of the said suit in the Vellore Court and as per the respondent No. 5, the application is coming up in the near future. (Para 5 of the written submission of the Private Respondent.)
- (e) According to Respondent No. 5, just one month after the divorce suit was decreed on 28-04-1999, R.K. Sharma married her on 31-05-1999 and

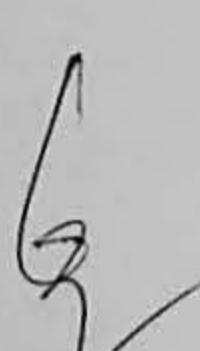
a female child was born to them in Sep. 2000. Late Sharma had left a will whereby he had bequeathed the terminal benefits etc., to Respondent No. 5.

(f) On the basis of the marital relationship with Late R.K. Sharma, as claimed by respondent No. 5, the official Respondents have released Family pension and DCR Gratuity to Respondent No. 5. (counter by the Official Respondents)

7. The Accountant General has taken a neutral stand, vide the counter on behalf of official respondents, wherein in lucid term the exact rule position and the circumstances under which certain terminal benefits came to be paid to Respondent No. 5 and that under which the balance amount shall be released and to whom have been expressed.

8. Both the sides have relied upon a number of judgments in support of their case. By and large they relate to the matrimonial relationship etc., As such, these need not dilate us for the limited question involved in this OA.

9. The decree of divorce was set aside and matter remitted back has been referred to in the OA at para 4.6. This fact has not been denied by Respondent No. 5, though she has stated in reply to the said para that after the divorce suit was allowed on 02-04-1999, she, widow of Late Manoj Pathak, married R.K. Sharma after expiry of one month of the decree



and in the wedlock, they begot a female child in September, 2000. Respondent No. 5 had not specifically denied the existence of stay of decree of divorce from the date of its filing till the decree had been set aside and the appeal had been filed within time. Under these circumstances, what is the status of Respondent No. 5 qua late R.K. Sharma or whether the alleged marriage as on 31-5-1999 could be held valid etc., is to be decided. Of course, the same is for the civil court to decide but since the fact of appeal against the decree of divorce filed on time and stay during inter-regnum period and ultimate setting aside of the divorce decree has not been denied by Respondent No. 5, for the purpose of this case, one can tentatively arrive at the conclusion that in so far as this case is concerned, the applicant has a better claim to the terminal benefits and other attendant concessions available on the demise of Shri R.K. Sharma.

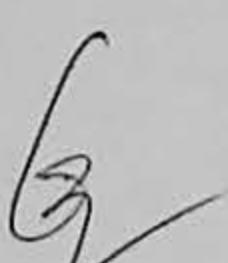
10. A look at the alleged will stated to have been executed by late R.K. Sharma in favour of respondent No. 5 would also be appropriate. There is absolutely no reference to the marriage having been solemnized between Late R.K. Sharma and Respondent No. 5. Again, the wordings are such that the two children named therein were stated to be that of respondent No. 5. And, Late R.K. Sharma only "treated these children" as his own children. While

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referring to respondent No. 5, she has been known only as Smt. Maitreyi and NOT 'Smt. Maitreyi Sharma'. It is to be kept in mind that Smt. Maitreyi was married to late Manoj Pathak. In other words, late R.K. Sharma had taken sufficient care to ensure that even unconsciously he did not want to exhibit that he had remarried. For, in all expectation, no prior permission would have been sought from the Government of India under the Rules applicable to the said Late R.K. Sharma, much less obtained from the Government for such remarriage and as such, any evidence of remarriage might affect his service career. Indeed, in drafting the will, the dexterity of the draftsman is demonstrative! If at all the will is taken into consideration, though filed and relied upon by Respondent No. 5, the same only strengthens the case of the applicant.

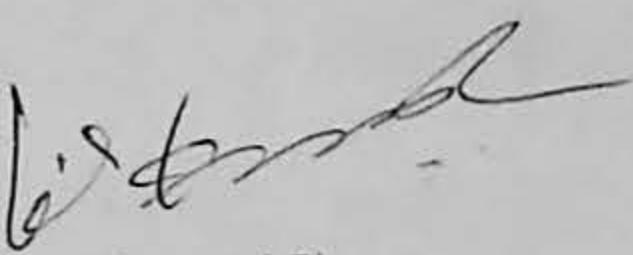
11. In view of the above, the applicant has made out a strong case in her favour and the OA is disposed of with the following observations/directions:-

"It is declared that the applicant is entitled to the terminal benefits (family pension and other unpaid dues) of late R.K. Sharma and the same is payable to her. However, since a rival claimant is also there, i.e. Respondent No. 5, and as the ultimate decision in the application filed by respondent No. 5 in the divorce suit would have its bearing in respect of terminal benefits payable to the legal heirs of late



R.K. Sharma, any amount that is being released to the applicant may, be suitably secured by the respondents in their own interest, by way of security to be obtained from the applicant. The security may be by way of bank guarantee or any other collateral security. An indemnity bond in addition may also be procured. The terminal benefits other than that which had already been released in favour of respondent No. 5 should be made available by the concerned Official Respondent within a period of four months from the date of communication of this order and subject to the furnishing of security as stated above by the applicant. In case the restoration application filed by respondent No. 5 before the civil court is decided against her, perhaps there may not be any necessity to demand any security from the applicant."

No cost.



Member (J)

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