IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 18th day of November, 2010

CORAM:

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

OA No.539/2009

1. Hemlata Mahavar w/o Late Shri Hira Lal Mahavar, r/o H.No.4, Fatehgarhi Road, Behind Jagdish Hotel, Rampura, Kota.

2. Toshit Mahavar s/o late Shri Hira Lal Mahavar, through her natural guardian Hemlata Mahavar r/o H.No.4, Fatehgarhi Road, Behind Jagdish Hotel, Rampura, Kota.

.. Applicants

(By Advocate: Shri Amit Mathur)

Versus

1. The Comptroller and Audditor General, 9-Deen Dayal Marg, Delhi.

2. Principal Accountant General (Civil Audit), Rajasthan, Jaipur

3. Manjulata r/o Gauner, Tehsil Sanganer, Jaipur

4. Welfare Officer, Principal Accountant General Office, Jaipur.

... Respondents

(By Advocate: Shri Vineet Pareek, proxy counsel for Shri Hemant Mathur, for respo. 1,2 & 4 and Shri Neeraj Batra, for resp. No.3)

OA No.22/2010

Manjulata w/o late Shri Hiralal Mahavar r/o Gauner, Tehsil Sanaganer, Jaipur

.. Applicant

(By Adovate: Shri Neeraj Batra)

Versus

1. Comptroller and Auditor General, 9-Deen Dayal Marg, New Delhi.

2. Principal Accountant General (Civil Audit), Statue Circle, Jaipur

3. Welfare Officer, Principal Accountant General, Statue Circle, Jaipur

4. Hemlata Mahavar r/o House No.4, Fatehgarhi Road, Behind Jagdish Hotel, Rampura, Kota.

5. Toshit Mahawar through his natural guardian Hemlate Mahavar r/o House No.4, Fatehgarhi Road, Behind Jagdish Hotel, Rampura, Kota.

.. Respondents

(By Advocate: Shri Mukesh Agarwal)

O R D E R (ORAL)

By way of this order, I propose to dispose of these OAs as common question of facts and law is involved.

2. For the purpose of decision in this case, the facts as stated in OA No.539/2009 are being referred to.

3. Briefly stated, undisputed facts of the case are that Late Shri Hira Lal Mahavar while working as Senior Auditor and posted in the office of Pr. Accountant General (Civil Audit) Rajasthan died in a road accident on 23.10.2009 leaving behind two widows and children. It may be stated that the deceased alleged to have conducted first marriage with Smt. Manjulata on 25.5.1991 and two daughters namely, Madhubala and Pooja were born from this

marriage. It is also not disputed that when second daughter Pooja was born, Smt. Majulata scummed to serious illness and became physically handicapped and is bed ridden. Thereafter, in the year 2001 a settlement was arrived at between Smt. Manjulata and the deceased before Panchayat and it is stated that Smt. Manjulata and the deceased got separated and in lieu thereof an amount of Rs. 61,000/- was paid to Smt. Manjulata by late Shri Hira Lal. Thereafter Late Shri Hira Lal conducted second marriage with Smt. Hemlata, applicant in OA No.539/2009 and one son, namely Toshit Mahawar was born from this marriage. The fact that the deceased has conducted second marriage with Smt. Hemlata is not even disputed by first wife namely Smt. Manjulata. According to Smt. Hemlata who is applicant in OA No.539/2009, Smt. Manjulata, first wife is leaving separately after the aforesaid settlement, although his two daughters are being looked after by her, whereas Smt. Manjulata has disputed this fact in OA No.22/2010, as according to her, the settlement arrived at in the presence of Panchayat was subsequently revoked and an application under Section 125 of Cr. P.C. was moved before the Family Court No.2, Jaipur for maintenance. Smt. Manjulata has also placed on record a copy of receipt dated 30.11.2002 as Ann.A/3 to prove that the settlement was revoked and sum of Rs. 61000/- which was taken from late Shri Hira Lal was returned to him.

4. Be that as it may, the facts remain that Smt. Manjulata is first wife of the deceased Shri Hira Lal whereas Smt. Hemlata is second wife and even the first wife in her OA has admitted that the second

marriage was conducted by her late husband with her consent. The dispute in these cases is regarding payment of terminal benefits of the deceased. It may be stated that as per the material placed on record and as can be seen from reply filed by the respondents, late Shri Hira Lal has filed nomination and has also indicated the details of family members in the said nomination in which name of Smt. Manjulata and mother and father of the deceased have been mentioned (Ann.R/1) whereas name of second wife has not been mentioned in the nomination papers. Accordingly, after death of the deceased husband of the applicant family pension papers were processed by the department. However, subsequently, representation dated 24.11.2009 was received from the second wife Smt. Hemlata thereby requesting for not considering the claim of first wife Smt. Manjulata and her daughters for family pension and other benefits. The respondents after receiving that representation and after noticing that OA No.539/2009 filed by the second wife is pending before this Tribunal, have not processed the case for payment of terminal benefits. It is on the basis of these facts, second wife of the deceased has prayed that respondents may be directed to consider case of the applicant for release of terminal benefits including family pension, leave encashment, gratuity, provident fund and others benefits in her favour whereas first wife in her OA has prayed that respondents may be directed to released all the retiral benefits to her.

5. Notice of this application was given to the respondents. The respondents have filed reply. The facts as stated above, have not

been disputed. In the reply, the respondents have categorically stated that as per the Government of India decision No.13 below Rule 54 of the CCS (Pension) Rules, 1972 second wife is not entitled to the family pension. The respondents have further stated that as per the service record Smt. Manjulata has been nominated as wife of late Shri Hira Lal Mahavar. The respondents have also annexed declaration so furnished by late Shri Hira Lal as Ann.R/1. Thus, according to the respondents, they are legally bound to process the case of the first wife.

6. I have heard the learned counsel for the parties and gone through the material placed on record.

7. At this stage, it will be useful to notice relevant provisions of the CCS (Pension) Rules, 1972. Rule 50 of the CCS (Pension) Rules, deal with retirement/death gratuity. Sub-rule (6) of Rule 50 defines 'family' in relation to a Government servant as under:-

(i) wife or wives including judicially separated wife or wives in the case of a male Government servant.
(ii) husband, including judicially separated husband in the case of female Government servant.
(iii) sons including stepsons and adopted sons,
(iv) unmarried daughters including stepdaughters and adopted daughters,
(v) widowed daughters, including stepdaughters and adopted daughters.
(vi) Father] including adoptive parents in the case of
(vii) Mother] individuals whose personal law permits adoption.
(viii) brother below the age of eighteen years including step brothers.
(ix) unmarried sisters and widowed sisters including stepsisters,
(x) married daughters, and
(xi) children of a pre-deceased son.

Rule 51 provides persons to whom gratuity is payable. At this stage, it will be useful to quote Rule 51 (1) (a), which thus reads:-

> "The gratuity payable under Rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53."

8. Thus, in view of the provisions contained in Rule 51(1)(a) the gratuity payable under Rule 50 shall be paid to the person or persons on whom right to receive the gratuity is conferred by means of a nomination under Rule 53. In this case, the right to receive gratuity is conferred on the first wife namely Smt. Manjulata. Thus, I see no infirmity if the case of Smt. Manjulata was processed by the respondents in the light of the aforesaid provisions.

9. During the course of arguments, it was brought to the notice of this Bench that second wife has already approached before the competent court under Section 372 of the Succession Act for claiming retiral benefits including gratuity amount. Thus, in view of the law laid down by the Apex Court in the case of Shipra Sengupta vs. Maridual Sengupta and ors., (2010) 1 SCC (L&S) 99 to the effect that nominee is entitled to receive the payment on the basis of nomination but the amount so received has to be distributed according to law of succession, I am of the view that it will be in the interest of justice if the terminal benefits except the family pension is withheld by the department till the matter is not settled by the competent court by issuing a succession certificate in terms of Section 372 and the same shall be disbursed among the

beneficiaries as per the succession certificate to be issued by the competent court.

10. So far as claim regarding payment of family pension is concerned, it may be stated that the family pension has to be paid as per provisions contained under Rule 54 of the Family Pension Rules, 1964. Sub Rule 6(1) of Rule 54 provides that the family pension is payable in case of widow or widower upto the death or re-marriage, whichever is earlier. Sub-rule 8(1) of Rule 54 provides that except as provided in sub-rule (7) the family pension shall not be payable to more than one member of the family at the same time. However, sub-rule 7(a)(i) provides that where the family pension is payable to more widows than one, family pension shall paid to the widows in equal share. At this stage it will also be useful to notice sub-rule 14(b) of Rule 54 which defines family in relation to Government servant, inter alia, to mean (i) wife in the case of male Govt. servant or husband in the case of female Govt. servant (ii) a judicially separated wife or husband, such separate not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery. Thus, from the combined reading of sub-rule (14) and sub-rule (7), it is evident that family pension can be granted to more than one widow. At this stage, it will be relevant to mention that in the year 2001 settlement deed was executed between first wife and her late husband and in lieu of this, a sum of Rs. 61000/- was paid as compensation and they started leaving separately. Although the said settlement was revoked subsequently but fact remains that the second marriage was conducted with

Smt. Hemlata with the express consent of first wife as per the prevailing custom as the first wife was totally handicapped and she could not look after the family and the husband. Copy of the settlement deed has been placed by first wife on record as Ann.A/4 explaining the circumstances why she has given her consent to her husband to conduct second marriage.

11. Thus, under these circumstances, it cannot be said that marriage of deceased with the second wife namely Smt. Hemlata was void. It may be stated here that from the marriage with the second wife one son has also born. Under these circumstances, I am of the view that it will be in the interest of justice if direction is given to the respondents to pay family pension to both the widows namely Smt. Manjulata and Smt. Hemlata in equal shares. Such exercise shall be done within a period of three months from the date of receipt of a copy of this order.

12. With these observations, both the OAs stand disposed of with no order as to costs.

दिनांक 16/11 के आदेशानुसार मेरी उपस्थिति में दिनांक 22/11/10 को भाग-II व III नष्ट किये गए।

Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR

(M.L.CHAUHAN)
Judl. Member

R/

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22/11/10