

**Central Administrative Tribunal  
Principal Bench**

OA No. 42/2014

Order reserved on: 02.05.2016  
Order pronounced on: 17.05.2016

***Hon'ble Mr. V. N. Gaur, Member (A)***

1. Smt. Shakuntala  
W/o Late Sh. Mahesh Chand
2. Vineet (Minor son aged 16 years)  
S/o Late Sh. Mahesh Chand

Both present R/o:

C-69/C, MandawaliFazalpur,  
Uncheper, Delhi-110092.

Also at:

B-82/B, Lajpat Nagar,  
Sahibabad Ghaziabad,  
U.P.

- Applicants

(By Advocate: Sh. Dayanand Sharma)

Versus

1. Union of India  
Through its Secretary,  
(Department of Telecommunication),  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi.
2. The CGM/Chief Accounts Officer,  
MTNL, Eastern Court, Janpath,  
New Delhi-110001.
3. The CMD  
Mahanagar Telephone Nigam Limited,  
At Khursheed Lal Bhawan,  
New Delhi-110050.

4. Smt. Sushila Devi  
W/o Late Sh. Mahesh Chand
5. Smt. Rajjo Devi  
W/o Late Sh. Ram Kishan  
(Mother of Late Sh. Mahesh Chand)

Respondents No.4 and 5 R/o:

Quarter No.1727, GPO,  
Kashmere Gate, Delhi-110006.

- Respondents

(By Advocate: Sh.M.S.Reen, Ms. LeelaTuteja and  
Sh. Ramesh Shukla for Sh. R.K.Shukla)

### **ORDER**

The applicants have filed this OA with the following prayer:

- “a) Direct the respondent no.2 & 3 to release all the pensionary benefits of service of Late. Sh. Mahesh Chand to the applicants as Sh. Mahesh Chand had been working with the respondent no.2 as “WORK ASSISTANT” vide employee code No.MZ 19680, in the interest of justice;
- b) Pass any other and further order which this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The applicant no.1 claims that she was married to late Sh. Mahesh Chand, an employee of respondent no.3 on 18.12.1995. A son (applicant no.2) was also born on 30.03.1997. According to applicant no.1 she came to know at the later stage that her husband had another marriage. However, she accepted this fact as her fate. The husband of applicant no.1 meanwhile died while in service on 16.10.2013, and therefore, she approached the

respondents for release of the benefits entitled to the heirs of the deceased employee but they did not respond to the same.

3. Learned counsel for the applicant submitted that applicant no.1 was married to late Sh. Mahesh Chand at Arya Samaj, Paharganj, New Delhi and the marriage certificate has been annexed as Annexure P-2. Other documents like election identity card, ration card have also been annexed to the OA showing that the applicant no.1 and applicant no.2 were part of the family members of the deceased employee. Considering the fact that at the time of marriage of late Sh. Mahesh Chand with applicant no.1, he already had legally married living wife, the second marriage may be void but the child born from such wedlock had all legal rights of his deceased father. While the present OA was pending before this Tribunal, the official respondents in complete disregard of the law and without waiting for the outcome of the same, have released all the DCRG/pensionary benefits to the private respondents no.4 & 5. Learned counsel further apprised that the applicants and the private respondents have entered into a Memorandum of Understanding on 01.11.2014 charting out a mutual agreement with regard to their claims in DCRG/Family pension, GPF etc of late Sh. Mahesh Chand and his other movable or immovable property. A copy of the Memorandum of Understanding (MOU) has already been submitted to respondents no.2 & 3 but the same was rejected by order dated 26.02.2015.

The respondents passed the speaking order dated 26.02.2015 following the directions of this Tribunal in OA No.43/2014.

4. Learned counsel for official respondents submitted that in the record of the respondents nowhere the employee had declared his second marriage. In the nomination form pertaining to the provident fund, deceased employee Sh. Mahesh Chand had shown respondent no.4 as his wife and Kamal Kishor and Sunil Kumar were shown as his sons. Same was the case in the nomination form for gratuity. These forms were filled up in the year 2008 much after the claimed marriage of the applicant. In other documents as well like, Group Service Linked Insurance Scheme and service book, it is the same position. The official respondents have, therefore, no option but to release the DCRG/pension and other dues to the persons nominated by the deceased employee. The MOU arrived at between the applicants and respondents no.4 & 5 and other members of their family does not have any validity in the eyes of law once the employee himself had given nomination while he was alive. Further, the applicants have not challenged the nominations made by the deceased employee and the speaking order passed by the official respondents on 26.02.2014.

5. Learned counsel for respondents no.4 & 5 submitted that respondents no.4 & 5 were the legal heirs of the deceased

employee and referred to various documents attached to the counter reply filed by them like CGHS card, insurance, permission for retention of official quarter etc. that show that the respondent no.4 and her children, being family members of the deceased employee, are the legal heirs. The last rites of Sh. Mahesh Chand had also been performed by his son Mr. Kamal Kishor.

6. I have carefully considered the arguments of the learned counsels in this case and perused the record placed before us. The applicants are claiming their right on the basis of the marriage of applicant no.1 with late Sh. Mahesh Chand in 1995 and some documents that have been filed in support of this claim. It is admitted by the applicants that she discovered much later that it was the second marriage of late Sh. Mahesh Chand. It has been further claimed that even though under the Hindu Marriage Act such a marriage is void, yet the child born from the said wedlock has the same legal rights as the children from the first marriage. On the other hand, the respondents have claimed that in all the relevant documents like service book, nomination form, GPF, gratuity etc. the deceased employee has never mentioned the name of applicants no.1 & 2 as late as in 2008. He mentioned the name of his mother and his family members from the first marriage as his nominees in the prescribed forms. In such a situation, respondents have no reason not to release

DCRG/final dues of the deceased employee to the persons nominated by him during his life time.

7. I accept the contention of the respondents that they have to abide by the nominations given by the deceased employee while he was alive; more so when such nomination was given in the year 2008 and the claimed date of second marriage is 18.12.1995. I therefore, do not find any illegality in the act of the respondents in releasing the DCRG/pensionary dues to the respondents 4 and 5.

8. It is further noted that the applicants and the respondents no. 4 and 5 and other family members of the deceased employee from the first marriage, have entered into a MOU where the terms have been laid down for sharing movable and immovable assets left behind by late Sh. Mahesh Chand including the service dues and benefits from the official respondents. This MOU has not been denied by the respondents 4 and 5. In the MOU with regard to the amount of leave encashment, CGEGIS, arrears of salary, gratuity, GPF and any other payment from the office of the deceased employee the family members of the deceased employee from the first marriage have agreed to give Rs.4,00,000/- in lumpsum to the applicants no.1 & 2 as a mutually agreed share of the latter in the aforementioned dues. The MOU also lays down their decision with regard to the compassionate appointment,

family pension, any dues from MTNL Society and any other movable/immovable property etc. In such a situation, it is upto the parties to the MOU to honour the terms agreed to among themselves. If one party has agreed to pay Rs.4,00,000/ to the other party, the same can be done even after the pensionary dues have been received by one party from the official respondents without their involvement. This Tribunal cannot give any direction in the matter.

9. In the above circumstances, the OA is found to be devoid of merit and the same is dismissed.

( V.N.Gaur )  
Member (A)

'sd'