

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 31st day of January, 2002

ORIGINAL APPLICATION NO.295 of 2001

Smt. Halimbee,
W/o late Hussainsab Mastansab,
i.e. P. Mastan Hussen,
Ex-Maz of Central Ordnance Depot,
T.No.684, Dehu Road, Taluka - Haveli,
District Pune.
(By Advocate Shri J.M. Tanpure) - Applicant

Versus

1. Union of India
through the Commandant,
Central Ordnance Depot,
Dehu Road, Taluka-Haveli,
District Pune.
2. The Controller of Defence Accounts,
(Pension), Allahabad.
(By Advocate Shri R.R. Shetty) - Respondents


ORAL ORDER

By Hon'ble Mr. B.N. Bahadur, Member (A) -

This is an Application made by one Shri Halimbee who states that she is the wife of late Hussainsab Mastansab and comes up to this Tribunal seeking the relief from this Tribunal for a declaration that the applicant is entitled for lifetime arrears of her husband's pension and for family pension. She also seeks arrears w.e.f. 2.3.1974, with 18% interest thereon, and costs for the application.

2. The facts, as stated by the applicant in the OA are that her husband late Hussainsab Mastansab superannuated after 30 years of service under respondent no.1 and that the pension claim had been submitted by the respondents to respondent no.3. It is stated that she did not know of the submission of her pension

...2/-



claim of her husband and took considerably long time for getting to know regarding the pension claim. The applicant refers to Exhibit A-8 which she states the receipt regarding marriage certificate of the applicant given by the Government Head Khazi, Adoni Division through a social worker who is the helping hand of the applicant. Similarly Exhibit A-9 is cited as the marriage certificate for a marriage held on 16.3.1943. The applicant states that she had made a representation to which, according to her, replies received are absurd.

3. The respondents have filed written statement of reply where the claims of the applicant are resisted, and the factual details of the service of Shri Hussainsab Mastansab are described. It is stated that the said Shri It is stated that Shri Hussainsab superannuated w.e.f. 1.7.1970, after serving the respondents from 31.7.1945. He had opted for pensionary benefits and his pension had been relieved. Acknowledgements are cited and other details provided with specific dates and numbers of correspondence. It is further stated by the respondents that the individual was asked to submit details of his family. As per declaration furnished by him on 8.8.1974, his wife by name Hussainbee Hussain Sahab had expired on 10.3.1965, a copy of the Death Certificate has been filed as Exhibit-R-4 with the respondents written statement. It is further stated in the written statement that the late Hussainsab expired on 2.3.1974. The claim of the respondents is that suddenly the applicant has appeared with no proof, and in fact all proof goes against her.

B.S.

4. I have heard the learned counsel for the applicant namely Shri J.M.Tanpure and learned counsel for the respondents Shri R.R.Shetty and have gone through the papers in the case. I have also seen the original document, a copy of which is marked at Annexure-R-4, which is available on Page 27 of the Paper Book. The learned counsel Shri Tanpure took me over the facts of the case and sought to draw support from the documents at Exhibit A-1 stating that this was conclusive proof of the marriage of the applicant with the deceased government servant, and that this can be the complete basis for release of the family pension. Exhibit A-8 was also referred to. The learned counsel in fact stated that the forwarding of pension papers are seen at Exhibit R-3 which showed that pension papers were sent to Allahabad Office.

5. The learned counsel Shri Shetty took support from the written statement of Respondents. He also mentioned that this case was hit very badly by delay and laches. He drew my attention to Exhibit-R-6 where as per government instructions the relevant record was to have been kept only for 25 years and more than 25 years have elapsed after the retirement of the deceased government servant.

6.. At the outset it must be stated that there is a M.P. filed for condonation of delay which the applicant states has been filed as an act of abundant caution. The technical point of limitation can be met by the fact that the claim, is a continuing cause of action. However, delay and laches will have to be gone into in the background of the facts and circumstances of the case. MP is disposed of accordingly.

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B.S.

7. The basic document to be taken in support i.e. Exhibit A-9 has to be examined with reference to the other evidence available. There is absolutely no justification in the argument made by the learned counsel for the applicant that this document can be conclusive proof. This is a service matter that we are dealing with, and hence the other document/s which government servants are required to fill in and declarations to be given become very relevant rather a document which has now been produced some 57 years after the event of marriage claimed by the applicant. There is no proof in regard to this document which can counteract other documents produced, especially the document referred to above i.e. Exhibit-R-3 wherein the deceased government servant is clearly seen to have stated that his wife one Smt.Hussainbee expired on 10.3.1965. It is difficult to take cognizance of a request by a person who claims to have married the same Hussainsab in 1943. This can be seen that it does not require too long winded a discussion on here to arrive at a conclusion that this is a case which is devoid of merits.

8. On the basis of the documents and arguments raised at this very late stage, it cannot be said that any case has been made out in a manner that the relief sought can be provided. The document at Exhibit R-5 & 6 are indeed important and one cannot accept official documents to be retained as indeed ordained by the rules.

9.. In the facts and circumstances of the case, this OA fails and is therefore dismissed with no order as to costs.

B.N. Bahadur

(B.N. Bahadur)
Member (A)