

17/6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of Decision : 16-8-2002

O.A. No. 291/2001.

1. Ayesa Sultan W/o Late Tufel Khan.
2. Miss Sakila Bano D/o Late Tufel Khan, aged 14 years, minor.
3. Master Sakil Khan S/o Late Tufel Khan, aged 16 years, Minor.

No. 2 & 3 through Natural guardian mother Ayesa Sultan W/o Late Tufel Khan ex Office Assistance Cazri Jodhpur, R/o Moti Bai Ka Mandir, Moti Chowk, Jodhpur.

... APPLICANTS.

v e r s u s

1. Indian Council of Agricultural Research through its Secretary, Krishi Bhawan, New Delhi.
2. Central Arid Zone Research Instituted through its Director Cazri Jodhpur.
3. Smt. Mahmooda W/o Late Tufel Khan Near Colonal Sahab Ke Havely, Udaimander Jodhpur.

... RESPONDENTS.

Shri K. S. Chauhan, counsel for the applicants.
Shri V. S. Guryar, counsel for respondent No. 1 & 2.
Shri Narpat Singh, counsel for Respondent No. 3.

CORAM

Hon'ble Mr. Gopal Singh, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :
(per Hon'ble Mr. J. K. Kaushik)

Smt. Ayesa Sultan, Miss Sakila Bano and Master Sakil Khan have filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for seeking the following reliefs :-

2

"That by way of writ, order or direction the respondent be directed to decide the pension case of applicant under the rule of 1964 and further be directed to make the payment of arriears along with interest @ 24% p.a.

That the record of the case may please be called for and the aproprated order in the facts and circumstance the passed in favour of applicant and the application be allowed with cost."

2. The brief facts of the case as narrated in the OA are that the applicant No. 1, is the wife of Late Shri Tufel Khan. Applicant No. 2 is the daughter of said Late Shri Tufel Khan and applicant No. 3 is the son of Late Shri Tufel Khan. A certificate dated 23.07.1981 to the fact that applicant No. 1 was married to Late Shri Tufel Khan has been filed as Annexure A-1. Birth certificates have also been filed in respect of applicant No. 2 and 3. Further a copy of Ration Card indicating the family member of deceased Tufel Khan and also a copy of Identity Card issued by Election Commission have also been annexed to OA. Late Shri Tufel Khan while working on the post of Assistant superannuated on 31.03.1996 and was granted the pension vide PPO dated 17.07.1996 (Annexure A-7).

3. Shri Tufel Khan expired on 29.03.1997. The applicant NO.1 moved an application for grant of family pension. It has also been submitted that applicant No. 1 and respondent No. 3, Smt. Mahmooda, both were legally valid wives of Late Shri Tufel



Khan and both have claimed for family pensions. Applicant No.1 was asked to submit succession certificate but she could not get the same, since the same cannot be issued in such matters inasmuch as the pension is not the debt or security. All these facts were brought to the notice of government respondent through a detailed representation. An affidavit as asked by the department was submitted. But the matter was not decided and a legal notice was got issued and there has been no response from the respondents side.

4. The application has been filed on number of grounds and it has been submitted that the applicants are entitled to get the family pension under Rules of 1964. It has also been submitted that applicant No. 1 and respondent No. 3 both are entitled for the family pension as per the rules, but the matter was not decided and it is being prolonged for a period of about 3 years without any basis. Respondent no. 1 and 2 have filed a detailed reply to the OA. It has been averred that Late Shri Tufel Khan neither informed the respondent about contracting second marriage nor he sought permission for the same, as per provisions of CCS (Conduct) Rules, 1964. Provisions of contracting 4 marriages under Muslim Law has nothing to do with the Conduct Rules, which applied to all the government servants uniformly. Late Shri Tufel Khan, at the relevant time, indicated the name of two children who are said to have been born to applicant No.1 and name of Respondent No. 3 as his family members. Hence the claim of the applicant No. 1 is without any substance for grant of family pension, and



2

therefore, a succession certificate was demanded from the applicant No. 1. But the applicant has failed to produce the same and thus the claim is without any substance. As far as the delay in release of the family pension is concerned the applicant herself had claimed exclusive rights and had prayed not to release the same to other wife and thus she herself was responsible for the delay. It has been further mentioned in the reply to the OA that Late Tufel Khan has indicated Respondent No. 3 as nominee and, therefore, the claim of the applicant is not sustainable in the eye of Law. The OA deserves to be dismissed.



5. A separate reply has been filed on behalf of respondent No. 3. She has stated that she is the legally wedded wife of Late Tufel Khan and the applicant has never disclosed the fact of Nikah ceremony with Late Shri Tufel Khan and birth of said children in his life time. Thus the clear intention is to deprive the Respondent No. 3 from his legitimate claim of pensionary benefits. The Ration Card and Identity Cards referred to in the OA have no legal sanctity for the purposes of legal marriage. The husband of respondent No. 3 never admitted the alleged marriage with the applicant in his service book or any other documents. It is thus wrong to contend that applicant No. 1 is a legally wedded wife of late Shri Tufel Khan and is entitled for family pension alongwith respondent No. 3. As a matter of fact it is only respondent No. 3 who is entitled for the family pension.

8

6. We have heard the learned counsel for the parties and

have carefully perused the record of the case.

7. Learned counsel for respondent No. 1 and 2 has also produced the service record in respect of late Shri Tufel Khan. At the very outset, the settled position in the matter is that until there is a specific declaration by a Civil Court regarding the legal heirs of a deceased government servant, the entries made in service book in this respect are to be relied upon. In the present case there is no such declaration in respect of any of the applicants or in respect of Respondent No. 3. Thus, we have to follow the declaration of the deceased employee regarding his family members / legal heirs from the service records. As per the latest details of his family furnished on 05.07.96 ~~submitted~~ by Late Shri Tufel Khan, the following members have been indicated as the Members of his family.



" 1. Miss Shakila Parveen	7th July, 1986	Daughter
2. Mr. Shakil Khan	24th Sept. 1984	Son
3. Mrs. Mahmooda	6th Aug. 1941	Wife "

In the aforesaid details the name of the applicant No. 1 does not find place and in this view of the matter, we cannot take the applicant No. 1 as the legally wedded wife of Late Shri Tufel Khan and she cannot have any claim of family pension in the present case.

8. As regard to respondent No. 3, her name has been entered in the list of members of the family in the Service Book of the deceased Government Servant Late Shri Tufel Khan. There can be no dispute that she is the legally wedded wife and is entitled to the family pension as per Rule 54 of the CCS Pension Rules.

9. Now the question remains about the applicant No. 2 and

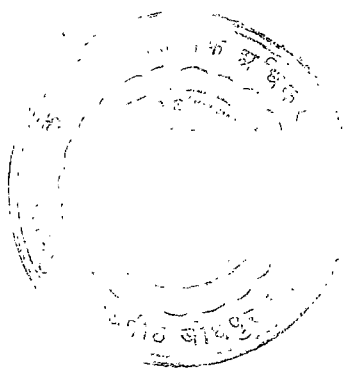
3. Both of them are said to be the daughter and son respectively of the deceased government servant Tufel Khan. Their birth certificates have been also annexed and they are said to have been borne to some Aisha Bano. However, since we have clearly held that applicant No. 1 cannot be taken as a legally wedded wife of Late Shri Tufel Khan (Until there is a declaration from a Court of competent jurisdiction), in absence of her name finding place in the service book, it cannot be presumed that applicant No. 1 is the mother of applicant No. 2 and 3. However, it is seen that both applicant No. 2 and 3 are borne to a lady and their father is Late Shri Tufel Khan. Thus the right of such children required to be protected and will accrue accordingly. They would be entitled to pensionary benefits as admissible to children from the void or voidable marriages. Government of India, Department of Personnel and Pension Welfare has issued an OM No. 1/16/96-P & PW(E), dated 02.12.1996, wherein it has been provided as under :-

pensionary benefits will be granted to children of a deceased Government servant/pensioner from such type of void marriages when their turn comes in accordance with Rule 54(8). It may be noted that they will have no claim



[Handwritten signature]

Handwritten mark



whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same."

In the present case, respondent No. 3 is the legally wedded wife of the deceased Government servant Late Shri Tufel Khan and she is entitled for the same. Thus, the applicant No. 2 and 3 can have no claim of pension so long the said widow i.e. Respondent No. 3 survives or gets remarried.

10. In view of the aforesaid discussion and the rule position, the OA has no force and the same deserves to be dismissed. The same is hereby dismissed with no order as to costs.

J. K. Kaushik

(J. K. KAUSHIK)

MEMBER (J)

Gopal Singh

(GOPAL SINGH)

MEMBER (A)