

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH:  
NEW DELHI**

O.A. No.938 of 2018

This the 15<sup>th</sup> day of July, 2019

**Hon'ble Ms. Nita Chowdhury, Member (A)**

Amina Khatoon,  
Aged – 60 years  
W/o Late Mohd. Taki,  
R/o H.No.20/199,  
Trilokpuri,  
Delhi-110091.  
Designation : Bhisky/Mashak

....Applicant

(By Advocate : Ms. Nimmi Sharma)

VERSUS

1. East Delhi Municipal Corporation,  
Assistant Commissioner,  
Shahdara (South) Zone, Delhi.
2. The Administration Officer (DEMS)  
Shahdara (South) Zone, Delhi.

.....Respondents

(By Advocate : Mrs. Sangita Rai)

**O R D E R (Oral)**

Heard learned counsel for the parties.

2. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- “(a) To set aside the compliance report/order dated 05.12.2016 (Annexure A-1) and to release the terminal benefits of deceased Mohd. Taki, in favour of Applicant No.1 i.e. widow of deceased Mohd. Taki.
- (b) To release pension, in favour of applicant No.1.

AND

- (c) To pass any other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

3. Brief factual matrix of this case is that one, namely, Md. Taki, had joined DDA as Bhisky/Mashak on 01.08.1980 and thereafter he was transferred to MCD on 28.02.1989. Subsequently, MCD was trifurcated and he came to be working under East Delhi Municipal Corporation (EDMC) where he continued as Bhisky/Mashak. He expired on 10.04.2009 while still in service of EDMC.

4. It is clearly stated by the respondents in their counter affidavit that while working in DDA Late Shri Md. Taki had indicated the name of his wife as Smt. Mumaina Begum and three sons and two daughters. Subsequently while working in EDMC, late Sh. Md. Taki had given his GPF nomination form on 23.03.2006 and in this form, he indicated the name of his wife as Smt. Amina Khatoon and Moh. Firoz as son. Full GPF was allocated to Smt. Amina Khatoon. In addition, he also has a daughter namely Rehana Begum and another son by the name of Md. Yunus from the second wife Smt. Amina Khatoon.

5. The applicant in the present OA is Smt. Amina Khatoon and she has pleaded that despite the GPF nomination form with the EDMC, the retiral dues have not been paid to her as yet. She has also not been paid any

pension. This is the grievance that has been agitated in the present OA.

6. The EDMC had advised the applicant to obtain Succession Certificate. The son of second wife Md. Firoz had approached the Court of Administrative Civil Judge, East Delhi, Karkardooma to obtain Succession Certificate in his favour, in respect of entire service benefits arising out of service period of the deceased namely Late Md. Taki. Grant of such a Succession Certificate was denied vide order dated 17.05.2017.

7. However, applicant pleaded that as per CCS Rules, the widow of the deceased employee is entitled to receive the retiral dues. Applicant also pleads that as per GPF declaration, applicant needs to be paid full GPF also, the payment of which is still awaited.

8. Learned counsel for the respondents submitted that since the deceased Govt. employee was having two wives, the EDMC advised to the applicant to obtain succession certificate and accordingly, applicant's son took initiative to obtain succession certificate but failed to obtain the same by the concerned competent court as such now EDMC is not required to release the admissible amount of retiral dues of late deceased employee to the applicant. However, the respondents have sent letters to deceased employee's first wife, namely, Smt. Mumin directing her to submit the

relevant documents in the respondents' office for release of terminal benefits of her deceased husband but till date they have not received any response from the said Smt. Mumin.

9. In view of the above present facts and circumstances, having regard to the submissions of learned counsel for the parties, this Tribunal is not in a position to issue any direction to the respondents to release the terminal benefits of deceased Mohd. Taki in favour of the applicant herein, as the same cannot be granted in favour of the applicant in view of the present factual situation of this case.

10. Now coming to the issue as to who is entitled for family pension, it cannot be disputed that family pension scheme confers monetary benefit on the wife and children of the deceased Govt. employee, but the employee has no title to it. The employee has no control over the family pension as he is not required to make any contribution to it. The family pension Scheme is in the nature of welfare relief to the widow and minor children of the deceased employee. It is also important to mention here that in the family pension scheme, it is nowhere provided for nomination of any person by the deceased employee during his life time for the payment of family pension. The Hon'ble Supreme Court in the case of **Smt. Violet Issac and others vs. Union of India and others**, 1991 SCC (1) 725, held that Family Pension Rules, 1964 provided for the sanction of family pension to the

survivors of a Govt. employee as in that case the dispute was in respect of grant of family pension to the family members of the deceased and brother of the deceased Govt. employee as the deceased Govt. employee bequeathed all the retiral benefits by virtue of a Will. Since the said matter was confined only to the grant of family pension, the Hon'ble Supreme Court held that family pension is a right of the family members of the deceased Govt. employee being a welfare scheme to provide relief to the widow and children. As such, the heirs of the deceased Govt. employee were entitled to family pension irrespective of any Will executed by the deceased Govt. employee. The Apex Court was of the view that the deceased Govt. employee has no control over the family pension as he is not required to make any contribution towards the payment of family pension. Hence, the Family Pension Scheme being a welfare scheme, the family members of the deceased are entitled for family pension. Keeping the said ratio of the aforesaid judgment of the Apex Court in mind, this Court is also of the opinion that by executing subsequent nomination in favour of the applicant of this OA will not disentitle the legally entitled legal heirs to receive the family pension, if she is otherwise eligible and fulfilling all the criteria for getting the family pension. It is the averment of the applicant that her deceased husband divorced his first wife but no documentary proof whatsoever had been annexed with

the present application or has/have been produced during the course of hearing. The present applicant as well as her son also failed to obtained succession certificate from the concerned Court as the learned ACJ-cum-CCJ-cum-ARC(E), Karkardooma Courts, Delhi vide order dated 17.5.2017 held as under:-

“1. The present petition has been filed under section 372 of the Indian Succession Act, 1925 by Firoj (hereinafter called petitioner) in respect of service benefits of late Mohd. Taki, who was working with respondent No.2 – EDMC. Mohd Taki expired on 10/04/2009 at Delhi. Petitioner claims himself to be the successor of the deceased averring himself to be the son of the deceased.

2. The claim of the petitioner has been rejected by the EDMC. The rejection is a reasoned order. The only remedy left with the petitioner is to bring an action-in-law against the said order as civil suit.

3. The issue is claim of petitioner against EDMC. The said claim is dismissed with reasons. Only action-in law against said rejection is a civil suit or appropriate writ.”

11. As such in view of the above present factual situation, this Court has no option except to deny the relief of pension as claimed by the applicant in this OA since in the case of ***Devki Nandan Prasad v. State of Bihar***, 1971-I-LLJ-557 at 568, the Apex Court observed as under (p.568):

"The payment of pension does not depend upon the discretion of the Government, but is governed by the relevant rules and any one entitled to the pension under the rules can claim it as a matter of right."

12. Further in the case of **Smt. Punamal v. Union of India** (AIR 1985 SC 1196), it was pointed out that:

"Where the Government servant rendered service to compensate which a family pension scheme is devised, the widow and the dependent minors would equally be entitled to family pension as a matter of right. In fact, we look upon pension not merely as a statutory right but as the fulfilment of a constitutional promise inasmuch as it partakes the character of public assistance in cases of unemployment, old age, disablement or similar other cases of undeserved want. Relevant rules merely make effective the constitutional mandate."

13. Hon'ble Supreme Court in the case of **Sarala Mudgal - vs- UOI** reported in 1995 (3) SCC 635 and in the case of **Javed -vs- State of Haryana** reported in 2003 (8) SCC 369, held that the personal law cannot come to any help to rescue a government servant from the rigour of the provision of the relevant service rules which prohibits bigamy. This being the position, there is no doubt that even if a personal law permits bigamy or polygamy in case of a member of that community but once the individual gets into service such licence under the personal law cannot override the provision of the relevant service rules. All the provisions of the service rules will be equally applicable to him and if there is any provision in the service rules which is contrary to service law, the same shall stand eclipsed and the employee shall be subject to the action under the provision of the service rule.

14. Rule 21 of CCS (Conduct) Rule, 1964 is relevant to note here, the contents of which read as under:

"21. Restriction regarding marriage- (1) No Government servant shall enter into, or contract, a marriage with a person having a spouse living; and (2) No Government servant, having a spouse living, shall enter into, or contract, a marriage with any person:

Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage as is referred to in clause (1) or clause(2), if it is satisfied that-

(a) such marriage is permissible under the personal law applicable to such Government servant and the other party to the marriage; and

(b) there are other grounds for so doing. (3) A Government servant who has married or marries a person other than of India Nationality shall forthwith intimate the fact to the Government."

15. In the light of the aforesaid provisions, it is observed that if any second marriage has been entered into without seeking any exemption by the government servant, the same would be impermissible. Further as observed by the Apex Court, quoted above, in ***Devi Nandan Prasad*** (supra) that the payment of pension does not depend upon the discretion of the Government, but is governed by the relevant rules and any one entitled to the pension under the rules can claim it as a matter of right and as already noted earlier, the claim for succession certificate has already been denied vide order dated 17.5.2007 passed by the learned ACJ-cum-CCJ-cum-ARC(E), Karkardooma Courts, Delhi, who has passed the detailed order in this regard. Hence, we do not find any



illegality in the impugned order passed by the respondents dated 5.12.2016.

16. In the result, for the foregoing reasons, the present OA being devoid of merit is dismissed accordingly. No costs.

**(Nita Chowdhury)**  
**Member (A)**

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