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

**ORIGINAL APPLICATION NO. 87/2007
WITH
MISC. APPLICATION NO. 109/2008**

Date of Order: 19th November 2008

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

Rukmani Devi W/o Shri Kishan Joshi, caste Brahmin, Age 80 years, R/o Plot No. 170 "C" Rajeev Nagar, out side Mahamandir, Jodhpur. Her husband Shri Kishan lastly worked on post of Ward Keeper in Northern Western Railway Workshop, Jodhpur.

...Applicant.

Mr. Gurnam Singh, counsel for applicant.

VERSUS

1. Union of India through General Manager, Northern Western Railway, Jaipur (Raj.).
2. The Divisional Railway Manager, Northern Western Railway, Jodhpur.
3. Assistant Personnel Officer (Workshop) Northern Western Railway, Jodhpur.

...Respondents.

Mr. Salil Trivedi, counsel for respondents.

ORDER

[Per Mr. Tarsem Lal, Administrative Member]

The brief facts of the case, as stated by the applicant, are that Rukmani Devi, the applicant, is the widow of late Shri Kishan Joshi, who worked as a Ward Keeper and retired from that post in North Western Railway (Workshop), Jodhpur, on 31.07.1982. He was issued PPO for payment of pension w.e.f. 01.08.1982.



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Shri Kishan Joshi died on 21.02.2000 and he withdrew his last pension upto September, 1999.

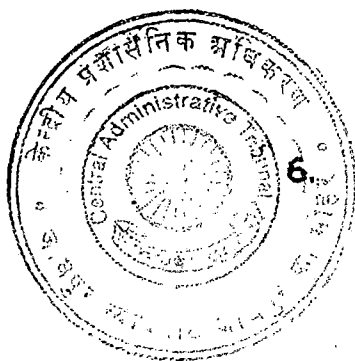
2. After the death of Shri Kishan Joshi, his (legally wedded wife) widow, the applicant applied for her family pension application (Annex. A/3) and also filed a form of application for family pension (Annex. A/4) to respondent no. 3.
3. The traveling passes, which were given by the respondents from time to time to the deceased Govt. servant, were submitted and placed on record as Annex. Nos. A/6, A/7 and A/8. Affidavit, which supports with all documents, is as Annexure A/9. In spite of all these documents and her repeated request to the Assistant Personnel Officer (Workshop), North Western Railway, Jodhpur (Respondent no. 3), the family pension has not yet been released to the applicant. The applicant also served a legal notice on the respondent nos. 2 and 3 by Registered Post on 23.02.2007 (Annex. A/10) and copy of A.D. is Annexure A/11. The respondents have given reply to the notice vide letter their dated 08.03.2007 (Annex. A/1) and asked for submission of copy of succession certificate from the applicant for further action in the matter.



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4. The applicant has explained that she is the legally wedded wife of Shri Kishan Joshi and in absence of any source of income she is facing great hardship at the age of 80 years. She has enclosed the copy of Ration Card and the Railway Travelling Passes issued to the deceased Govt. servant. In spite of all the above documents and repeated requests made by her, respondents have not sanctioned family pension to her so far. The respondents have asked for production of succession certificate before family pension could be paid to her.

5. Aggrieved by the above, the applicant prays that the respondents may kindly be directed to make payment of family pension and arrears thereof with interest @ 18% and quash the reply of the respondents' notice dated 08.03.2007 (Annex. A/1) and other relief as deemed fit looking to the facts of the case may also be granted in favour of the applicant. Costs may also be awarded to the applicant.



6. The respondents have contested this Original Application, inter alia, pleading that Shri Shrikishan Joshi was working as Ward Keeper in the respondent-department and was superannuated on 31.07.1982. Shri Shrikishan Joshi filed the nomination for DCRG in the year 1982 (Annx. R/1) in favour of his father Shri

Jhumar Lal Joshi. Similarly, he filed PF nomination in the year 1973 (Annex. R/2) wherein he gave his nomination in favour of his two sisters. The Government servant filed settlement forms (Annex. R/3) at the time of his retirement, but he did not gave the name of any of the nominee for the purpose of family pension. According to the settlement papers submitted by the employee himself under his own signature, the pension was sanctioned to him vide PPO No. 14820059 dated 21.09.1982. Shri Shrikishan Joshi enjoyed the pension for 18 years, but neither he nor the applicant requested for inclusion of name for family pension. It is only after the death of the above named employee, the original applicant applied for family pension and she was rightly asked to submit the succession certificate in the year 2000 from the Court of competent jurisdiction as in all the settlement papers pertaining to the above named official, the name of the applicant was nowhere mentioned as wife. The applicant thereafter approached the District Judge, Jodhpur for seeking her succession certificate which is evident from show cause notice issued by the District Judge, Jodhpur to DRM, North West Railway, Jodhpur, bearing no. CM 115A/ 2000 (Annex. R/4). The applicant, even after approaching the Court for seeking succession certificate, did not produce the same. Thus, this being the position, the family pension as sought by the applicant cannot be

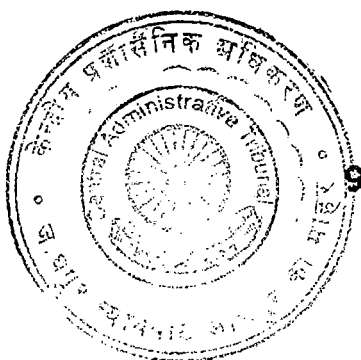


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granted as already informed vide letter dated 08.03.2007 (Annex. A/1).

7. The respondents have explained that as the applicant has not submitted the succession certificate, the matter cannot be proceeded for grant of family pension and in the facts and circumstances as narrated above, no illegality can be found in the order impugned.

8. The respondents have further explained that the applicant applied for succession certificate by initiating proceedings before the District Judge, Jodhpur, but what was the final result of the proceedings was not made known to the respondents nor the applicant disclose this fact in this Original Application. The contention of the applicant that she is legally wedded wife of late Shri Shrikishan Joshi simply cannot be accepted as in the record pertaining to the deceased employee, it is nowhere mentioned that the applicant is legally wedded wife of late Shri Shrikishan Joshi.

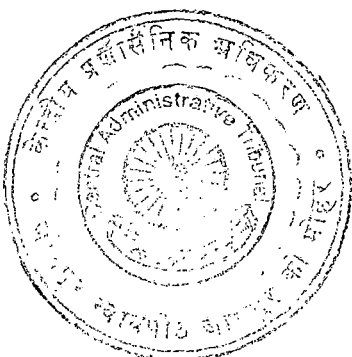


9. The respondents have further explained that issuance of passes vide no. 087138 (Annex. A/6, A/7 and A/8), are not denied. However, the passes were issued for Shrimati and Shri Shrikishan Joshi. This document by itself cannot establish as to whether Smt. Rukmani is the wife of Shri Shrikishan Joshi or not. Thus, the

applicant was rightly asked to submit the succession certificate way back in the year 2000, but till date the applicant has not produced the same for claiming family pension on account of death of Shri Shrikishan Joshi. In view of this, the respondents have prayed that the Original Application deserves to be dismissed.

10. The applicant has filed rejoinder to the reply filed by the respondents, stating that she is not claiming DCRG and PF for which the Govt. servant made nomination in favour of his father and sisters. She is claiming family pension and the applicant filed this Original Application for grant of family pension as her right. The applicant had filed application for succession certificate before the District Judge, Jodhpur as Civil Misc. Case No. 115A/2000. After taking evidence and arguments, the District Judge decided the case and gave order on 06.12.2001 (Annex. A/12). The District Judge held in his order dated 06.12.2001 that the applicant wants succession certificate for her deceased husband pension, but pension is not a disputed property of the deceased and a civil application has to be filed before the competent court and District Judge has no right to give the succession certificate for the pension.

11. The applicant claims that she is a legally wedded wife of Shri Kishan Joshi and she was married long back in the



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year 1942. By this wedlock, she has three daughters and two sons. The applicant has further explained that in the year 1992, the marriage anniversary was celebrated as Golden Jubilee in their family. The photographs of the above Golden Jubilee Celebration have been produced as Annexure A/16.

12. Shri Kishan Joshi made a 'Will' (Annex.A/21) for his movable and immovable properties in favour of her son Pradeep Joshi. By this 'Will', Mr. Pradeep Joshi filed application for probate before the District Judge at the Civil Misc. Case No. 19A/2001 which was decided in favour of Pradeep Joshi on 10.09.2002 (Annexure A/22).

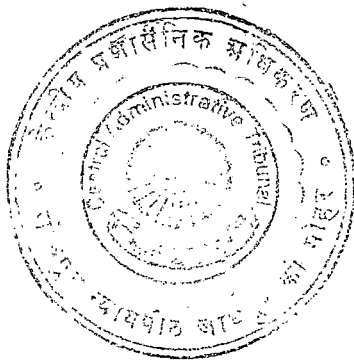
13. Based on all these documents, the applicant claims that she is the legally wedded wife of the deceased Govt. servant. In this case, the applicant has also filed Misc. Application No. 109/2008 for permission to file additional documents. In this M.A., the applicant placed certain documents i.e. copy of the identity card and voter list (Annex. A/26-28), letter from the officer on special duty to the Vice President of India (Annex. A/29), sale deed (Annex. A/30), letter from Shri Kishan Joshi to his father-in-law (Annex. A/31), letter of RSEB for electricity connection (Annex. A/32), certificate from "Sahitya Sudhakar Examination" (Annex.A/33), copy of



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service book maintained by a private school i.e. Arya Kanya Pathsala, Sardarpura, Jodhpur (Annex. A/34), copy of statement given by applicant and her son Pradeep Kumar in a suit for succession certificate before the District Court at Jodhpur (Annex. A/35), copy of sale deed for purchase of plot (Annex. A/37), letter from General Secretary, All India Congress Committee, New Delhi (Annex. A/38), certificate from Additional District Magistrate (City), Jodhpur (Annex. A/39), photographs of marriage anniversary (Annex. A/40), copy of check-up sheet from Bhandari Hospital, Jodhpur (Annex. A/41). The applicant prayed these documents submitted by her shown that she is legally wedded wife of Shri Kishan Joshi and she is entitled to get all the benefits including pension for her husband. She further prayed that aforementioned documents may kindly be taken on record.

14. In response to the said M.A., the respondents have filed their reply and submitted that the documents produced by the applicant in M.A. in no way can be said to be relevant documents so far as the relief claimed by the applicant in the O.A. is concerned. The respondents have prayed that this Tribunal does not have jurisdiction to adjudicate the issue of applicant being legally wedded wife of late Shrikishan Joshi on the basis of these documents sought to be produced by way of



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this M.A. The respondents have, therefore, prayed that the M.A. filed by the applicant for producing these irrelevant documents are wholly misconceived and deserves to be dismissed.

15. Learned counsels for the parties have been heard. They generally reiterated their arguments already given in their respective pleadings.

16. Learned counsel for the applicant made a detailed presentation of the facts given in this O.A. as well as M.A. He strenuously pleaded and made the Court to go through various documents placed on record.

17. Learned counsel for the applicant cited and relied upon the following decisions/judgments of the Hon'ble Apex Court as well as the Hon'ble High Court/s:

(i) In the case of **Smt. Poonamal and Ors. Vs. Union of India & Ors.** [(1985) 3 SCC 345], wherein the Hon'ble Supreme Court held has as under:

"Pension is not merely a statutory right but it is the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old-age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate. Pension is a right not a bounty or gratuitous



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payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right."

- (ii) In the case of **Smt. Violet Issaac & Ors. Vs. Union of India & Ors.** [(1991) 1 SCC 725], wherein the Hon'ble Supreme Court has held as under:

"..... The employee has no title nor any control over the family pension as he is not required to make any contribution to it. The family pension scheme is in the nature of a welfare scheme. Therefore, it does not form part of his estate enabling him to dispose of the same by testamentary disposition."

- (iii) In the case of **Jodh Singh vs. Union of India & anr.** [AIR 1980 SC 2081], wherein the Hon'ble Supreme Court has held as under:

"It is unquestionably established that special family pension sanctioned to the widow of an officer of the Indian Air Force by the President of India under Rule 74 could not be subject-matter of testamentary disposition by the husband of the widow. It is irrelevant whether the deceased had shown his wife as his dependant or not."



- (iv) In the case of **Badri Prasad vs. Dy. Director of Consolidation and others** [AIR 1978 SC 1557], wherein the Hon'ble Supreme Court has held as under:

"Evidence Act (1 of 1872), S. 114 - Marriage - Presumption - A man and a

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woman living as husband and wife for about 50 years - Strong presumption arises in favour of wedlock - Proof as to factum of marriage by examining the priest and other witnesses not necessary."

(v) In the case of Smt. Parameshwari Bai vs. Muthojirao Scindia [AIR 1981 Karnataka 40], wherein the Hon'ble High Court of Karnataka has held as under:

"A man and a woman tied together by wedlock form the least unit of our complex society and whenever a man and woman lived as husband and wife for a fairly long time and were so reputed, law presumes that they are living as husband and wife and not in a state of concubinage. Presumption is both with regard to factum of marriage and legality of it. It is a strong presumption as it goes to the root of the structure of society and the persons who challenge it will have to rebut it by clear, cogent and satisfactory evidence."

(vi) In the case of Laxmi Kom Venkanna Nayak vs. Government of India [AIR 2003 Karnataka 54], wherein the Hon'ble High Court of Karnataka has held as under:

".....Family pension - Entitlement - Claimant whether wife of freedom fighter - Proof - Fact that freedom fighter has not in his application or affidavit indicated that claimant was his wife - Cannot be sole basis to reject claim - Claim has to be decided on objective assessment of all material produced before the Govt. - Circumstance that State Govt. under its own scheme has sanctioned family pension to claimant - Is relevant factor."



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In view of the above pleadings, learned counsel for the applicant pleaded that the applicant is legally wedded wife of the deceased Government servant and she may be allowed payment of family pension and her O.A. and M.A. may be allowed.

18. Learned counsel for the respondents pleaded that the name of the applicant has nowhere been mentioned in the official record that she is the legally wedded wife of the deceased Govt. servant. The deceased Govt. servant made different nominations for payment of his DCRG and PF in favour of other family members whereas the name of the applicant has nowhere been mentioned in the service record for payment of family pension. Therefore, the applicant has been correctly asked to submit succession certificate from the competent court of jurisdiction. The documents relied upon by the applicant in the O.A. as well as M.A. would be seen by the competent court whether the same are relevant or irrelevant to determine whether or not the applicant is legally wedded wife of the deceased Govt. servant. He, however, emphatically stated that this Tribunal does not have any jurisdiction for deciding the fact that the applicant is a legally wedded wife of the deceased Govt. servant or not. He further prayed that the case law quoted by the learned counsel for the applicant would be helpful for obtaining the order of the

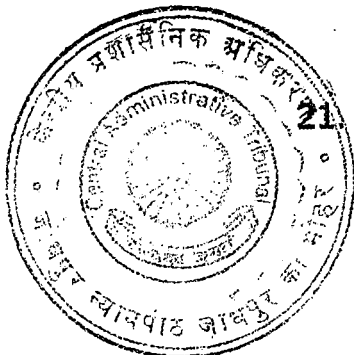


competent court of jurisdiction whether the applicant is the legally wedded wife of the deceased Govt. servant.

19. Learned counsel for the respondents cited and relied upon the case of **Prasani Devi vs. Union of India & Anr.** (O.A. No. 213/99) decided on 18.04.2000 by this Bench of the Tribunal wherein this Bench has held in a similar case that only remedy available to the applicant is to seek a declaration of her rights to claim the family pension from the respondents as the widow of the deceased Govt. servant. In view of this, the O.A. was held to be not maintainable in absence of such a declaration and the same was dismissed.

In view of the above pleadings, learned counsel for the respondents prayed that the O.A. as well as M.A. may be dismissed.

20. This case has been considered carefully and the documents placed on record perused.



It is seen that the Govt. servant had retired on 31.07.1982 and he has drawn his pension upto September, 1999. The deceased Govt. servant made nomination for payment of DCRG and PF in favour of other family members, whereas the name of the applicant has not been mentioned anywhere as wife for

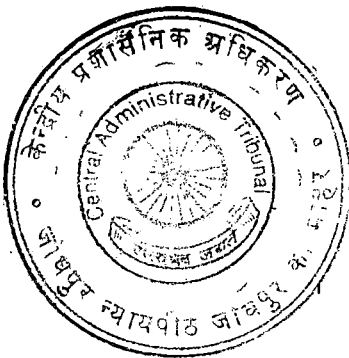
payment of family pension after his death. It is seen that the applicant had filed a case before the District Court, Jodhpur for obtaining succession certificate, wherein the District Judge, Jodhpur, has passed the following order on 06.12.2001:

“प्रार्थिया के विद्वान अभिभाषक उपस्थित। विद्वान अभिभाषक को सुना गया। प्रार्थिया के विद्वान अभिभाषक यह स्वीकार करते हैं कि मृतक स्वर्गीय श्रीकृष्ण जोशी के द्वारा छोड़ी गई चल सम्पत्ति प्रार्थिया ने प्राप्त कर ली है और अब वह सम्बंधित विभाग से, जहां से स्वर्गीय श्रीकृष्ण जोशी सेवा निवृत्त हुए थे, केवल पारिवारिक पेंशन प्राप्त करना चाहती है। चूंकि पारिवारिक पेंशन मृतक के द्वारा छोड़ी गयी सम्पत्ति की परिभाषा में नहीं आती इसलिए पारिवारिक पेंशन के लिए उत्तराधिकार प्रमाण-पत्र जारी नहीं हो सकता। अगर प्रार्थिया चाहें तो इसके लिए सक्षम न्यायलय में सिविल वाद प्रस्तुत करें। अतः इस स्थिति में यह प्रार्थना- पत्र खारिज किये जाने योग्य है।

परिणामतः प्रार्थिया का यह प्रार्थना-पत्र खारिज किया जाता है।

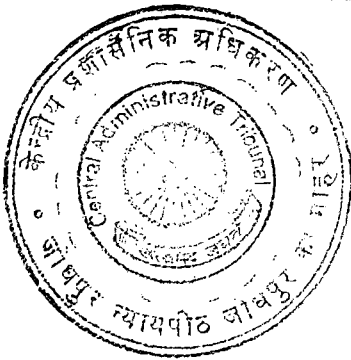
आदेश सुनाया गया। पत्रावली फाइल शुमार होकर दाखिल दफ्तर हो।”

22. It is clear from the above order of the District Court, Jodhpur that although the succession certificate could not be issued for payment of family pension but the Court has observed that in case it is required, the applicant may file a civil suit before the competent court. It appears that the applicant has not filed civil suit before the competent court in pursuance of the above judgment of the District Judge, Jodhpur.



23. The various documents placed on record by the applicant through the O.A. as well as M.A. No. 109/2008 do not conclusively prove that the applicant is the legally wedded wife of the deceased Govt. servant. This Tribunal is not competent court to decide whether or not the applicant is the legally wedded wife. The case law quoted by the learned counsel for the applicant would help the Civil Court to decide whether or not the applicant is the legally wedded wife of the applicant. The above case law is distinguishable on the facts and grounds of this case. The case law quoted above does not suggest that family pension can be paid to claimant without any nomination in his or her favour.

24. In this case, original service record of the deceased Govt. servant was summoned from the respondents and the same has been carefully perused. From the said service record of the deceased Govt. servant - Shree Kishan Joshi, the following have been seen:



- (i) In the proforma filled in by the deceased Govt. servant on 04.04.1998 (page 54) under his own signature for revision of pension / family pension in the case of pre-1986 pensioners/family pensioners as on 01.01.1996, against the column no. 3 - "Type of the deceased Government servant /

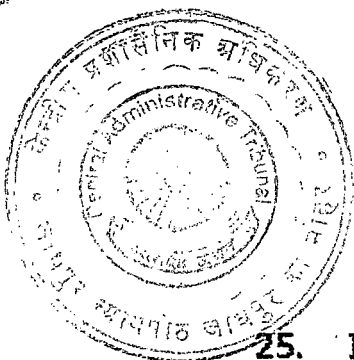
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pensioner in case of family pension" - has been indicated as "Not applicable".

(ii) In the pension payment authority for disbursement of pension to Shri Kishan Joshi issued on 21.09.1982 (page 53) in the column "On the event of the death of the above pensioner, his "No family" will get the family pension on production of death certificate". It is clear that against this column 'no family' has been indicated.

(iii) In the nomination form for family pension (page 32), "Nil" family members have been shown to receive the family pension, which had also been signed by the deceased Govt. servant himself.

(iv) In the form filled in by the deceased Govt. servant - Shree Kishan Joshi on 28.06.1982 (page 9) for statement showing the details of the members of the family for the purposes of Family Pension Scheme, 1964, no other family members has been shown by the deceased Govt. Servant except himself.



25. In the case of Prasani Devi vs. Union of India & Anr. - O.A. No. 213/99 (supra), wherein this Bench of the Tribunal has passed the following order:

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"4. The facts involved in the case are not in dispute. The applicant is claiming herself to be the wife of the deceased Ram Singh, therefore, she has to conclusively prove that she is the wife of the deceased Ram Singh and thus entitled to family pension. In this Court no inquiry relating to the facts can be made. The question of applicant's marriage with Shri Ram Singh and her being his wife, is a question of fact which can be debated upon by a civil Court only. There is nothing on record to show that applicant is the wife of the deceased Ram Singh. If she was married to Shri Ram Singh she could have as well been nominated by Shri Ram Singh as the recipient of family pension. But in the record of the Railways, Kartar Singh S/o the deceased Ram Singh continued to be the nominee. Therefore, the applicant has to secure declaration in respect of her being wife of the deceased Ram Singh from the competent court before she can claim pensionary benefits i.e. family pension from the Railways. On the basis of voter list and ration card entry, it cannot be concluded that she is legally wedded wife of Shri Ram Singh.

5. The present applicant had obtained a succession certificate from the competent court in the past but that relates to an amount of Bank deposit. The amount of family pension has not yet been quantified by the respondents, therefore, it cannot also be said that a specific amount is due from the respondents to the applicant and in view of this, the only remedy available to the applicant is to seek declaration of her rights to claim the family pension from the respondents as the widow of the deceased Ram Singh. In my opinion, the present O.A. is not maintainable at this stage in absence of such a declaration. The O.A. deserves to be dismissed."



In view of the above decision of the Tribunal, it is clear that the only remedy available to the applicant is to seek a declaration of her rights, to claim the family pension from the respondents, as she is the legally

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wedded wife of the deceased Govt. servant Shreekishan Joshi from the competent Court through civil suit.

26. In view of the above, it is considered that the applicant has not been able to prove conclusively that she is the legally wedded wife of the deceased Govt. servant Shreekishan Joshi. Hence, the Original Application deserves to be dismissed.

27. The Original Application No. 87/2007 as well as Misc. Application No. 109/2008 are, therefore, dismissed with no order as to costs.



Tarsem Lal 19/11/2008
[TARSEM LAL]
ADMINISTRATIVE MEMBER

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