

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ORIGINAL APPLICATION NUMBER 547 OF 2004

ALLAHABAD THIS THE 23rd DAY OF November, 2005

HON'BLE S.C. CHAUBE, MEMBER (A)

Abrar Ahmad, a/a 63 years, S/o Late Fariyad Ali,
R/o House No. 265, Chak Zero Road, Allahabad,
Retired as Junior Engineer, Gr. I (Drawing),
D.R.M. Office, N.C. Railway, Allahabad.

(By Advocate : Sri K.N. Katiyar)

V E R S U S

1. Union of India through the General Manager,
N.C. Railway, Allahabad.
2. Divisional Railway Manager, N.C. Railway,
Allahabad.
3. Sr. Divisional Personnel Officer,
N.C. Railway, Allahabad.
4. Sr. Divisional Finance Manager,
N.C. Railway, Allahabad.
5. Smt. Shamim Ara, wife of Sri Abrar Ahmad,
Garhi Kalan, P.S. Shahganj, Allahabad.
6. The Manager, Punjab National Bank,
Civil Lines, Allahabad.

..... Respondents

(By Advocate: Shri A.K. Gaur)

O R D E R

The applicant through this O.A has impugned the order
dated 28.10.2003 jointly issued by respondent No. 3 and 4

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and has further sought direction for restoration of his pension originally sanctioned as Rs. 3625/- per month. He has also sought direction to respondent No. 3 and 4 to recall their order dated 28.10.2003, and refund the 50% amount of pension so far disbursed to Smt. Shamim Ara arbitrarily and illegally by the Manager, Punjab National Bank, Civil Lines, Allahabad, respondent No. 6 with interest @ 25 % per annum.

2. Briefly the facts are that the applicant was appointed as Tracer (Gr. Rs. 110-200) on 27.12.1962. He retired as Junior Engineer Gr. I (Drawing) on 31.05.2002 on the last pay of Rs. 7250/- per month . According to the applicant, he divorced his first wife Smt. Shamim Ara on 11.07.1987 and applied for temporary withdrawal of Rs. 10,000/- from provident fund in connection with his marriage with Farazana Begum. It was performed on 10.05.1992. Out of his wedlock with Farazana Begum, 2 daughters Nikhat Rukhsar and Nusarat Rukhsar were born and are still alive.

3. According to the applicant Smt. Shamim Ara, the first wife filed case under section 125 of Cr.P.C for maintenance at the Rate of Rs. 500/- per moth each for her self and 2 sons Akhatar Ahmad and Anwar Ahmad in Family Court, Allahabad. The Court, however, granted Rs. 150/- per month to one minor son Mohd. Agsar Ahmad for a period of three years vide judgment dated 3.4.1993. Aggrieved by the above mentioned judgment, Smt. Shamim Ara preferred Criminal Revision No. 710/93 Shamim Ara & Ors. Vs. State of UP against judgment dated 03.04.1993. The Hon'ble High Court partly allowed the aforesaid Criminal Appeal vide order dt. 28.02.1995 whereby revisionist No. 1 was entitled to claim

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maintenance allowance @ Rs. 200/- per month for the period from 01.01.1988 to 05.12.1990, the date of Talaq as fixed by the Hon'ble Court.

4. Aggrieved by the aforesaid decision of the Hon'ble High Court Allahabad dated 28.02.1995, Smt. Shamim Ara filed criminal appeal no. 465/96 Shamim Ara Vs. State of U.P and another in the Hon'ble Supreme court by the Special Leave. The Hon'ble Supreme Court allowed the appeal filed by Smt. Shamim Ara vide judgment dated 01.10.2002. The operative portion of the judgment is being reproduced below:

" For the foregoing reasons, the appeal is allowed. Neither the marriage between the parties stands dissolved on 05.12.1990/26.10.1991 nor does the liability of the respondent No. 2 to pay maintenance comes to an end on that day. The respondent No. 2 shall continue to remain liable for payment of maintenance until the obligation comes to an end in accordance with law. The costs in this appeal be borned by the respondent No. 2."

5. Pursuant to the judgment of Apex Court, Smt. Shamim Ara approached Railway Administration whereupon DRM (P), Allahabd issued a note to the applicant vide letter 12.09.2003 to show cause as to why P.P.O in favour of Farazana Begum for family pension may not be cancelled thereby authorizing Smt. Shamim Ara for the same and thereafter issued order dated 28.10.2003 against which the applicant had sent his representation dated 07.11.2003.

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6. It has been contended by the applicant that the right of pension being a statutory right could not be taken away and there is no provision of attachment of pension; that disbursement of 50% of the applicant's pension to Smt. Shamim Ara is illegal and arbitrary; that there is no rule or law to transfer the part of pension of Railway Employee to his wife or any other person during his life time; that no action was taken against the applicant despite the fact that the Railway Administration sanctioned withdrawal of Rs. 10,000/- from Provident Fund to the applicant on account of his second marriage; that the matter is still sub-judice since 1991 before the Family Court, Allahabd; that the respondents No 3 and 4 have transgressed the jurisdiction of Judge, Family Court, Allahabad; that the dues to a Govt. employee towards Provident Fund and pensionary benefit is not liable to attachment as has been held in the case of J.C Fund and Finance Vs, UOI AIR 1976 (SC) 1163 which has been further relied upon in case of Meera Bai Damukardak Vs. UOI & Ors (1198) 37 ATC 225.

7. The respondents on the other hand have contended that on the representation of Smt. Shamim Ara alongwith judgment of Hon'ble Supreme Court in Criminal Appeal No. 465/1996, an administrative decision has been taken for disbursement of 50% pension of the applicant to his first wife Smt. Shamim Ara for her livelihood and pension disbursing bank was authorized for the same vide Personnel and Account joint letter dated 28.10.2003. They have further stated that in the light of judgment rendered by the Hon'ble Apex Court in Criminal Appeal No. 465/1996, order was passed by the competent authority to the effect that Smt. Shamim Ara

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was still the legally wedded wife of the applicant and there was no dispute over the same. The authority concerned has also observed that the reply given by the applicant to the show cause notice was not based on facts and accordingly competent authority sanctioned 50% of pension to be given to Smt Shamim Ara. Thus the respondents have stated that the action taken by them was proper as it was as per order of Hon'ble Apex Court.

8. In his RA the applicant has merely reiterated and reaffirmed his contentions in his original application.

9. I have heard the counsel for the parties and perused the pleading on record.

10. On the question of dissolution of first marriage of the first wife i.e Smt. Shamim Ara, the Hon'ble Apex Court in an illuminating judgment have clearly observed as follows : -

" For the foregoing reasons, the appeal is allowed. Neither the marriage between the parties stands dissolved on 05.12.1990/26.10.1991 nor does the liability of the respondent No. 2 to pay maintenance comes to an end on that day. The respondent No. 2 shall continue to remain liable for payment of maintenance until the obligation comes to an end in accordance with law. The costs in this appeal be borned by the respondent No. 2."

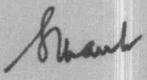
11. The Hon'ble Apex Court not only upheld the marriage between the applicant and Smt. Shamim Ara but also directed that the liability of the respondent No. 2 to pay

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maintenance to Smt. Shamim Ara continues until the obligation of the applicant for payment of maintenance comes to an end in accordance with law.

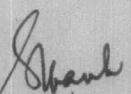
12. Further the DRM, North Central Railway, Allahabad issued a show cause notice dt. 12.09.2003 to the applicant to show cause, in the light of the judgment of the Hon'ble Apex Court as to why the name of Smt. Farazana Begum as a recipient of family pension should not be cancelled and substituted by the name of Smt. Shamim Ara. The respondents further directed the applicant to show cause why departmental action should not be initiated against him after obtaining permission of his H.E President of India for contracting a second marriage during the life time of the first wife. A perusal of the reply dated 13.10.2003 would show that the reply given by the applicant to the show cause notice was neither point-wise nor based on facts. Under the circumstances it is amply clear that the action taken by the respondents was just and proper in the light of the judgment of the Hon'ble Apex Court.

13. The case law referred to by the applicant has no bearing on the peculiar facts and circumstances of the present case. On the other hand, learned counsel for the respondents has cited Meera Bai Damukardak Vs. UOI (Supra) wherein it was held that in the event of a finding of the competent Court of law that applicant is a legally wedded wife, she was held to entitled to family pension in contrast to another lady, who was judicially found to be a mistress. The facts of the present case carry the weightage of the finding of the Hon'ble Apex Court that Smt. Shamim Ara continues to be the legally wedded wife of the



applicant and also the liability on the part of the applicant to pay maintenance having not come to an end, the respondents cannot be faulted with the issue of the impugned order dated 28.10.2003.

14 For the aforesaid reasons and the case law cited above the O. A is dismissed with no order as to costs.



MEMBER- A.

/ANAND/