

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

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Original Application No. 290/00083/2017

Reserved on : 24.09.2018

Pronounced on : 03.10.2018

CORAM:

HON'BLE MRS. HINA P.SHAH, MEMBER (J)

Smt. Manisha @ Guddi w/o late Shri Sushil Kumar Carp (SK) aged about 47 years R/o 217, Sunder Nagar, Behind Bangad College, Pali District Pali (Rajasthan).

...APPLICANT

BY ADVOCATE : Mr. Jamwant Gurjar

VERSUS

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. The Engineer-in-Chief (MES), Integrated HQ of Ministry of Defence (Army), Branch E-In-Cs Sectt. Room No.112, Kashmir House, Rajaji Marg, New Delhi-110 011.
3. The Chief Engineer MES, Jaipur Zone, Power House Road, Bani Park, Jaipur – 302 006
4. AE Civil, Garrison Engineer (A) Central Multan Lines, Jodhpur 342 010

..RESPONDENTS

BY ADVOCATE: Mr. K.S.Yadav

ORDER

The applicant has filed the present OA u/s 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) By an appropriate order or direction, the impugned order dated 29.11.2016 is quashed and set aside.
- (ii) By an appropriate order or direction the respondents may be directed to release all the terminal benefits in favour of the humble applicant being the lawful wedded wife of late Shri Sushil Kumar.
- (iii) By an appropriate order or direction the respondent may be directed to grant the compassionate appointment to the humble applicant in spirits to the law prevalent.
- (iv) Any other appropriate direction or order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- (v) Cost of the Original Application may kindly be awarded in favour of the applicant.

2. The case of the applicant is that her husband late Shri Sushil Kumar was working as Carp (SK) of MES/192837 and he expired on 9.3.2016. Marriage of the present applicant was solemnised with late Shri Sushil Kumar on 30.04.2009 after the death of his first wife Smt. Bhanwari Devi. The said marriage took place at her home in the presence of her family members and the family members of late Shri Sushil Kumar as per the existing customs in their society. Applicant has not applied for marriage certificate after her marriage with late Shri Sushil Kumar. The said marriage certificate was not acquired by the applicant in good faith and due to lack of education and legal formalities required and its usage. The applicant has Aadhar Card, Horoscope of her son Master Yaswant Chauhan as documentary

evidence to show that she is wedded wife of late Shri Sushil Kumar. After unfortunate death of Shri Sushil Kumar, while in service, the applicant and her son were only dependents, therefore, she represented the respondents to release the terminal benefits and to seek compassionate appointment. After considering the same, the respondents replied to the said representation vide their letter dated 29.11.2016 rejecting the claim of the applicant, which is the impugned order Ann.A/6. Aggrieved by the same, the applicant has preferred the present OA.

3. The respondents after issue of notice have filed their reply dated 11th February, 2018 raising the plea of multiple reliefs sought and stated that the present OA deserves to be dismissed on this ground. The respondents state that the applicant claims herself to be wife of late Shri Sushil Kumar but as per service record maintained by the Department, name of Smt. Bhanwari Devi is shown as wife of the deceased employee. The Department is unaware of the fact that the applicant is married to late Shri Sushil Kumar as though he was working in the Department at that time, but he failed to inform about the marriage with the present applicant. In the nomination form and various other documents, name of Smt. Bhanwari Devi is only mentioned.

Though the marriage with the present applicant is shown to have been solemnised on 30th April, 2009, but late Shri Sushil Kumar expired only on 9th March, 2016. Therefore, he was having sufficient time to add the name of the applicant in the record available with the Department. Therefore, in the absence of such information or material submitted by the deceased employee, the respondents are unable to pay any terminal benefits or to consider his case for compassionate appointment in the absence of provisions or rules. The documents provided by the applicant pertaining to her marriage with the deceased employee are obtained only after death of the employee. The Department had consistently demanded for marriage certificate from the applicant but the same was not provided by the applicant and hence in the absence of the same, the Department is unable to entertain the claim made by the applicant. The respondents further state that the terminal benefits have already been paid partially to the dependents of the deceased employee i.e. Ms. Sapan and Ms. Khushboo who are daughters of Smt. Bhanwari Devi as per the nomination for Death-Cum-Retirement-Gratuity as well as Group Insurance. The respondents have paid GPF, GLIS, CGE, GIS to the dependents of the deceased employee as per the

family details available in the service record under the direction of the HQ. Some payments have been withheld due to pendency of the present litigation before this Tribunal. The respondents further state that whether the applicant is legally wedded wife of the deceased employee is not within the jurisdiction of this court to decide. The said jurisdiction lies only with a Civil Court as the same does not fall under the term 'service matters'. Thus, the respondents prayed for dismissal of the present OA.

4. Heard Shri Jamwant Gurjar, counsel for the applicant and Shri K.S.Yadav, counsel for the respondents and perused the material available on record.

5. The applicant contended that she got married with late Shri Sushil Kumar after death of Smt. Bhanwari Devi and out of the said marriage her son, Yaswant Chauhan, was born on 5.4.2010. The applicant further contended that after her marriage in good faith and due to being illiterate, she did not register her marriage and therefore, she had no marriage certificate showing proof of her marriage with late Shri Sushil Kumar. In fact, her marriage was solemnised as per the prevailing customs in the society in the presence of family members of both sides. She was unaware about her

nomination not being included in the service record available with the Department. She has Aadhar Card which is vital proof and which shows that she is wife of late Shri Sushil Kumar. Also the birth certificate of her son shows name of his father as Sushil. The document of Laxmi Devi Mundra Public School has been produced to show that Master Yashwant Chauhan is son of Shri Sushil Chauhan. The applicant further states that she is entitled for terminal benefits of her deceased husband and also for compassionate appointment, though her name is not in the service record, but she cannot be denied her legitimate right merely on the ground that her name does not exist in the service record of the Department. The action of the respondents is, therefore, arbitrary, discriminatory and in violation of Article 14, 16, 21 and 300-A of the Constitution of India. In support of her contentions, the applicant has heavily relied on the judgment of the Hon'ble Apex Court in the case of **Rameshwari Devi vs. State of Bihar and Ors.**, (2000) 2 SCC 431 and stated that Cohabitation for a long period gives rise to a strong presumption of wedlock and it was not necessary for the State Government to require the second spouse to prove her marriage in court of

law, insofar as entitlement to family pension was concerned.

6. Per contra, the respondents contended that the representation of the applicant dated 3.11.2016, was replied vide letter dated 29.11.2016 clearly mentioning that as per existing rules, family details submitted by late Shri Sushil Kumar as available in the service record does not bear name of the present applicant, hence she is not entitled for payment of terminal benefits as well as compassionate appointment. The respondents further contended that whether the applicant is legally wedded wife of the deceased employee is disputed question of facts and such question or issue cannot be adjudicated upon by this Tribunal, as the said jurisdiction lies only with the Civil Court. The respondents also stated that as per Rule 10 of the CAT (Procedure) Rules, 1987 claiming plural reliefs is barred. In the present case, the applicant is seeking payment of terminal benefits as well as compassionate appointment. Both issues are separate cause of action and the same cannot be entertained in a single OA. Therefore, the present OA is liable to be dismissed on the ground of claiming multiple reliefs.

7. As per rival submissions made by both the parties, it is clear that the applicant married with late Shri Sushil Kumar on 30th April, 2009. It is undisputed that late Shri Sushil Kumar expired on 9th March, 2016 and the deceased employee in all the service documents available with the respondents had not added name of the present applicant, though his first wife Smt. Bhanwari Devi had expired. There was sufficient time available with him to add name of the applicant in his service record. As seen from the Annexure annexed at R/1, Shri Sushil Kumar had only kept on record name of his wife Smt. Bhanwari Devi and also mentioned name of Ms. Sapna and Ms. Khushboo as nominee. Therefore, from the documents submitted by the applicant i.e. Aadhar Card and birth certificate of her son Master Yashwant Chauhan does not prove the marriage of the applicant with late Shri Sushil Kumar. It is also clear that in the absence of any information being submitted by the deceased employee in the service record, the respondents are unable to pay the terminal benefits of her husband or consider the case of the present applicant for compassionate appointment under the relevant rules. It is also clear that the Department has paid some terminal benefits to the dependents of the deceased employee as

per the family details available on record and some benefits have been withheld due to pending litigation before this Tribunal.

8. The case of OA No. 213/1999 – **Prasani Devi vs. Union on India and Ors.** decided on 18.4.2000 by this Tribunal covers the present issue wherein it was clarified that the applicant therein had to secure declaration in respect of her being wife of the deceased employee from the competent court before claiming pensionary benefits and the said OA was dismissed on the ground of maintainability. Also in the case of **Smt. Samshad Banu vs. UOI**- OA No.290/00146/2015 decided on 8th December, 2016, this Tribunal held that the applicant was unable to make out a convincing case pertaining to second marriage in absence of valid succession certificate and the OA was dismissed being devoid of merit.

9. The case of **Rameshwari Devi** (supra), is not applicable to the present case as the facts of that case were completely different from the present case.

10. In view of the above discussions and considering the facts and circumstances of the present case, it is clear that this Tribunal has no jurisdiction to decide the question of

facts pertaining to marriage of the applicant with late Shri Sushil Kumar. Therefore, the terminal benefits of late Shri Shushil Kumar or compassionate appointment being his wife cannot be granted till the issue of said marriage is decided by the competent court.

11. Accordingly, the OA is dismissed on the ground of maintainability. No order as to costs.

(HINA P.SHAH)
Judl. Member

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