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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH: JODHPUR**

Original Application No. 267/2004

Date of decision: 31.8.2006

**HON'BLE MR. J K KAUSHIK, JUDICIAL MEMBER.**

1. Parwati Devi, w/o Late Shri Rajendra Kumar aged 40 years,
  2. Shoba, d/o Late Shri Rajendra Kumar aged 17 years
  3. Suman, d/o Late Shri Rajendra Kumar aged 15 years
  4. Laxmi, d/o Late Shri Rajendra Kumar aged 14 years
  5. Ramu, S/o Late Shri Rajendra Kumar aged 11 years
- Applicant Nos. 2 to 5 are minors through their legal guardian applicant No. 1 all residents of 58-A, Indira Colony, Ratanada Road, Jodhpur. Rajendra Kumar Ex-Mason HS II in the Office of the Garrison Engineer Air Force Jodhpur.

: Applicants.

Rep. By Mr. Vijay Mehta: Counsel for the applicants.

**VERSUS**

1. Union of India through the Secretary to the Government of India, Ministry of Defence, Raksha Bhawan, New Delhi.
2. Commander, Works Engineer, MES, Air Force, Jodhpur.
3. Garrison Engineer, MES, Air Force, Jodhpur.
4. Chief Engineer, MES, Air Force Camp Hanuman, Ahmedabad
5. Shri Vinod Son of Shri Rajendra Kumar C/o Shri Madho Ram, 58, Shakti Colony, Near Khadi Bhandar, Ratanada, Jodhpur.
6. Smt. Prabhati Wife of Shri Dharmendra, Class IV Servant, Shri Lal Bahadur Shastri School, Subhash Chowk, Ratanada, Jodhpur.

: Respondents.

Mr. M. Godhara proxy counsel for  
Mr. Vinit Mathur

: Counsel for respondents  
No. 1 to 4.

None present for respondents 5 & 6.

**ORDER**

**Per Mr. J K Kaushik, Judicial Member.**

Smt. Parwati Devi has filed this Original Application under section 19 of Administrative Tribunal Act 1985 wherein the order dated 20.9.2004 (Anne A/1) and order dated 30.9.2004 (Annex A/2) have been challenged with further prayer for grant of family pension and Gratuity amount along with interest @ 24 % p.a.

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2. I have heard the elaborate arguments advanced at the Bar by both the learned counsel representing the contesting parties and also earnestly considered the pleadings and records of this case. Service records/file in respect of deceased government servant was also produced by the respondents for perusal of this court.

3. The factual panorama of this case indicates that the applicant is the wife of Shri Rajendra Kumar who was employed as permanent employee and holding the post of Mason Gr. II in the office of respondents No. 3. Said Rajendra Kumar died on dated 4.12.2002, while on active service and was survived by wife i.e. applicant, one son and three daughter. The deceased Government Servant also left behind another son named Vinod (R-5) who was born to one Smt Prabhati (R-6); erstwhile wife of the deceased government servant.

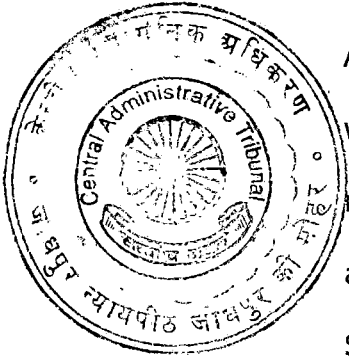


The late government servant married the applicant after obtaining divorce from said Smt. Prabhati. Smt. Prabhati also re-married one Shri Dharmendra and developed her separate family. Shri Vinod is also residing with his mother. Late Rajendra Kumar submitted his family details on the requisite proforma to his controlling officer who entered the same in the service records as indicated in letter dated 10.04.2003 (Annex.A/3). She has also been paid certain amounts towards leave encashment and insurance etc. But her claim for family pension and gratuity has not been entertained with a mention that unless it is proved that the first wife is legally divorced or expired, she cannot be granted family pension. The claim of family pension and gratuity cannot be processed further.

4. The further facts of the case are that as per revised details of family members, the applicant No. 1 has been shown as his wife and

2

the same was acceptable to the concerned authority who after due verification released certain part of retiral benefits to the applicant. The details regarding divorce of late Shri Rajendra Kumar with Smt. Parbati must have been submitted at the relevant time. The applicant belongs to Scheduled Caste and she is semi illiterate. There is nobody to assist her in obtaining a copy of divorce deed which may be of more than 25 years old. It has also been averred as per the custom and usage prevalent in their community there was no necessity to obtain divorce order from the Court of law. It has been further asserted that the respondent No.6 has not submitted any claim for pensionary benefits.



5. The official respondents have filed their reply to the Original Application and it has been submitted that the applicant is the second wife of Shri Rajendra Kumar and there is no records available with the respondents as to whether there was any divorce with the first wife as also about the solemnizing the second marriage with the applicant. Shri Vinod Kumar has obtained a succession certificate from the competent Court of law and claimed the terminal benefits. The respondents are not aware whether the fact of second marriage has at all been taken into account while issuing the succession certificate to Vinod Kumar. As per provisions of Hindu Marriage Act, 1955 second marriage is not valid when it takes place during the life time of the first wife without any divorce certificate issued by the competent court of law. The family pension and gratuity are to be paid to the beneficiaries as per the clear nomination. In absence of clear nomination and existence of legal disputes (sic), the Headquarter is not in a position to release the same. The grounds raised in the OA have been generally denied. The same is followed by an exhaustive

rejoinder to the reply wherein a copy of the succession certificate has been annexed indicating that an amount of Rs. 50,000/- towards gratuity should be released in favour Shri Vinod Kumar.

6. Both the learned counsel representing the contesting parties have reiterated the facts and grounds mentioned in their respective pleadings of the parties. The learned counsel for the applicant has submitted that a perusal of Annex. A/3 to the O.A clearly indicates that late Shri Rajendra Kumar had shown, the applicant as his wife, in the latest family details submitted to the authorities. The divorce deed must have been submitted then and after due verification only the family details would have been accepted. He has also submitted that the first wife of the deceased government servant has also been impleaded as one of the respondents to this O.A. But she has not chosen to oppose the claim of the applicant. The facts which have been pleaded remain undenied by her and to the extent they relate to her divorce with late Government servant, they are deemed to be admitted. Therefore the applicants are fully entitled for grant of family pension as well as gratuity amount.



7. The learned counsel for the respondents has submitted that the family details submitted by late government servant on dated 20.11.2000, wherein the name of the applicant No. 1 is indicated as wife, has not been entered in the service book. He has also submitted that it was incumbent on the part of the applicant to prove that there was valid divorce between the deceased Government servant and the respondent No. 6. But no proof has been submitted in support of her assertion. Therefore, the applicant has no case worth consideration by this Bench of the Tribunal.

2

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8. I have considered rival submissions put forth on behalf of the applicant as well as the official respondents. As far as the factual aspect of the matter is concerned it is true that there is no entry of the family details given on dated 20.11.2000 by the deceased government servant, in the service book. But the Annex. A/3 has indicated that the family details were also furnished on 20.11.2000. After carrying out an incisive analysis I find that in personal file of late Shri Rajendra Kumar the revised details were submitted on 20.11.2000 and the name of the applicant No. 1 has very much been shown there which has rightly been mentioned in Annex. A/3 as noticed earlier (A copy of the same is being placed on the record of the case file.). This position is fortified by certain subsequent action of the respondents in as much as the applicant was issued with a communication for clearing bank loan outstanding in the name of late government servant and also her claim for appointment on compassionate ground has been turned down not on the ground that she is not the legally wedded wife of the late government servant but on the ground that she was over aged. Admittedly she has been paid some part of the retiral benefits. It is trite law that family pension is required to be paid to a legally wedded wife and the same cannot be subject to any testamentary disposition. 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. Who is the legally wedded wife is first to be ascertained from the family details which are furnished by the Government servant. The liability of the department would stand discharged after having disbursed the due amount to the legal heirs mentioned in the family details. If any one, other than such members claims any right against the retiral benefits of the deceased, a



2

declaration from the competent civil court would be imperative. It is made clear that entering the particulars given in an application by the government servant in his service book is a procedural matter and one cannot be made to suffer for the fault on the part of respondents. Otherwise also, once the valid application for Family Details duly countersigned by the competent authority is available on the records, it could even now be entered in the service book. In this view of the matter I have no hesitation in holding that the applicant No.1 is fully entitled for the grant of due family pension and payment of gratuity amount.



9. Looking the matter from yet another angle, much has been said and argued from the side of the official respondents that copy of divorce deed between the deceased government servant and respondent no. 6 has not been produced. I am not impressed with this submission for more than one reason. Firstly, the applicant was not a party to the said deed and the respondent No. 6 who could have thrown some light on the same has not chosen to contest this case. The official respondents have also never asked respondent No. 6 regarding her divorce. Secondly, the family details in revised form, wherein the name of applicant No. 1 has been shown as wife of the deceased Government servant, were duly accepted and counter signed by the competent authority. There is always a presumption that the official acts must have been done in accordance with the procedure established by law. The family details submitted by deceased government servant must have been duly verified in accordance with the procedure established by law. It does sound well from the official respondents that they did not follow the due procedure. Thirdly, the pin drop silence on the part of respondent no. 6 gives a very

21/

significant indication that version made by the applicant is true. Admittedly, no claim has been preferred on her behalf for release of any of the retiral dues of the deceased Government servant. Shri Vinod Kumar has claimed only a portion of gratuity for which the applicant had no objection and the succession certificate has been issued only to that extent. I am therefore of the considered view that the applicant's claim is well founded.

10. In the premises, the Original Application has ample force and the same deserves to be accepted. Ordered accordingly. The impugned order dated 20.09.2004 (Annex. A/1) and order dated 30.9.2006 (A/2) are hereby quashed. The respondents are directed to pay the family pension and the balance amount of gratuity (i.e. less the amount already paid to Shri Vinod), along with interest @ 8% p.a. from the due date till the date of payment, within a period of three months from the date of receipt of a copy of this order.



  
(J K KAUSHIK)  
JUDICIAL MEMBER.

jsv

Plans

By Ernst  
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