

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH: JODHPUR**

ORIGINAL APPLICATION NO. 206/2004

Date of decision: 29.7.2005

Smt. Usha Kapoor

...Applicant

Mr. S.P. Sharma

...Advocate for the Applicant

V E R S U S

U.O.I. & Ors

...Respondents.

Mr. M. Godara, proxy counsel for

Mr. Vinit Mathur, Advocate for Respondent Nos. 1,3 & 4.

Mr. Daya Ram, Advocate for Respondent No. 5.

None is present for the respondent No. 2.

CORAM:

Hon'ble Mr. J.K. Kaushik, Judicial Member.

1. **Whether Reporters of local papers may be allowed to see the judgement?** *No*
2. **To be referred to the Reporter or not?** *Yes*
3. **Whether their Lordships wish to see the fair copy of the Judgement?** *Yes*
4. **Whether it needs to be circulated to other Benches of the Tribunal?** *Yes*

JK Kaushik
(J K Kaushik)

Judicial Member



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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

Original Application No. 206 of 2004

Dated of order: 29.07.2005

CORAM:

HON'BLE MR. J K KAUSHIK, JUDL. MEMBER

Smt. Usha Kapoor wife of late Shri Tilak Raj Kapoor S/o Shri Ram Prakash Kapoor, aged 55 years, Caste - Kapoor, Residing C/o Shri Kishan Singh Ji Rathore, Plot No. 124 "Ratandee" Central School Scheme, Air Force Area, Jodhpur (Raj.).
(Legal wife of late Shri Tilakraj Kapoor, Senior Refrigeration/A.C. Mechanic, Defence Laboratory, Jodhpur.

...Applicant

Mr. S.P. Sharma: counsel for the applicant.

VERSUS



1. Union of India through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. The CDA (Pension), G-3/VII Section, Allahabad (U.P.).
3. The Chief Engineer, Headquarters Southern Command, Engineers Branch, Pune - 411001.
4. Assistant Garrison Engineer (E/M), AGE (I) R&D, Defence Laboratory, Ratanada, Palace, Jodhpur.
5. Smt. Iron J Singh, House No. R-22, in front of Circuit House, Bharatpur (Rajasthan).

...Respondents.

Mr. M. Godara, proxy counsel for Mr. Vinit Mathur,
Counsel for respondent No. 1, 3 and 4

Mr. Daya Ram, counsel for respondent No. 5.
None present for the respondent No. 2.

ORDER

Smt. Usha Kapoor has invoked the jurisdiction of this Bench of the Tribunal and filed this Original Application for questioning the validity of order dated 09.07.2004 (Annexure A/2) whereby her claim for family pension and pensionary

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benefits has been turned down. She has, inter alia, prayed for quashing of the same in addition to claiming the release of pension, gratuity and other admissible dues of late Shri Tilak Raj Kapoor in favour of the applicant in accordance to the terms of agreement duly executed on affidavit on 18.09.2003 between the applicant and respondent no. 5, so as to meet the dire need of source of livelihood to the bereaved family, amongst other reliefs.

2. The case was listed for admission and with the consent of all the learned counsel for contesting parties it was taken up for final disposal at the stage of admission. I have, accordingly, heard the elaborate arguments advanced on behalf of all the contesting parties and also perused the pleadings and records of this case. The official respondents have been fair enough to make available the relevant service records in respect of the deceased Govt. servant.

3. The material facts as narrated in the pleadings of the applicant in the Original Application, indicate that the applicant is the wife of late Shri Tilak Raj Kapoor. Late Shri Tilak Raj Kapoor was a permanent employee of Military Engineering Service and was last posted as Senior Refrigeration Mechanic HS-I at AGE (I) R&D Defence Laboratory, Jodhpur. He served the department from 01.10.1966 till 02.03.2001 and he expired on 02.03.2001. He was survived of the applicant (wife), Ajay

Raj Kapoor and Devraj Kapoor (sons). He was also survived by another wife Smt. Iron J. Singh, Vijay Raj Kapoor (son) and Bina (daughter), residing at Bharatpur.

4. The further facts of the case are that the first wife of late Shri Tilak Raj Kapoor, Smt. Iron J. Singh, i.e. respondent No. 5, was in employment as J.N.M. (O.T.) Govt. Hospital, Bharatpur. She left Shri Tilak Raj Kapoor over 25 years back prior to the death of Shri Tilak Raj Kapoor. Her son being about 25 years of age was not dependent on Shri Tilak Raj Kapoor as he was employed in PHED, Bharatpur. There was some litigation between Shri Tilak Raj Kapoor and respondent No. 5 and also divorce petition was filed but in the year 1980, mutually it was decided to live separately, forever and the divorce petition was consequently withdrawn. Subsequently Shri Tilak Raj Kapoor married in the year 1979 with the present applicant. In service record, the applicant has been made as nominee and complete particulars of the applicant as well as the two children are recorded therein. She never knew about the previous wife of Shri Tilak Raj Kapoor till the death of her husband. The applicant came to know about the first wife only when the respondent No. 5 submitted the family pension papers to the department. An agreement on affidavit was arrived at between the applicant and the respondent No. 5 on 18.09.2003 at Jodhpur duly countersigned by Sub Divisional Magistrate, Jodhpur. The amounts of Provident Fund and Insurance Benefits

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have been equally divided by both the parties in equal share. An objection was raised by the respondent-department saying that PCDA (P) Allahabad did not agree to that agreement on the ground that as per rules family pension cannot be divided between two wives. The pathetic condition of the applicant has been projected in the pleadings and the Original Application has been grounded on diverse grounds as narrated in para 5 and its sub-paras.



The separate replies have been filed on behalf of official respondents as well as on behalf of private respondent. A detailed rejoinder has been filed to the reply filed by the private respondent. The facts and grounds raised in the Original Application have been controverted and it has been mentioned in the reply filed by the official respondents that both the parties failed to produce the succession certificates and that is the reason that the family pension and gratuity have not been released. It has also been averred that as per the rules in force, the second wife is not entitled to the family pension during the lifetime of legally wedded wife. The grounds raised in the Original Application have been generally denied. In the reply filed on behalf of private respondent i.e. respondent No. 5, it has been emphasised that during subsistence of the first marriage i.e. between Shri Tilak Raj Kapoor and respondent No. 5, the second marriage will be treated as nullity as per the personal law since the matter relates to the persons belonging to Hindu

community. In this view of the matter, the respondent No. 5 being the first wife would only be entitled for the family pension and other retiral benefits.

6. The learned counsel representing all the contesting parties have reiterated the facts and grounds raised in their respective pleadings. The learned counsel for the applicant has vociferously submitted that applicant's husband had absolutely no relation with the respondent No. 5 for more than 25 years. On the other hand, the applicant and her children have enjoyed all the facilities like that of LTC etc. from the service as well as shared the multiple family sufferings. The name of the applicant has been nominated in all the service records. He has also submitted that there was an agreement between the applicant and that of the respondent No. 5 for sharing the pensionary benefits in the ratio of 50% each and the same was executed vide Annexure A/15 but no heed has been paid to it by the respondents. The learned counsel for the applicant has also submitted that the applicant's husband withdrew the divorce petition since an amicable agreement was arrived at between him and respondent No. 5. He lastly tried to demonstrate that the respondent No. 5 is financially well off, needing no assistance but the condition of applicant is so deplorable. The case of applicant needs to be sympathetically considered by applying justice oriented approach. In this view of the matter, it is the applicant alone who could be said to be entitled for the

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family pension and other benefits due to the sad demise of her husband.



7. Per contra, the learned counsel for the respondent No. 5 has with his usual vehemence opposed the contentions of the learned counsel for the applicant and countered the submissions with the assertion that the family pension is payable to the legally wedded wife. It is the respondent No. 5 who is the legally wedded wife and not the applicant since the marriage between the respondent No. 5 and late Shri Tilak Raj Kapoor subsisted till the date of death of later. During all this period, there was no divorce with the respondent No. 5 and, therefore, the marriage with the applicant is against the Hindu Marriages Act and shall have to be treated as in nullity. The submissions were ratified by the learned counsel for the official respondents.

8. I have anxiously considered the contentions raised on behalf of both the parties. As far as the factual aspect of the matter is concerned, it is the admitted position of this case that the Tilak Raj Kapoor got married first with the respondent No. 5 and the applicant is the second wife. There was no divorce between the first wife i.e. respondent No. 5 and Shri Tilak Raj Kapoor and the marriage subsisted till the death of later. It is also true that Shri Tilak Raj Kapoor had made certain nominations in respect of gratuity and provident fund in respect of applicant and her children. From the record it is also seen

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that such type nominations have also been made in respect of respondent No. 5 and the subsequent nominations do not indicate that they superseded the earlier nominations. It is also seen from the records that in this case there is an affidavit wherein both the parties, i.e. applicant and respondent no. 5, have agreed for sharing the retiral benefits as noticed above.

9. At the very outset, I would like to deal with the so called agreement whereby the applicant as well as the respondent No. 5 have said to have been agreed upon to share the retiral benefits. As a matter of fact, I find that Annexure A/15 is only an affidavit and not an agreement at all. However, the family pension is a right of a widow and not the estate of a deceased Government servant and is therefore not subject to testamentary deposition. In other words, even the Govt. servant has no control over the family pension since the exclusive right of the family pension is that of a widow alone due to her widowhood. The family pension is payable to a legally wedded wife alone. In this view of the matter, the family pension cannot be divided or distributed on the strength of any agreement. The relief as per the agreement between the applicant and the respondent No. 5 cannot be granted. Otherwise also this tribunal is not meant for execution of any agreement between any parties. Thus the relief claimed in this OA as such cannot be granted.

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10. As a matter of fact, after the aforesaid finding the fate of this Original Application is substantially decided since the main prayer of the applicant itself has been rejected. However, I would venture to deal with the other aspects of this case for the reason that the relief clause in this case has not been happily worded. The late Government servant had contracted a second marriage and in terms of notification made by the Department of Pension and Pensioners' Welfare dated 16.2.1987, under Rule 54 of Pension Rules the second wife will not be entitled to family pension as a legally wedded wife. The relevant portion is reproduced below:


 "It is specifically a question arising under the Hindu Marriage Act, 1955. Under Rule 54(7) of the CCS (Pension) Rules, 1972, in case a deceased Government servant leaves behind more than one widow or a widow and eligible offspring from another widow, they are entitled to family pension in respect of that deceased Government servant. Section 11 of the Act provides that any marriage solemnized after the commencement of the Act shall be null and void and can be annulled against the other party by a decree of nullity if the same contravenes any of the conditions specified in Clauses (iv), (iv) and (v) of Section 5 of the Act. Section 5(1) stipulates that the marriage cannot be legally solemnized when either party has a spouse living at the time of such marriage. Therefore, any second marriage by a Hindu male after the commencement of 1955 Act during the life time of his first wife will be a nullity and have no legal effect. Such marriage cannot be valid on the ground of any custom. In fact, a custom opposed to an expressed provision of law is of no legal effect. So under these circumstances, the second wife will not be entitled to the family pension as a legally wedded wife."

Applying the aforesaid rules/instruction to the facts of this case, I find that applicant cannot be said to be legally wedded wife and thus would not be entitled for the family pension as a legally wedded wife. Perhaps, the applicant is fully aware that she cannot get the family pension as such and that is the reason the shield of so-called agreement has been taken. The misplaced sympathy can never take stride over the legislative enactments.

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Therefore, I am not impressed with the contention of learned counsel for the applicant that applicant is entitled to the family pension on any count. No fault can be fastened with the action of the official respondents and the impugned order is unimpeachable.

11. Although the point was not argued before me, I take judicial notice of the fact that the Supreme Court in the case of

Maharani Musum Kumari v. Kusum Kumari Jadeja, (1991)

1 SCC 582, held that the amended Section 16 of the Hindu Marriage Act has enlarged the applicability of beneficial provision to illegitimate children. I also take judicial notice of the fact that in terms of the Supreme Court Judgment the Department of Personnel has issued instructions on the point by its O.M. No. 1/16/96-P & PW(E) dt. 2.12.1996. Certain right of family pension is also envisaged for the illegitimate children of the late government servant. The relevant paragraph of the above memorandum lays down as below:



"4. The rights of such children requires to be protected and will accrue accordingly. It is, therefore, clarified that 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 whatsoever to receive family pension as long as the legally wedded wife is the recipient of the same."

The legally wedded wife i.e. respondent No. 5 is recipient of family pension at the present and first son borne to the applicant have crossed the age of 25 years by now, hence, there would be no question for any of family pension to him on any count. The

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right of second son, would survive till 10.3.2007 subject to, of course, other contingencies.

12. In the result, this Original Application is found devoid of any merit or substance and the same is hereby dismissed but with no order as to costs.

JK Kaushik
(J K KAUSHIK)
JUDICIAL MEMBER

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R.I.C
on 2/8/2009
from
Dr. Peter
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Part II and III destroyed
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under the supervision of
section officer (1) as per
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