

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 14-09-04

OA No.239/2002

Smt. Kanta w/o late Shri Ramesh Kumar Sharma, aged about 41 years, resident of c/o Baldev Singh, Advocate, Dadwara, Near Santoshi Mataji Ka Mandir, Kota Junction, Kota.

.. Applicant

Versus

1. The Union of India through the Secretary, Bharat Sanchar Nigam Limited, Sanchar Bhawan, Government of India, New Delhi.
2. The Chief General Manager, DTO Cell, S-14, Chitranjan Marg, C-Scheme, Bharat Sanchar Nigam Limited, Rajasthan Telecom Circle, Rajasthan, Jaipur.
3. The General Manager, Telecom District, Kota.

.. Respondents

Mr. P.K.Asthana, counsel for the applicant

Mr. Gopal Krishna, proxy counsel to Mr. Arun Chaturvedi, counsel for the respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

O R D E R

Per Hon'ble Mr. M.L.Chauhan.

The applicant who claims to be third wife of late Shri Ramesh Kumar Sharma has filed this OA thereby praying for quashing communication dated 12.12.2001 (Ann.A1) whereby the applicant was asked to produce succession certificate in order to settle her pensionary claim with further prayer that the respondents be directed to give all terminal benefits alongwith interest to the applicant immediately.

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2. Facts of the case are that late Shri Ramesh Kumar Sharma was the employee of the respondents and he was working on the post of Telegraph Messenger and was posted at the Telegraph Office, Tonk (Rajasthan). He died on 3.5.95. The applicant claims to be third wife of late Shri Ramesh Kumar Sharma. It is stated in the application that first wife of late Shri Sharma died without issue soon after marriage. Out of the second marriage late Shri Ramesh Kumar Sharma got children and she also died subsequently. On the death of his second wife, husband of the applicant wed locked with the applicant and also lived married life but the applicant did not bear any children. It is further stated that late Shri Sharma on marriage with the applicant also got registered the name of the applicant in office record as wife and dependent. Since there was a quarrel between late Shri Sharma and the applicant on account of developing bad habit of drinking and quarreling with her, the applicant thought it better to move to her parents for some time little prior to the death of Shri Sharma. It is further stated that her step sons did not inform about the death of late Shri Sharma. The applicant was informed about the sad demise of her husband in the year 1996 and consequently she was advised to move to obtain a death certificate from the office of the Registrar, Birth and Death, Nagar Nigam, Jaipur on 20.4.1996 paying with necessary fee and affidavit (Ann.A2). On the basis of the said application she moved before the authorities to release the terminal benefits and family pension, but she was advised to obtain a death certificate. Accordingly, the said certificate was issued by the Nagar Nigam, Jaipur some time on 12.10.2000 (Ann.A4). Thereafter her application form for terminal benefits was processed but the same was not released as Shri Deepak Kumar has attained majority. It is further stated that Shri Deepak

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Kumar also submitted an application on 24.7.95 for release of terminal benefits relating to his deceased father. In the documents submitted by Shri Deepak Kumar date of death of the deceased employee was indicated as 3.5.95 whereas the death certificate submitted by the applicant the date of death was indicated as 3.3.96. Since there was a discrepancy in two documents and on scrutiny of the death certificate of the applicant and Shri Deepak Kumar a subsequent letter dated 2.1.2001 (Ann.A6) was issued whereby it was indicated that on the basis of different death certificates, terminal benefits cannot be released in favour of the applicant. Thereafter, the applicant submitted another application dated 4.1.2001 thereby stating that date of death of the deceased Ramesh Kumar is 3.5.95. The applicant also subsequently submitted affidavit dated 13.3.2001 (Ann.A8) sworn by Shri Deepak Kumar whereby the said Shri Deepak Kumar has admitted the applicant as wife of late Shri Ramesh Kumar Sharma. It was further affirmed in the affidavit that he has no objection if pensionary as well as appointment in place of his father be given to the applicant. It is further contended that on the basis of this affidavit as well as certificate dated 23.5.2001 (Ann.A13) issued by the Public Relation Officer, it can safely be concluded that the applicant is legally wedded wife of late Shri Ramesh Kumar Sharma and on the face of these two documents Ann.A8 and A13 the applicant is entitled for pensionary benefits and it is not legally permissible for the respondents to ask for succession certificate.

3. The respondents have filed reply. In the reply it has been categorically stated that the applicant is not wife of late Shri Ramesh Kumar Sharma. It is further stated that as per official record, late Shri Ramesh Kumar Sharma has got

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registered name of his wife as Smt. Sudershani Bai as nominee. The respondents have also stated that from the death certificate issued by the Municipal Corporation of Jaipur (Ann.R4) it is clear that late Shri Ramesh Kumar Sharma died on 3.5.95 and not on 3.3.96. As such, the applicant has furnished a fabricated document for claiming the benefit and therefore, she was asked to submit succession certificate for claiming pensionary and other benefits from appropriate court vide letter dated 6.11.2002 (Ann.R5) but the applicant failed to submit the same till date. Thus, she is not entitled to claim the benefit in question. It is further stated in the reply that the affidavit submitted by Shri Deepak Kumar Sharma on earlier occasion (Ann.A9) is of no consequence as the applicant who is sister-in-law of Deepak's uncle obtained his signature in drunken stage. Regarding Ann.A13, the certificate issued by the Public Relation Officer regarding status of the applicant as wife of late Shri Ramesh Kumar Sharma, it has been stated that the Public Relation Officer is not competent to issue such certificate and he has acted without jurisdiction in issuing the certificate. It is further stated that the said officer has rectified his mistake at the later stage by cancelling his earlier certificate. It is further stated that after issuing this certificate the applicant^{te} was also moved alongwith the affidavit dated 18.2.2003 by Shri Deepak Kumar Sharma s/o late Shri Shri Ramesh Kumar Sharma stating the Smt. Kanta is not the wife of his father and it was under these circumstances that the applicant was asked to submit succession certificate vide letter dated 6.11.2001 (Ann.R5) which the applicant has failed to submit so far.

4. The applicant has filed rejoinder reiterating that on the basis of the affidavit of Shri Deepak Kumar dated 13.3.2001

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(Ann.A8) and certificate dated 23.5.2001 (Ann.A13) the applicant is entitled to the pensionary benefits. There was no necessity for asking the succession certificate and the family pension could have been released only after an idemnity in favour of the respondents which the applicant and her gurantors have already executed vide Ann.A14 which is sufficient to protect the interst of the applicant.

5. Since the applicant was basing her claim on the basis of the affidavit filed by Shri Deepak Kumar son of late Shri Ramesh Kumar (Ann.A8) and the certificate issued by the Public Relation Officer (Ann.A13) and version in both these documents were subsequently denied by the authors of these documents, there was no contemporaneous record before this Tribunal to come to the conclusion that the applicant is legally wedded wife of late Shri Ramesh Kumar ^hSarma. In order to give further chance to the applicant, this Tribunal vide order dated 7.8.2003 passed the following order:-

"Heard the learned counsel for the applicant. Learned counsel for the applicant is directed to submit proof of the marriage of the applicant with deceased Ramesh Kumar Sharma. Let him do so within three weeks."

The matter was thereafter adjourned from time to time. Subsequently, by way of MA No.72/2004, the applicant has filed four affidavits which were sworn and attested on 6.2.2004. One affidavit has been filed by the applicant in which it has been stated that she had married to late Shri Ramesh Kumar Sharma on 17.11.73 according to Hindu rites. It was further affirmed that late Shri Ramesh Kumar died on 3.5.95 and she is the only wife and has not re-married again. The second affidavit is that of mother of the applicant which is also to the similar effect. Other two affidavits are that of one Shri Sita Ram

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Sharma and Nanak Tekchandani which state that marriage of the applicant was solemnised on 17.11.73 and after marriage the couple lived in the house of one Shri Ghasi Ram. At the outset, it may be stated that, but for these affidavits which have been sworn on 6.2.2004, the applicant has not placed any other contemporaneous record such as - Voter list/Identity Card, Ration Card, Photographs of the marriage etc. which documents could throw some light on the marriage status of the applicant. It may be stated here that as per affidavit filed by the applicant, marriage of late Shri Ramesh Kumar Sharma was solemnised on 17.11.73 and that death took place on 3.5.95 almost after 22 years of the married life. It has also come on record that for practically two decades the applicant and late Shri Ramesh Kumar Sharma lived under the same roof (as according to the applicant he left the house of late Shri Ramesh Kumar little prior to his death). In these circumstances, it cannot be believed that there is no record which might throw light on the relationship of the applicant and late Shri Ramesh Kumar as husband and wife.

6. In view of what has been stated above, I am of the view that action of the respondents cannot be faulted whereby the applicant was asked to furnish succession certificate which could throw some light on her marital status with that of late Shri Ramesh Kumar Sharma, more particularly, when according to the nomination form (Ann.R3) it is Smt. Sudarshana Bai who has been shown as wife of the applicant. In this nomination form it is further mentioned that in the contingency of death of the nominee, the retiral benefits should be given to Deepak, Mayabai and Jamunabai. This nomination was executed on 20th September, 1966 and age of Deepak has been mentioned as 3 years. Thus, according to me, the action of the respondents

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whereby the applicant was asked to submit succession certificate alongwith the application to settle the claim of terminal benefit vide communication dated 12.12.2001 (Ann.A1) cannot be faulted as the respondents were within their right to satisfy themselves about the actual claim before making payment of the pensionary benefits to appropriate person.

7. Yet for another reason the applicant is not entitle to any relief. In para 3 and 4 of the OA, the applicant has made the following averments:-

"3. That late Shri Ramesh Kumar had children of his IInd wife, their brief particulars are as under:

Smt. Jamna aged about 40 years

Smt. Maya aged about 32 years

Smt. Jaishri aged about 30 years,

Shri Deepak aged about 36 years

and Shri Harish aged about 24 years

4. That on the death of his IInd wife the husband of the applicant wed locked with the applicant and also lived a normal married life, but applicant did not bear any child."

The verification in the OA was made on 14.5.2002. On the basis of the averments made in the OA, the date of birth of Shri Harish Kumar will related back to the year 1978. If it is so, then contention of the applicant in para 4 of the OA that on the death of second wife, the husband of the applicant wed-locked with the applicant, cannot be accepted. Thus if the date of marriage of the applicant is taken to be 17.11.73 as affirmed by her in the affidavit dated 6.2.2004 which fact has also been corroborated by 3 witnesses, the marriage of the applicant during the life time of one wife would be void in view of the provisions contained in Section 5 read with

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Section 11 of the Hindu Marriage Act, 1955 which prohibits contracting more than one wife and if one does so, the second marriage would be void. At this stage, it will be useful to quote decision of the M.P.High Court in Sita Bai Sinodia and others vs. Regional Provident Fund Commissioner and others, 2003 (2) SLR 79 whereby the Hon'ble High Court has held that Hindu Marriage Act, Section 5 read with Section 11 prohibits contracting more than one wife and if one does so the second marriage would be void. However, this prohibition is not applicable to the marriages under Muslim Law. Therefore in the event of two widows living after the deceased, both will share the pensionary benefits equally, otherwise where there is only one member in the family, namely a wife, it is not to be paid to more than one wife. It was further held that on the basis of succession certification the children of second wife may be entitled to the share in the estate of deceased on the basis of succession certificate but law of succession would not be applicable in case where disbursement of pension is conditioned by Pension Rules. In that case the dispute was regarding sharing of the pension between two wives and the Hon'ble High Court found that since the marriage of the second wife during the life time of first wife was void, she was not held entitled for pensionary benefits. On the same analogy, marriage of the applicant during the life time of second wife of late Shri Ramesh Kumar Sharma was void, as such the applicant cannot be said to be a legally wedded wife of late Ramesh Kumar Sharma even if it is assumed that marriage between the applicant and late Shri Ramesh Kumar was solemnised which fact, according to me has not been established at all.

8. There is also another infirmity in this case which casts



serious doubts about the status of the applicant as legally wedded wife of Shri Ramesh Kumar Sharma. In this OA the applicant has stated her age about 41 years as on 14.5.2002, as can be seen from verification clause made in this OA as well as shown in the cause title. On the basis of these facts, the date of birth of the applicant can be related back to the year 1961. According to applicant as well as three other witnesses the marriage of the applicant with late Shri Ramesh Kumar Sharma was solemnised on 17.11.73. This fact has been disclosed by these persons on affidavit. If it is so, the age of the applicant at the time of her marriage was about 12 years. Admittedly, she was minor at that time. Under these circumstances, can it be said that the applicant has in fact contracted marriage with late Shri Ramesh Kumar Sharma ? Further, can it be concluded that the marriage was solemnised by late Shri Ramesh Kumar Sharma after the death of his second wife in order to look after and care the minor children when she was herself minor and was about the aged of 12 years ? Thus, the irresistible conclusion which can be drawn from the facts as stated above, is that the applicant has filed this OA with ulterior motives to grab pensionary and terminal benefits of the deceased late Shri Ramesh Kumar Sharma and to deprive the children of late Shri Ramesh Kumar Sharma from terminal benefits especially when they have been shown nominee in the nomination form submitted by the deceased Shri Ramesh Kumar during his life time and while in service. The applicant also could not explain why it took her so long time to ventilate her grievances regarding terminal benefits especially when late Shri Ramesh Kumar has died in the year 1995 and in any case the applicant was aware about the death of late Shri Ramesh Kumar in April, 1996 when she submitted an application dated 20.4.96 for procuring death certificate in which the date of death has not been correctly recorded. I am of the

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firm view that the respondents have not committed any illegality if the applicant has been asked to submit proof of her status as wife of late Shri Ramesh Kumar Sharma which was the duty of the respondents to satisfy themselves about the claimants before making the payment of terminal benefits especially when there were other claimants as per their official records (nomination form) and even the applicant does not dispute the relation of children who have been shown as nominee after the death of their mother Sudarshani Bai.

9. Thus viewing the matter from any angle, I am of the view that the applicant has not made out any case for grant of relief. Accordingly, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)

Member (J)