

CENTRAL ADMINISTRATIVE TRIBUNAL  
NAGPUR CIRCUIT BENCH

O.A. NO. 835/1997

Pronounced this the 12th day of June, 1998.

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

Smt. Kashibai wd/o Devdas Patil,  
R/O Waregaon,  
Post: Kamptee, Tehsil: Kamptee,  
Distt. Nagpur.

... Applicant

( By Shri.N. R. Sarin, Advocate )

-Versus-

1. Union of India through  
its Secretary,  
New Delhi.
2. The General Manager,  
Ordnance Factory,  
Ambazhari,  
Nagpur.
3. Smt. Sumitra wd/o Devdas Patil,  
R/O Qr. No. B-43/513,  
Hudco Colony,  
Nara Road, Bhim Chowk,  
Nagpur.

... Respondents

( By Shri R. G. Agarwal, Advocate )

O R D E R

Shri Justice K. M. Agarwal:

Claiming herself to be widow of Devdas Patil,  
the applicant has filed this O.A. for a direction to  
respondent No.1 to pay her family pension after the  
death of Devdas Patil in October, 1996.

2. It is stated that Devdas Patil worked with  
the respondents as Driver-CMD-MT-Section Defence  
Project, Ordnance Factory, Nagpur. It also appears  
that after superannuation he started getting pension

etc. from the respondents. In October, 1996 Devdas died. Thereafter the applicant started claiming family pension from the respondents by alleging that she was the legally married wife of the deceased.

3. After making appearance on the basis of notice before admission the respondents have filed reply and contested by asserting that as per nomination paper filed by the deceased and the documents available with them, Sumitra is widow of the deceased Devdas Patil and accordingly they started making payment of family pension to Smt. Sumitra Patil.

4. After the reply was filed the applicant filed M.P.(N) 125/98 for amendment of the application. Earlier to this it appears that pursuant to the court order dated 6.2.1998, the applicant had amended the application by joining Smt. Sumitra as 3rd respondent. By the application under consideration the applicant has asserted that she was married to Devdas Patil in 1951. Out of that wedlock, a child was also born to them. Consequent to the arrival of the 3rd respondent in the application, she filed a petition for separation and also obtained judicial separation from Devdas and was getting permanent alimony as awarded by the Civil Court. She claimed that as judicially separated wife of the deceased she was entitled to receive the family pension after his death. Accordingly she has prayed the following

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reliefs in the relief clause by initial application under Section 19 of the Administrative Tribunals Act, 1985 :

"1(A) Direct the respondents 1 and 2 to cancel the order of respondent No.1 and 2 regarding payment of Family Pension to respondent No.3 forthwith.

1(B) Direct the respondent No.1 and 2 to recover the amount of family pension already paid to respondent No.3 and pay the same to the applicant at the earliest because it is applicant's money."

Alongwith the application she has also filed a typed copy of the judgement delivered on 18.6.1998 in Civil Appeal No. 241/1966 of the Court of District Judge, Nagpur. This application for amendment will be considered while considering the merits of the claim of the applicant as laid in her main petition.

5. By citing Rule 54 (14) (b) (ia) of the Central Civil Services (Pension) Rules, 1972, the learned counsel for the applicant argued that judicially separated wife was entitled to get the family pension on the death of her judicially separated husband. Smt. Sumitra, the 3rd respondent was described to be the mistress or concubine of her deceased husband and, therefore, it is urged that her name had been mentioned in the nomination paper and other documents given by the deceased. For this

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reason, she could not claim or the respondents could not pay her family pension on the death of Devdas Patil.

6. The learned counsel for the respondent No.1 and 2 submitted that on the face of the nomination made by the deceased and other documents filed along with the counter, the claim of the applicant is not tenable. It was ascertained that the official respondents have already started payment of family pension to the 3rd respondent as widow of the deceased Devdas Patil.

7. After hearing the learned counsel for the parties and perusal of the records, I am of the view that this application has no merit and the case deserves to be dismissed. On going through the copy of the judgement filed alongwith the M.P., it is clear that on the basis of the application filed, the Trial Court awarded the decree of judicial separation on 30.7.1966 in H.M.P. 102/65 filed before Jt. C.J. Sr. Div. Nagpur. She was also granted permanent alimony. The decree was confirmed by Civil Appeal No. 241/66 decided on 18.6.1968. In para 4 of the application it is mentioned that she was controverting the allegations of desertion and submitted that he had entered into second marriage with the 3rd respondent in 1954. It is pertinent to note that Hindu Marriage Act, 1955 was subsequently brought into force with effect from 17.6.1956 and the second marriage with the subsistence of the first marriage was proved. In other words prior to the enforcement of Hindu Marriage

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Act, 1955, marriage with 3rd respondent was performed judicially by Devdas Patil and therefore, the 3rd respondent cannot be treated or said to be the mistress of the deceased as alleged. The applicant herself has described the 3rd respondent as widow of Devdas Patil and not his mistress. Admittedly the nomination was filed by the deceased in favour of 3rd respondent and, therefore, if the respondents started making payment of family pension to the 3rd respondent it cannot be said that they have committed any illegality in making such payment. It is also to be noticed that judicial separation was of 1966. The various papers submitted by the deceased to the respondents relate to 1971, 1987 and 1991. There is also a legal presumption that if a male or female live together as husband and wife for a sufficiently long period, they will be presumed to be legally married husband and wife. The judgment delivered in Civil Appeal No. 241/1966 indicates that the deceased was living with the 3rd respondent as her husband since 1966. The documents filed and other materials also indicate that till death in 1996 he lived with the 3rd respondent as her husband. The 3rd respondent must be the widow of the deceased and entitled to the family pension of Devdas after his death.

8. There is also another angle to look at. There is nothing on record to show that after the judicial separation of the applicant in 1966, the applicant ever lived with him as wife or that, she never had conjugated with him after the date of *In* judicial separation. Under these circumstances the

legal presumption is in favour of divorce. It must have materialised after expiry of the period of two years from the date of judicial separation. Simply because she was getting permanent alimony she cannot claim the family pension on the basis of aforesaid provisions under the Central Government Pension Rules, because as per the provisions of the Hindu Marriage Act divorcee wife is also entitled to permanent alimony so long as, she did not re-marry and lives a chaste life. For this latter reason, she might be getting or claiming her permanent alimony from the deceased, Devdas. I have written the words "getting or claiming" because no documents are filed along with her application to prove that. As she could not get alimony from Devdas, she had resorted to a legal notice of demand and that the deceased expressed his inability to pay on the ground that after retirement his earning or dues had fallen.

9. For the foregoing reasons I find no merit in the O.A. Accordingly, it is hereby dismissed with no order as to costs.



( K. M. Agarwal )  
Chairman