

THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. O.A. No. 204/2002.
T.A. No.

DATE OF DECISION

Smt. Kamlesh Kumari.

Petitioner

Mr. Pankaj Sharma.

Advocate for the Petitioner(s)

Versus

UII and 2 others.

Respondent

Mr. S.M. Khan

Advocate for the Respondents(s)

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

(A.K. Bhandari)
Administrative Member.

(G.L.Gupta)
Vice Chairman.

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

O.A. No. 204/2002.

Date of decision. 20.8.03

Smt. Kamlesh Kumar, w/o Late Shri Ramesh Kumar, age 35 year, r/o A-156, Scheme No. 10. Alwar, District Alwar. (applicant is the widow of Ex-defence employee)

: Applicant.

VERSUS.

1. The Union of India through Secretary, Ministry of Defence, Central Secretariat, New Delhi.
2. The Chief Engineer, Southern Command, Pune.
3. Garrison Engineer, Military Engineering Services (MES) Itarana Place, ALWAR.

: Respondents.

Mr. Pankaj Sharma : Counsel for the applicant.

Mr. S.S. Hassan proxy counsel

for Mr. S.M. Khan.

: Counsel for the respondents.

CORAM:

The Hon'ble Mr. Justice G.L.Gupta, Vice Chairman.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.



ORDER

Per Mr. Justice G.L.Gupta:

The applicant is the widow of late Shri Ramesh Kumar, who was an employee working on the post of Mazdoor under respondent No. 3. He died on 19.05.2000 while in service. After the death of her husband, the applicant submitted an application on 30.05.2000 for the grant of terminal benefits namely, provident fund, Pension, Gratuity, Commutation, insurance and leave encashment etc. Despite repeated representations and applications, nothing was done. Hence this O.A. with a request to direct the respondents to grant the terminal benefits viz. family pension, commutation, gratuity, GPF, leave encashment etc to the applicant with interest 24 % per annum on the entire dues.

2. In the reply, the respondents have come out with the case that nomination existed in favour of the applicant, but the respondents have received a 'talak nama' dated 14.02.86 signed by both, the applicant and late Shri Ramesh Kumar, a 'will' signed by late Shri Rameshkumar in favour of his mother Smt. Bhagwani Devi and also some documents which indicate that late Shri Ramesh Kumar had divorced the applicant and thereafter the applicant married to Om Prakash. Therefore, it is stated, the applicant is not entitled to the retiral benefits of late Shri Ramesh Kumar.

3. In the rejoinder, the applicant has reiterated the facts stated in the O.A and has tried to meet the points raised in the reply.

4. We have heard the learned counsel for the parties and perused the documents placed on record. It is admitted position of the parties that late Shri Ramesh Kumar, during his life time, had filed papers nominating the applicant as his nominee, as she is his legally wedded wife. In the normal course, the applicant is entitled to get the retiral benefits of late Shri Ramesh Kumar and also the family pension as per rules. However, the respondents have rejected the claim of the applicant on the basis of certain documents, viz., talaq nama, 'will' and identity card issued by the

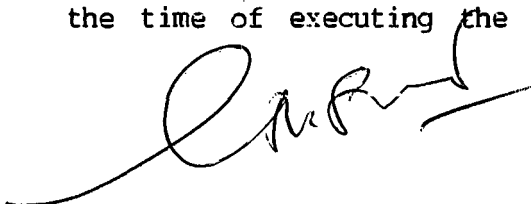


Election Commission.

5. We have gone through all these documents. The divorce document is Annex. R.2, which is captioned as 'talak nama' dated 17.02.85. The document says that there was no cordial relationship between husband and wife (late Shri Ramesh Kumar and the applicant) and therefore they had decided to live apart. Even assuming that this document was executed by late Shri Ramesh Kumar, it cannot be said that the deceased employee had legally divorced his wife. According to the provisions of the Hindu Marriage Act, 1955 divorce by a Hindu can be given by obtaining a decree of dissolution of the marriage from the competent court. Simply by writing a talaq nama and getting it verified by the Notary Public, the relationship of husband and wife did not come to an end. Therefore on the basis of this document, it cannot be accepted that the deceased employee had divorced the applicant.

5.1. It may also be pointed out that in the proceedings before the District Judge, in reply to the application filed for maintenance under Sec. 24 of the Hindu Marriage Act, 1955, Shri Ramesh Kumar had stated that there was some dispute between him and his wife in December 1991 but that dispute had been resolved.

6. As to the 'will' Annex. R.4 it may be stated that it bears the thumb impression of one Ramesh. Admittedly, late Shri Ramesh Kumar was in Government service and it is stated by the applicant that he had studied upto M.A. This fact has come in the statement of Smt. Bhagwani Devi recorded on 11.04.02 in the Court of District Judge in the matter of application No. 250/2000, for probate. When late Shri Ramesh Kumar had studied upto MA, even prima facie it cannot be accepted that he would have executed a will by putting his thumb impression. It may also be pointed out that in her statement before the District Judge, Smt. Bhagwani Devi has admitted that she had put her thumb impression on the alleged will. She has also stated that late Shri Ramesh Kumar was not in sound state of mind at the time of executing the will. In the presence of these facts, the

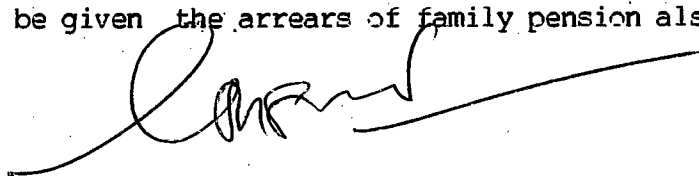


applicant cannot be deprived of the retiral benefits of late Shri Ramesh Kumar, on the basis of the alleged will.

7. Coming to the identity card issued by the Election Commission of India, (Annex. R.3) , it is seen that after the name of Kamelsh Kumari, in the col. father/mother/husband, the name of Om Prakash is written. This identity card was issued on 21.12.99. Thereafter, the applicant has been issued fresh identity card in which the name of Om Prakash does not appear. The applicant has also filed ration card (Annex. 16/2), in which she has been shown as head of the family and as widow of Shri Ramesh Kumar. It is also seen that the Additional Collector, Alwar, has issued a bonafide residence certificate (Annex. 16/3) dated 27.08.2001, in which the applicant has been shown as widow of late Shri Ramesh Kumar, who was the son of Shri Khem Chand. It is further stated in the certificate the address of the applicant is C/o Shri Om Prakash, 156, Scheme 10, Alwar. It seems that the applicant is residing in the house No. 156 of Om Prakash Arora, which is situated in Scheme No. 10- Alwar. In the identity card issued by the Election Commission of India, the name of Om Prakash has appeared without disclosing his relationship with the applicant. In our opinion, the identity card (Annex. R.3) does not prove that the applicant is married to Shri Om Prakash.

8. Keeping in view the above discussion it has to be held that the applicant is the widow of late Shri Ramesh Kumar and is entitled to all the retiral benefits available to Shri Ramesh Kumar. She is also entitled to the family pension.

9. Consequently, this O.A is allowed. The respondents are directed to release the retiral benefits in favour of the applicant within a period of two months from the date of communication of this order. The applicant be given the arrears of family pension also within that period.



9.1 The applicant shall also be given interest at the rate of 10% per annum on the amounts of gratuity, GPF, leave encashment, insurance arrears of family pension from 01.09.2000 till the date of actual payment. The interest on family pension becoming due after 01.09.2000, shall be calculated from the date it became payable every month. The applicant shall also get costs Rs.1000/- from the respondents.


(A.K. Bhandari)

Administrative Member


(G.L. Gupta)

Vice Chairman.

jsv.