

**Reserved**

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH**  
**JABALPUR**

**Original Application No.200/00228/2017**

Jabalpur, this Tuesday, the 3<sup>rd</sup> day of December, 2019

**HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER**  
**HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER**

Smt. Kusum Bai, W/o Late Shri Prakash Kumar Usrete,  
Aged about 58 years, R/o Bheemrao Chowk,  
Jharra Tikuriya, Forester Ward Katni,  
Distt. Katni (MP), Pin 483501

**-Applicant**

(By Advocate –**Shri K.K.Verma**)

**V e r s u s**

1. The Union of India, through Secretary,  
Ministry of Defence Protection South Block, New Delhi-110001

2. Chairman Ordnance Factory Board, 10 SK Bose Road,  
Calcutta (W.B.) Pin 700001

3. Senior General Manager, Ordnance Factory Khamariya,  
Distt. Jabalpur (MP), Pin 482005

4. The Director Controller Defence Account  
(Pension Allahbad), Draupadighat, Near Sadar,  
Allahabad-211014

5. Smt. Sushila Bai, W/o Late Prakash Kumar Usrete,  
Aged about 50 years, R/o In front of Jumman  
Sahu Tola, Dixit Pura, Uprainganj,  
Jabalpur, Distt. Jabalpur (MP)-482002

**-Respondents**

(By Advocate –**Shri D.S.Baghel for respondents Nos. 1 to 4**  
& **Shri Tirath Singh Thakur for respondent No.5**)

(Date of reserving the order:-31.01.2019)

## **ORDER**

### **By Ramesh Singh Thakur, JM:-**

The applicant is challenging the legality and validity of the order dated 28.09.2016 (Annexure A-6), by which the respondents have rejected the claim of the applicant for family pension.

2. The applicant has prayed for the following reliefs in this Original Application:-

#### **“8. Relief Sought:-**

8.1 To direct the official respondents to produce the entire relevant record for kind perusal of this Hon’ble Tribunal.

8.2 To set aside the impugned order dated 28/09/2016 Annexure A-6.

8.3 To direct the respondents for making the payment of family pension with effect from 19.12.2015 (Annexure A-2.)

8.4 To direct the official respondents to recover the amount of family pension already paid to the respondent No.5.

8.5 To issue any order/orders, direction/directions relief/reliefs which this Hon’ble Tribunal deems fit for proper in the fact and in the circumstances of the instant case.”

3. The brief facts of the case are that the applicant got married with the deceased employee on 30.04.1974. When the applicant got illegally expelled from the house and subjected to cruelty, she filed an application for grant of maintenance before the competent court and the court vide its order dated 14.06.1993 granted the maintenance to the applicant and subsequently applicant filed an

application U/s 127 of Code of Criminal Procedure for grant of maintenance and the same has been decided vide order dated 04.07.2015 (Annexure A-1). The husband of the applicant died on 19.12.2015 (Annexure A-2). The applicant after the death of her husband filed an application for grant of pension, she was informed that the official respondents had removed the name of present applicant from the service record of deceased employee and substituted the name of respondent No.5 in the service record without obtaining the decree of divorce passed by the competent court and issued family pension to respondent No.5. A copy of the representation dated 04.01.2016 is filed as Annexure A-3. Being aggrieved by the act of the respondents the applicant filed Original Application before this Tribunal and the same was registered as O.A. No. 200/771/2016 and was finally decided vide order dated 05.08.2016 with liberty granted to the applicant to file a comprehensive representation in the matter, within a period of 15 days from the date of this order. On such representation being filed the respondent No.3 shall consider and decide it, by a reasoned and speaking order, within a period of three months from the date of its submission.

4. The applicant in compliance of the same submitted a representation dated 30.11.2016 (Annexure A-5) to the official

respondents. The respondents on receipt of the representation informed the applicant vide letter dated 20.01.2017 that her representation have already been rejected vide order dated 28.09.2016. A copy of the letter dated 28.09.2016 as well as letter dated 20.01.2017 are cumulatively filed herewith as Annexure A-6.

5. The main grounds for challenge in this Original Application are that the applicant is a legally wedded wife of the deceased employee. Neither any proceeding of divorce was initiated by either of the parties nor any decree of divorce has been passed by the competent court. Therefore, applicant is entitled for family pension. The respondent No.5 is not a legally wedded wife of deceased employee, therefore not entitled for family pension.

6. The respondents Nos. 1 to 4 have filed their reply wherein it is submitted that it is a second round of litigation. It is submitted by the respondents that Shri Prakash Kumar was appointed as Labour on 24.12.1979 and compulsorily retired from service w.e.f. 26.04.2003. The deceased employee executed a marriage declaration from wherein he was declared that he is married to Smt. Sushila in the year 1977. A copy of the said document is annexed as Annexure R-1.

7. It is respectfully submitted that a legal notice dated 22.10.2003 was served from applicant to the factory Reply to

applicant was given vide letter dated 04.11.2003 in which it was intimated that her name is not mentioned in any nomination documents as wife in the service book by her husband. Therefore, she is not entitled to get family pension. It is further submitted by the respondents that Shri Prakash Kumar was awarded compulsory retirement by the Disciplinary authority with effect from 26.04.2003. At the time of completion of pension papers he submitted fresh nomination documents wherein he had endorsed name of Sushila as wife in the family declaration and DCRG nomination. It is further submitted by the respondents that retired employee submitted a letter dated 18.10.2014 in which he requested the factory to initiate proceeding about family pension in the name of his wife Smt. Sushila Bai. A copy of the letter is annexed as Annexure R-13.

8. The respondent No.5 has also filed the reply wherein it is submitted that the applicant is not a legally wedded wife of the deceased employee as she has not filed any such documents relating to her marriage. The respondent No.5 further submitted that the name of the applicant was never recorded in the service record therefore her name was not recorded. The respondent No.5 is the legally married wife of the deceased employee. The marriage certificate dated 02.03.1977 issued by the marriage officer,

Jabalpur is annexed as Annexure R-1. The respondent No.5 is the nominee therefore she is getting the family pension as mentioned in the pass book of the bank filed at Annexure R-2. The details of family members have also mentioned in the particulars of the employee which has been issued by the respondent No.3 is marked as Annexure R-3. It is also submitted that the family card issued from the Municipal Corporation Jabalpur dated 25.08.2006 is filed as Annexure R-4 and also the Adhar card in which the name of the husband is mentioned as Prakash Kumar Usrete marked as Annexure R-5. Therefore, without any document in support of the applicant the case is liable to be dismissed.

**9.** Heard the learned counsel for the parties, perused the pleadings and the documents annexed therewith.

**10.** The main contention of the applicant is that the applicant got married with the deceased employee on 30.04.1974. When the applicant got illegally expelled from the house and subjected to cruelty, she filed an application for grant of maintenance U/s 127 of Code of Criminal Procedure for grant of maintenance with the competent court of law vide order dated 14.06.1993 and the same has been decided vide order dated 04.07.2015 (Annexure A-1). It is also an admitted fact that the husband of the applicant died on 19.12.2015 (Annexure A-2).

**11.** The main contention of the applicant is that the name of respondent No.5 has been entered in the service record without obtaining the decree of divorce passed by the competent court of law. So being applicant as a legally wedded wife the pension should have been granted to the applicant. The representation was made by the applicant but the same was rejected by the respondent department vide order dated 28.09.2016 as well as letter dated 20.01.2017 (Annexure A-6).

**12.** On the other hand the contention of the respondents Nos. 1 to 4 that Shri Prakash Kumar was appointed as Labour on 24.12.1979 and compulsorily retired from service w.e.f. 26.04.2003. The deceased employee executed a marriage declaration from wherein he was declared that he is married to Smt. Sushila in the year 1977. A copy of the said document is annexed as Annexure R-1. A legal notice dated 22.10.2003 was served from applicant to the factory Reply to applicant was given vide letter dated 04.11.2003 in which it was intimated that her name is not mentioned in any nomination documents as wife in the service book by her husband. Therefore, she is not entitled to get family pension. It is further submitted by the respondents that Shri Prakash Kumar was awarded compulsory retirement by the Disciplinary authority with effect from 26.04.2003. At the time of

completion of pension papers he submitted fresh nomination documents wherein he had endorsed name of Sushila as wife in the family declaration and DCRG nomination. It is further submitted by the respondents that retired employee submitted a letter dated 18.10.2014 in which he requested the factory to initiate proceeding about family pension in the name of his wife Smt. Sushila Bai. A copy of the letter is annexed as Annexure R-13.

**13.** The respondent No.5 has also filed the reply separately to the Original Application and it has been submitted that the applicant is not a legally wedded wife of the deceased employee as she has not filed any such documents relating to her marriage. The respondent No.5 further submitted that the name of the applicant was never recorded in the service record therefore her name was not recorded. The respondent No.5 is the legally married wife of the deceased employee. The marriage certificate dated 02.03.1977 issued by the marriage officer, Jabalpur is annexed as Annexure R-1.

**14.** It has been further submitted by respondent No.5 that she is the nominee therefore she is getting the family pension as mentioned in the pass book of the bank filed at Annexure R-2. The details of family members have also mentioned in the particulars of the employee which has been issued by the respondent No.3 is marked as Annexure R-3. It is also submitted that the family card



issued from the Municipal Corporation Jabalpur dated 25.08.2006 is filed as Annexure R-4 and also the Adhar card in which the name of the husband is mentioned as Prakash Kumar Usrete marked as Annexure R-5.

**15.** It is very clear that the husband of the applicant was the employee of the respondent department and after considering the documents on records especially the marriage certificate issued by the Marriage Officer dated 02.03.1977 (Annexure R-1) the respondent No.5 is the wife of deceased employee. Moreover, as per service record and the nomination form which has been prepared at the time of retirement of the deceased employee the name of the applicant does not appeared. Whereas on the other side, the contention of the applicant that the applicant got married with the deceased employee on 30.04.1974 but the applicant has failed to prove this fact by way of evidence whereas the respondent No. 5 has proved this fact especially the marriage certificate issued by the marriage office, Jabalpur (Annexure R-5).

**16.** The respondents has relied upon the judgment passed by the Hon'ble Apex Court in the matters of **R. Kasthuri and others vs. M. Kasthuri and others**, AIR 2018 SC, 786 wherein it has been held that the dispute between two parties claiming to be married and wives of deceased person is a civil dispute and not a family

dispute. Such dispute is to be resolved on the basis of evidence tendered before the Civil Court. Though the applicant has relied upon the order passed by the competent court under Section 125 and 127 of the Code of Criminal Procedure as per judgement passed by the Hon'ble Apex Court in the matters of R. Kasthuri (**Supra**) the Hon'ble Apex Court has clearly held that the dispute between the parties where the parties claiming to be married and wives of the deceased is a civil dispute and not a family dispute and such dispute is to be resolved in Civil Court. From the facts and pleadings in the instant case the applicant has failed to prove that she is the legally wedded wife. On the other side the respondent No. 5 has proved her case especially of the marriage certificate issued by the competent court and also the documents prepared and furnished at the time of retirement of the deceased employee.

17. Resultantly, in view of the above, we do not find any illegality in the action of the respondent department. Hence the Original Application is dismissed. No order as to costs.

**(Ramesh Singh Thakur)**  
**Judicial Member**  
rn

**(Navin Tandon)**  
**Administrative Member**