

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.471/2007

Friday, this the 18th day of January, 2008.

CORAM :

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

P.V.Mariamma
W/o. Late T.Thankappan (Alias Varghese),
Pathalil Putthen Veetil,
Thannithode PO, Kozhencherry Taluk,
Pathanamthitta District. ... Applicant

By Advocate Ms.Rejitha for Mr.T.C.G.Swamy

V/s.

- 1 Union of India represented by
Secretary to the Government of India,
Ministry of Communications
(Dept. of Telecommunication), New Delhi
- 2 The Chief General Manager (Telecommunications)
Kerala Circle, Trivandrum, Kerala.
- 3 The Accounts Officer (Estt)
Office of the Principal General Manager,
Bharat Sanchar Nigam Limited, Ernakulam
- 4 The Communication Accounts Officer
Office of the CCA,
Kerala Telecommunication, PMG Junction,
Trivandrum. - 682 033. ... Respondents

By Advocate Mr.TPM Ibrahim Khan SCGSC (R-1)
By Advocate Ms.I.Sheela Devi (R 2 to 4)

The application having been heard on 5.12.2007 the Tribunal on 18.1.2008
delivered the following

(ORDER)

Hon'ble Mr.George Paracken, Judicial Member

The applicant's grievance in this case is that she has been denied
family pension arbitrarily, discriminatively and in violation of the
constitutional guarantees enshrined in articles 14 and 16 of the Constitution.



2 The facts as narrated by the applicant are that Shri T.Thankappan retired on 31/5/1991 and later died on 16/11/2003. Claiming to be the surviving widow of late Shri Thankappan, the applicant had approached the respondents to sanction her the family pension as admissible under the rules. Since the respondents did not consider her request favourably, she had approached this Tribunal earlier by filing OA-565/2006 which was disposed of vide Annexure A-3 order dated 9/8/2006 with a direction to the respondents to take a decision in the matter and communicate the same to her. The competent pension sanctioning authority, viz, the Controller of Communication Accounts, Department of Telecom, Trivandrum to whom the case was referred to by the Respondents for a final decision in the matter observed as under:-

- i) Service Book of the late pensioner has no evidence to show that Smt.Mariamma and her two children are in any way related to him.
- ii) From the details of the family in Service Book, it is seen that Smt.D.Kanakamma and her three children are the only members of the family.
- iii) Attested joint photograph at the time of retirement submitted by the deceased petitioner is that of the late official and his wife Smt.D.Kanakamma.
- iv) The pension payment authority issued by the competent authority shows only Smt.D.Kanakamma is eligible for family pension.
- v) In the investigation report submitted by the DE(Vig) Ernakulam SSA it is mentioned that Smt.P.V.Mariamma and Shri T.Thankappan (alias Varghese) had registered a mutual agreement in February, 1979 to live separately."

3 Thereafter, the Respondents asked the applicant to produce the legal heir certificate from the competent authority to examine her case further. Accordingly, she submitted the legal heir certificate issued to her by the Tahsildar, Kozhencerry to the respondent No.4. The Competent Pension sanctioning authority further examined her case and observed vide his letter No.CCA/KRL/1-3/RP-46/04-05/9 dated 4.3.2006 that while Shri T.Thankappan was in service and at the time of his retirement, he had informed the

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respondents that his wife and legal nominee for Family Pension was Smt.D..Kanakamma. It was only when the applicant came with the request for grant of Family Pension and on verification made by the Divisional Engineer (Vigilance) in the Office of the PGMT Emakulam, the Respondents came to know that Shri Thankappan had married the Applicant, Smt.P.V.Mariamma also in the year 1965 after having assumed the name of Varghese. However, there was no proof that he had converted to Christianity and changed his name from T.Thankappan to Varghese. It was further observed by the Pension Sanctioning Authority that Shri T.Thankappan and Smt.P.V.Mariamma had deliberately kept their relationship secret during his service fearing disciplinary action. It is only after his death and the death of Smt.D.Kanakamma (his wife as per records) that the applicant has come up with the claim. Had she made the claim atleast at the time of retirement of Shri Thankappan, the pension sanctioning authority would have been in a position to ascertain the truth from the employee. The pension sanctioning authority has also observed that the legal heir certificate was of not much consequence as there is no problem in getting such a certificate by hiding the fact that Shri Thankappan had married Smt.D.Kanakamma and there were three children out of that wedlock. The marriage between Shri Thankappan and the applicant was illegal as Shri Thankappan was having a family and the same was declared before the respondent's office. Therefore, the pension sanctioning authority vide Annexure A-4 order dated 18/12/2006 has held that it was not permissible under the rules to sanction family pension to the applicant.

4 The applicant has also produced the Annexure A-5, copy of the certificate of marriage issued by the Malankara Syrian Catholic Church, Valanchuzhi on 4/1/2004 certifying that Shri Thankappan son of Mr.Varughese, Pathanamthilla, Valanchuzhi, Perakathu House, belonging to St. Thomas

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Valanchuzhi in the Archdiocese of Trivandrum was married to Mariamma daughter of Mr. and Mrs.Varghese, Valanchuzhi Pathalil House, belonging to Parish of St.Thomas Syrian Catholic Church in the Archdiocese of Trivandrum was blessed on 11/1/1965 at the Malankara Syrian Catholic Church, Valanchuzhi by Rev.Samuel Sankarathil in the presence of the Parish Community according to the register kept in the Church and in the said wedlock of Shri Thankappan with the applicant, two children were born. She has tried to further strengthen her claim by producing the certificate of Baptism issued by Archdiocese of Trivandrum which shows that a male child named Salu P.T. (Yesudasan) was born on 8/12/1968 to Shri Thankappan(Varghese) and Mrs.Mariamma and the child was baptised on 16/12/1968. She has also produced Annexure A-8, Baptism Certificate in respect of their daughter Sisily P.T. born on 26/3/1966 and baptised on 11/4/1966 and the Annexure A-9 copy of the SSLC Certificate of their son Salu P.T. In which also the father's name is shown as Shri T.Thankappan. The copies of Passports of her son Salu P.T. and another son Thomas Thankappan, the names of Thankappan and Mariamma have been shown as their father and mother have also been produced. The applicant has also submitted that there was a mutual agreement dated 22/2/1979 between Shri Thankappan and her and since then both the parties have been living separately and the agreement was executed before the Pathanamthitta Sub-Registrar Office. It was also the contention of the applicant that there was in fact no valid marriage between late Smt.D.Kanakamma and Shri Thankappan. The applicant, has, therefore submitted that for all purposes she got the legal status as the widow of late Shri Thankappan and therefore she is entitled to Family Pension under the CCS (CCA) Family Pension Rules.

5 Respondents in their reply has submitted that according to the "details of the family" submitted by late Shri Thankappan, while he was in

service, he was son of one Mr.N.Thomas and he was married to Smt.D.Kanakamma. In the said wedlock, two sons and one daughter was born to them and they are all majors. They have denied that the applicant was the widow of late Shri Thankappan as there are no records to that effect available in the office of the respondent. According to them, there is also no information with the respondents that he was having an alias name as "Varghese". In the nomination for Death Cum Retirement Gratuity (R-3(c)) also, he had nominated his wife, Smt.D.Kanakamma and no one else. They have, therefore, contended that the applicant has created records produced by her only for the purpose of getting the benefits after the death of Shri Thankappan.

6 We have heard Advocate Ms.Rejitha for Mr.T.C.G.Swamy for the applicant and Advocate Mrs.I Sheela Devi for Respondents 2 to 4. The undisputed facts in this case are that late Shri Thankappan had two wives. This fact was confirmed from the verification made by the Divisional Engineer (Vigilance) in the Office of the PGMT, Ernakulam. He married his first wife Smt.D.Kanakamma in the year 1959 and the second wife, the applicant in the year 1965. However, in all his service records, Shri Thankappan had shown the name of Smt.D.Kanakamma as his only wife. She was also the nominee for the DCRG. In their wedlock, they have got three children, all majors and they are not entitled for any terminal benefits after the death of Shri Thankappan. His wife Smt.D.Kanakamma has also pre-deceased him and there is also no claim for family pension from her. Applicant and Shri Thankappan lived together as husband and wife till they decided to separate themselves by way of Registered deed dated 24/2/1979. In that wedlock Shri Thankappan had two children, one daughter named Sisily and a son named Salu P.T. Shri Thankappan concealed this fact from the respondents probably for fear of Disciplinary proceedings against him. The question for consideration is whether the applicant being the

second wife of the deceased Government servant is entitled for grant of family pension or not.

7. The Apex Court has considered the very same issue in its judgment in **Rameshwari Devi v. State of Bihar and others** [JT 2000(1) SC 328]. The dispute in that case was also concerning the payment of family pension and DCRG to two wives of one Narayan Lal who died in 1987 while posted as Managing Director, Rural Development of the State of Bihar. Rameshwari Devi was his first wife and one Yogmaya Devi was the second wife. The second wife claimed 50% of the family pension and the DCRG. As the same was not granted to her, she made a writ petition before the High Court of Bihar which vide judgment dated 17.10.1996 directed the Accountant General to pay 50% of the family pension and DCRG to the minor children of Yogmaya Devi. Smt Rameswari Devi, the first wife disputed the very factum of marriage between Narayan Lal and Yogmaya Devi. However, the ADM, Danapur, Patna conducted an enquiry into the matter and found that Shri Narayan Lal had married twice, first time to Smt Rameswari Devi in 1948 and second time to Smt. Yogmaya Devi in 1963. The Apex Court has considered the question as to who all are entitled to the family pension and DCRG on the death of Narayan Lal in the said circumstances. The Apex Court observed that though the marriage of Yogmaya Devi with Narayan Lal was held in accordance with the Hindu rites and ceremonies connected with the valid Hindu marriages, it does not make the marriage between Yogmaya Devi and Narayan Lal as legal, as the same was in contravention of Section 5 of Hindu Marriage Act and a void marriage. However, under Section 16 of the said Act, children of void marriage are legitimate. Under the Hindu Succession Act 1956, the property of a male Hindu dying intestate devolve firstly on heirs in clause(1) which include widow and son. Among the widow and son, they all get equal shares. Since Yogmaya Devi cannot be described a widow of the Narayan Lal as the marriage with Narayan Lal was

void, but sons of Narayan Lal would be entitled to his property in equal shares along with Rameshwari Devi.

8. Rule 21 of the CCS(Conduct) Rules 1966 also imposes restrictions regarding marriage, which reads under:

"21 Restriction regarding marriage

(1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and

(2) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to Clause (1) or Clause (2), if it is satisfied that;

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing.

(3) A government servant who has married or marries a person other than of Indian nationality shall forthwith intimate the fact to the Government."

9. In the above facts, in my considered opinion, the present case is squarely covered by the judgment of the Apex Court in Rameshwari Devi's case (supra). The marriage of the applicant with the deceased Government servant late Shri T Thankappan is firstly in contravention of the aforesaid Rule 21 of the CCS (Conduct) Rules, 1966. It is also a void marriage as the same was in contravention of Section 5 of Hindu Marriage Act. The applicant is, therefore, not entitled for the family pension after the death of the Government servant. The O.A is accordingly dismissed. No costs.

Dated, the 18th day of January, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER