

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

**HON'BLE MR.A.K. GAUR , MEMBER (J).**

Original Application Number. 1398 OF 2006.

ALLAHABAD this the 28 day of 8<sup>th</sup>, 2009.

Smt. Vijay Laxmi, Wife of Late Shambhu Nath Jaiswal,  
R/o Dakhin Fatak, Post and Tehsil- Sadar, Distt.  
Mirzapur.

.....APPLICANT

**V E R S U S**

1. Post Office Superintendent, Mirzapur Division,  
Mirzapur.
2. Post Master, Mirzapur.
3. Union of India through Ministry of Communication, Department of  
Post, Dak Bhawan, Sansad Marg, New Delhi.
4. Smt. Madhuri Devi, Daughter of Late Shambhu Nath Jaiswal, wife  
of Sri Ganesh Chand Jaiswal, R/o Dubeypur, Post- Ashapur,  
Thana- Rampur, District- Jaunpur .

.....Respondents

Advocate for the applicant:	Sri Satish Dwivedi Sri P.N. Srivastava
Advocate for the Respondents:	Sri S. Singh Sri S.C. Mishra Sri S.M. Ali

**ORDER**

**(Delivered by Hon'ble Mr. A.K. Gaur, J.M)**

Through this Original Application filed under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for a direction in the nature of mandamus to the respondents to make payment of entire due pension, family pension, gratuity and post retiral benefits relating to her deceased husband Late Shambhu Nath Jaiswal and continue making payment of the same from time to time as and when the same falls due.

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2. The facts of the case, in brief, are that the applicant, is the widow of Late Shambhu Nath Jaiswal, who died on 05.05.2001 while working as Postal Assistant in Sub Post Office, Churk, Distt. Sonebhadra. According to the applicant, she and Late Shambhu Nath Jaiswal applied for Court Marriage before the Marriage Officer, Mirzapur on 02.06.1993. In the application, Late Shambhu Nath had shown himself to be a bachelor and the applicant as a divorced lady. They got married before Marriage Officer on 05.07.1993. The marriage certificate was signed by the witnesses namely Gita, Shakuntala Singh and Nankhu Ram. Thereafter Late Shambhu Nath submitted an Affidavit on 17.10.1994 informing the departmental authorities that his former wife Smt. Kalawati has already expired four years ago and there are three daughters surviving through her wedlock, who are already married and there is no male issue. Late Shambhu Nath further submitted a list of following family members on 13.02.1998 in order to record the same in his service record: -

- (a). Smt. Shyma Devi, a/a 75 years      mother
- (b). Smt. Vijay Laxmi, a/a 40 years      wife
- (c). Ravi Shankar, a/a 16 years      son
- (d). Km. Deep Mala, a/a 14 years      daughter
- (e). Km. Priti Devi, a/a 13 years      daughter

3. Learned counsel for the applicant submitted that one Gita Devi filed Original Suit No. 30/2002 before the Learned Court of Civil Judge, Senior Division, Sonebhadra claiming herself to be the legally wedded wife of Late Shambhu Nath Jaiswal, which was dismissed for default and for non-prosecution. Learned counsel for the applicant would further contend that the children born out of wedlock with Late Smt. Kalawati and the children born through the wedlock with the applicant have been recorded as legal heirs and legal representatives of the applicant, in



service record. After the death of her husband, the applicant applied for payment of family pension, gratuity and other post retiral benefits but no fruitful response has been given by the respondents on the ground that she is not legally married wife of Late Shambhu Nath Jaiswal. The grievance of the applicant is that the action of the respondents is unfair, improper, illegal and is against the provisions of Part III, Part IV and Article 301 of the Constitution of India as the marriage of the applicant with Late Shambhu Nath Jaiswal is valid and is in accordance with the provisions of Hindu Marriage Act and the children born out of nuptial bond with late Shambhu Nath or solely depended upon the applicant and are at the verge of starvation as there is no other source of livelihood.

4. During the pendency of Original Application, Smt. Madhuri Devi, daughter of Late Shambhu Nath Jaiswal (respondent No. 4) filed Impleadment Application No. 1016/2007 on 07.05.2007, which after hearing counsel for both sides was allowed vide order dated 05.03.2008. During the course of arguments, it was revealed that despite the order dated 05.03.2008; the applicant has not impleaded her as necessary party in the array of respondents. However, on the request of learned counsel for the applicant, he is permitted to incorporate the necessary impleadment in O.A during the course of the day.

5. On notice, a detailed Counter Affidavit has been filed on behalf of respondent Nos. 1 to 3 on 30.10.2007 and counsel for respondent No. 4 filed Counter Affidavit on 02.05.2008. Learned counsel for the respondent Nos. 1 to 3 submitted that after the death of the deceased employee on 05.05.2001, the claim for payment of terminal benefits have been received by the following persons: -

- i. Smt. Vijay Laxmi, the alleged wife of the deceased employee;

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- ii. Smt. Geeta Devi, the alleged wife of the deceased employee;
- iii. Smt. Shushma Jaiswal, married daughter of the deceased employee;
- iv. Smt. Aarti Devi alias Patti, married daughter of the deceased employee;
- v. Smt. Madhuri Devi alias Guddi, married daughter of the deceased employee.

6. Since there were five claimants out of which, one was Smt. Geeta Devi(since deceased), the alleged wife of Late Shambhu Nath and three daughters of the first wife of deceased employee Late Kalawati Devi, whose names were already recorded in the service book of the deceased employee as nominee/ legal heir for payment of the retrial dues, one of the daughters Smt. Madhuri Devi submitted Succession certificate issued from the competent court of law. Therefore, she is the necessary party which in the instant case has not been done deliberately by the applicant with intention to get exparte order in her favour. According to the respondents, the O.A. is not maintainable for non-joinder of necessary party therefore, the OA deserves to be dismissed on this ground alone.

7. I am not inclined to accept this preliminary objection raised by the learned counsel for the respondents as this Tribunal vide order dated 05.03.2008 has already allowed the impleadment application filed by Smt. Madhuri Devi, who has also filed her Counter Affidavit.

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8. According to learned counsel for the official respondents further the name of first wife Late Kalawati Devi was already recorded in the service book of the deceased employee as nominee. Late Kalawati Devi also died leaving behind three married daughters namely Smt. Shushma Jaiswal, Smt. Aarti Devi alias Patti and Smt. Madhuri Devi alias Guddi. Vide letter dated 11.07.2001 a notice was sent to all of the alleged claimants for furnishing succession certificate issued from the competent court of law with a view to grant of necessary payment of terminal benefits including family pension. In spite of the notice dated 11.07.2001, both Smt. Vijay Laxmi and Smt. Geeta Devi, alleged wife of the deceased, neither submitted any valid proof of their marriage with the deceased employee Late Shambhu Nath Jaiswal nor filed succession certificate issued by a competent court of Law in their favour. On the other hand, Smt. Madhuri Devi, the daughter of the deceased employee obtained succession certificate in her favour and this succession certificate has been issued with the consent of other two daughters namely Smt. Shushma Jaiswal and Smt. Aarti Devi alias Patti from the court of Civil Judge (Senior Division), Mirzapur on 22.12.2001. According to the official respondents, the applicant alleging herself to be the wife of Late Shambhu Nath, filed a Writ Petition No. 31845/2001, (Vijay Laxmi Vs. UOI & Ors) before the Hon'ble High Court, Allahabad and another alleged wife Smt. Geeta Devi filed an Original Suit No. 30/2002 before the Learned Civil Judge (Senior Division), Sonabhadra claiming herself to be the legally wedded wife of the deceased employee and for obtaining succession certificate in her favour. It is alleged by the respondents that the necessary

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payments could not have been made in favour of Smt. Madhuri Devi, the daughter of the deceased employee, who has already submitted succession certificate. Learned counsel for the official respondents further submitted that the Hon'ble High Court vide its order dated 30.10.2001 disposed of the Writ Petition No. 31845/2001 directing the respondents to consider and decide the representation of the applicant. However, after the decision on the representation of the applicant, she filed another Writ Petition No. 67060/2006 (Vijay Laxmi Vs. UOI & Ors), which was dismissed with direction to the petitioner to approach this Tribunal. Learned counsel for the official respondents would further contend that the Original Suit No. 30/2002 (Geeta Devi Vs. UOI & Ors) also dismissed in default and for none prosecution on 14.11.2006.

9. It is also alleged by the learned counsel for the official respondents that no information regarding court marriage was ever given by the deceased employee to the Railway administration. Similarly endorsement of the name of the applicant in the service book does not entitle her to get terminal benefit being legal heir of the deceased employee. It was incumbent upon the applicant to have furnished succession certificate issued from the competent court of law in her favour, which she failed to do till date, whereas, the daughter of the deceased employee namely Smt. Madhuri Devi has already submitted succession certificate issued by the competent court of law in her favour. Learned counsel for respondent invited my attention to the application dated 28.09.1999/Annexure 1 of CA and submitted that the deceased employee Late Shambhu Nath Jaiswal had requested to delete the

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name of the applicant from the service book. Learned counsel for the official respondents further argued that instead of producing succession certificate the applicant has approached various courts and submitted that the grounds on which the claim of the applicant has been assailed are totally devoid of merit and as such the O.A. deserves to be dismissed.

10. Sri S.M. Ali, learned counsel for the respondent No. 4 invited my attention to the Annexure CA-4 and CA-5 of Counter Affidavit filed on 02.05.2008 and submitted that the applicant is real wife of Shri Shamsher and she is still living with him. He further submitted that as per section 11(3) of Hindu Marriage Act, assuming though not admitting, the applicant was married with Late Shambhu Nath but such a marriage would be deemed to be void in view of the provisions of Section 11(3) of Hindu Marriage Act. It is settled principle of law that during the life time of the former husband, the applicant could not have married with Late Shambhu Nath/the deceased employee.

11. I have heard learned counsel for both sides and perused the pleadings as well as the written arguments filed by the either sides.

12. During the arguments, learned counsel for the official respondents submitted that the Learned counsel for the official respondents further submitted that after the direction of the Hon'ble High Court dated 30.10.2001 in Writ Petition No. 31845/2001, the respondents decided the representation of the applicant and thereafter she filed another Writ Petition No.

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67060/2006 (Vijay Laxmi Vs. UOI & Ors), which was dismissed with direction to the petitioner to approach this Tribunal. However, the applicant has neither mentioned in the O.A regarding the fact of filing of Writ Petitions before Hon'ble High Court and order passed thereon nor about the order passed by the official respondents on her representation. Further the applicant did not file copy of divorce certificate from her previous husband Sri Shamsher. This goes to show that the applicant has not come to this Tribunal with clean hand. The applicant has also not produced succession certificate, which in the facts and circumstances of the case is a necessary document, till date despite the notice dated 11.07.2001 issued by the official respondents.

13. In view of the observations made above, I find no good ground in the O.A. The claim of the applicant not only lacks merit but is dismissed on the ground of concealment of material facts and documents.

14. There will be no order as to costs.

  
MEMBER- J

/Anand/