

1

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No. 1030/2007

A.W. CCP No. 146/2008

Reserved on 6.2.2017

Pronounced on 13-02-2017

Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Ms. Nita Chowdhury, Member (A)

Smt. Ram Mani Giri aged about 49 years wife of Dr. S.P.Giri r/o 248, Tula Ram Bagh, Allahabad.

Applicant

By Advocate: Sri A.D.Singh

Versus

1. Union of India through Comptroller & Auditor General of India, New Delhi.
2. The Accountant General (A.G.) Office of the Accountant General (A & E-II) U.P. Allahabad.
3. The Deputy Accountant General (Admn.) Office of the Accountant General (A & E-II), U.P. Allahabad.
4. Smt. Archana Goswami, aged about 46 years daughter of late Sri S.N. Goswami r/o 2, Tagore Town, Allahabad.

Respondents

By Advocate: Sri R.K. Rai (Counsel for official respondents)

Sri A. Srivastava (Counsel for private respondent)

ORDER

HON'BLE MR. JUSTICE DINESH GUPTA, MEMBER (J)

This O.A. is preferred by the applicant for the following reliefs:-

- i) to issue a writ, order or direction in the nature of mandamus directing the Respondent Nos. 2 & 3 to release and pay the petitioner all settlement dues of the

deceased Sri Ram Dulare outstanding upon them towards provident fund, unpaid salary, unpaid bonus, leave encashment, Group Insurance & Gratuity at an early date together with interest @ 12% per annum from the date when the deceased died i.e. 15.4.2007 till the payment is actually made, within a period as may be fixed by this Hon'ble Tribunal.

ii) to issue a writ, order or direction in the nature of mandamus directing the Respondent Nos. 2 & 3 to take steps and to release and pay the petitioner the aforesaid amount pursuant to the registered will duly executed by the deceased on 2.11.2001 in favour of the petitioner, within a period as may be fixed by this Hon'ble Tribunal.

iii) to issue a writ, order or direction in the nature of mandamus, directing the Respondent Nos. 2 & 3 not to release and pay the aforesaid payments to the respondent No. 4 herein till the suit No. 966 of 2007

Smt. Ram Mani Giri Versus Smt. Archana Goswami & others filed before the Court of Civil Judge (Senior Division) , Civil Court, Allahabad for issuance of Succession Certificate in favour of the petitioner, is decided finally and further to act only in accordance with the law/rules and to make the payment to the petitioner incase the Succession Certificate is issued in her favour by the aforesaid Court of law.

iv) to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Tribunal may deem fit and proper.

v) to award the cost of the petition in favour of the petitioner.

2. The brief facts emerges from the O.A. are that the mother of the deceased Sri Ram Dulare, Smt. Kullan Devi died on 13.10.1983. It is relevant to state that till the death of mother of the deceased, deceased remain unmarried but in December, 1984, deceased married to one Archana Goswami daughter of late Sri S.N. Goswami i.e. the respondent No. 4 but the matrimonial relation being not cordial, could not continue and was completely break down by divorce through registered deed duly signed by the parties and witnessed and the matrimonial relation of husband and wife came to an end and since 10.2.1987, they never saw each other and continued to leave separately.

2.1 However, out of wedlock of the deceased with the respondent No. 4, one son was born who unfortunately died just after one day of his birth and since the date of mutual divorce, i.e. 10.2.1987, the deceased and the respondent No. 4 living separately.

2.2 After the divorce with the respondent No. 4, the deceased started living with the petitioner, who is the only maternal daughter at her residence House No.,

220/1-183/1 Tula Ram Bagh, District-Allahabad. Since the mother and father of the deceased, both ha already died and there was no body to take care of the deceased in the old age and as such it was the petitioner being the only maternal daughter upon whom the deceased was having full confidence and trust, was requested by the deceased to keep him with the petitioner in her house which the petitioner accepted with the consent of her husband and children also.

2.3 At the age about 55 years, the deceased unfortunately developed hyper tension and Kidney deceased and became very seriously ill.

2.4 The deceased executed a registered will deed on 2.11.2001 in favour of the petitioner declaring successor of all the properties movable, immovable and case in hand and at bank and also service benefits including the fund etc. While execution the aforesaid will deed, the deceased also disclosed the details of the properties, bank accounts.

2.5 Thereafter, on the advice of the relatives, well wishers and Pandits, the deceased adopted son of the petitioner namely Abhinav Giri who was at that time aged about eleven years as his son with the consent of natural parents of the said Abhinav Giri i.e. the petitioner and her husband on 11.11.2002 as per the Hindu customs. In order to give further legal effect to adoption

11

of Abhinav Giri as son of the deceased, the deceased also vide adoption deed 4.1.2003 got the adoption of Abhinav Giri held on 11.11.2002 registered.

2.6 The petitioner, apart from the aforesaid registered will dated 2.11.2001, was also duly nominated by the deceased Govt. servant in the relevant records authorizing the petitioner to receive the Gratuity as per Rule 53 (i) of the CCS (Pension) Rules, 1972.

2.7 The deceased Sri Ram Dulare unfortunately died on 15.4.2007 just before few months from the date of his retirement without receiving any service benefits i.e. DCRG, provident fund, pension, commutation , Group Insurance and leave encashment etc. and as already brought on record, the aforesaid factum of death of the deceased was informed to the respondent on 16.4.2007 by the petitioner.

2.8 It is further submitted that this Tribunal may kindly advert the letter dated 5.6.2007 and reply given by the petitioner dated 15.6.2007. The contents of aforesaid two letters are reproduced here and the same may kindly be visualized through bare perusal of the aforesaid two annexure. However, it may be clarified here that the claim of payment of all settlement dues including the death-cum-retirement Gratuity of the deceased vide letter dated 9.5.2007 submitted by the petitioner was duly supported with by the registered will and also by the fact

that the petitioner was duly nominated by the deceased authorizing her to receive the Gratuity and the contents of the application submitted by the petitioner from time to time contend the correct averments and if the office record is not matching with the facts and documents submitted by the petitioner, it is only the office which can alone be held responsible and not the petitioner. Record of the office itself are contradictory which is abundantly clear from the letter dated 5.6.2007 in which the reference of LTC benefits to the mother of the deceased upto 2001 has been made whereas the mother had died on 13.10.1983. Further, the wife of the deceased vide registered deed dated 10.2.1987 duly signed and witnessed by wife and her uncle demonstrate that there was complete break down in the matrimonial relation in the year 1987 itself whereas in the letter dated 10.8.2007, the said wife has stated to have been included in the LTC benefits upto 2001. The aforesaid two facts are contradictory for which it is the office which is responsible. Further, the errors are minor omissions or ordinary wear and tear and the deceased Sri Ram Dulare intentionally or unintentionally would have claimed false LTC benefits showing in the LTC claim the mother and his wife just for pecuniary gain.

2.9 After the aforesaid query, since no reply was given, as such the petitioner sought information under Right to

Information Act, 2005 vide application dated 30.7.2007 and instead of supplying aforesaid information under the RTI, the respondent No. 3 vide letter dated 10.8.2007 again made certain queries with the petitioner.

2.10 It is further submitted that the official respondents are giving undue favour to the respondent No. 4 in the matter of payment of Gratuity, Provident Fund and other retirement /settlement dues with ulterior motive and illegal gratification and further visualizing the fact that despite all the legal documents, in support of the petitioner duly submitted before the official respondents, the official respondents are adamant to make payment to the respondent No. 4. Petitioner moved an application before the Court of Civil Judge (Senior Division) Civil Court, Allahabad for issuance of Succession Certificate in her favour which has been registered as Suit No. 966 f 2007- Smt. Ram Mani Giri Vs. Smt. Archana Goswami and others. In the aforesaid suit for issuance of Succession Certificate, all the legal documents such as Will etc. referred to above have been relied upon and the respondent No. 4 has also been impleaded as one of the respondent.

2.11 The petitioner has also informed the official respondents about the aforesaid facts vide letter dated 5.10.2007 received by the official respondents by putting their seal and signature on the same date.

2.12 From the aforesaid facts, it is abundantly clear that it is the petitioner who should be allowed the payment of settlement dues particularly the DCRG of the deceased Sri Ram Dulare only and in no way respondent No. 4 comes into the picture in view of the fact that she took mutual divorce with the deceased vide divorce letter dated 10.2.1987.

2.13 Apart from the registered will, since the petitioner has been duly nominated by the deceased before his death under Rule 53 (1)(ii) of the CCS (Pension) Rules, 1972 which provides that in case the Govt. servant has no family, the nomination may be made in favour of a person or persons or body of individuals whether incorporated or not.

2.14 As per the aforesaid Registered will dated 2.11.2001, it would be seen that as a matter of fact at the time when the nomination was made, there was no family member to whom the deceased wanted to authorize to receive the Gratuity and as such aforesaid provision comes into play.

2.15 It is mention that in all such disputed claims, as per the law, such payments are made to the persons in favour of whom such Registered Will deed exists and further to the person in whose favour the court of law issues succession certificate authorizing such person to receive the settlement dues. The official respondents

are not supposed to by-pass the legal position by making the payment to the respondent No. 4 by giving undue favour to her with view to gain illegal gratification.

2.16 In view of the matter, on account of registered will and the succession certificate which are likely to be issued by the competent court of law, the respondents are liable to be directed not to release any payment in favour of the respondent No. 4 till the aforesaid Suit No. 966 of 2007 is decided by the Civil Judge (Senior Division) Civil Court, Allahabad.

3. Notices were issued to the respondents.
4. At the time of admission, the Tribunal on the point of interim relief directed the respondents not to affect any payment out of the financial benefits occurring to late Ram Dulare if any till the succession issue is finally decided.
5. Respondents No. 1,2 an 3 appeared and filed counter Reply and stated therein that it is wrong to say that the applicant is entitle for retiral benefits as claimed by her. It is also incorrect to say that the will is duly executed and valid document. It is also incorrect to say that the applicant is entitled to receive the gratuity by virtue of having nomination in her favour. It is also incorrect that the alleged registered Talaknama dated 21.2.1987 is valid piece of document.



5.1 It is submitted that after the death of late Ram Dulare, the respondent No. 4 Smt. Archana Goswami submitted a duly notarized affidavit claiming herself to be legally wedded wife of deceased. She also submitted the Post Office Pass Book dated 16.11.1994 showing herself to be wife of late Ram Dulare. She also submitted her claim on the basis of CGH Card No. 11948 and new CGHS Card No. 12195 coupled with the aforesaid facts that late Ram Dulare availed the LTC in the Block year 1982-85, 1990-93, 1994-97 and 1998-2001 showing her wife Smt. Archana Goswami as his companion which strongly support the claim of respondent No. 4.

5.2 It is further submitted that there cannot be a legal separation on the basis of any such alleged document. It is also mentioned that late Ram Dulare has availed the LTC in the block year 1982-85, 1990-93, 1994-97 and 1998-2001 even after the said alleged agreement dated 10.2.1987 as such even if any such agreement was executed it will loose its sanctity.

5.3 Rule 50(6) read with Rule 53 of the Pension Rules clearly contemplate that nomination can only be in favour of family members and the fact that Smt. Archana Goswami, legally wedded wife is alive as on today the alleged nomination in favour of Smt. Ram Mani Giri who is not even family member as defined under

Rule 50(6) of the Pension Rules, will be of no consequence.

5.4 In so far as the will executed by late Ram Dulare whereby he has bequeathed all his movable & immovable properties in favour of Smt. Ram Mani Giri, deposits in the banks and the amount to be paid arising out of service benefits, admittedly late Ram Delare died on 15.4.2007, however, there is nothing on record to show that Smt. Ram Mani Giri had taken any steps for obtaining the probate where the legal sanctity of the alleged will could have been tested. Therefore, the applicant cannot derive any benefit out of the alleged will. However, despite all the aforesaid facts, in view of the claim put forth by the applicant, the amount has not been released in favour of respondent No. 4 as well. The amount would be released in favour of the party in whose favour the succession certificate is issued by the competent court

5.5 It is submitted that during his life time, late Ram Dulare had never brought any such fact to the knowledge of the respondents rather the fact that late Ram Dulare had availed the LTC in block years upto 2001 are sufficient enough to prove that respondent No. 4 was legally wedded wife of late Ram Dular. It is further submitted that the registered divorce deed is of the year 1987 whereas subsequent to it late Ram Dulare had

availed LTC showing respondent No. 4 Smt. Archana Goswami as his wife. As such the applicant cannot be held entitled for the post retiral benefits.

5.6 It is further submitted that no intimation about separation after marriage was furnished by late Ram Dulare during his service and respondent No. 4 has submitted duly notarized affidavit claiming herself to be legally wedded wif of late Ram Dulare. Respondent No. 4 also made an averment that she had never been divorced by late Ram Dulare and no intimation about judicial separation/ divorce is available on record of the answering respondents to deny payment of retiral benefits to family member.

5.7 It is further submitted that late Ram Dulare has never intimated the Department regarding execution n of any such registered will nor any such will had never been furnished while nominating the applicant for the post retiral benefits. Admittedly, applicant died on 15.4.2007 and there is nothing on record to show that Smt. Ram Mani Giri had taken any steps for obtaining the probate where the legal sanctity of the alleged will could have been tested.

5.8 It is further submitted that as per the office procedure, late Ram Dulare had not intimated to the office regarding the adoption of Abhinav Giri on 11.11.2002 as his son nor he ha given any intimation to

the Department about addition in his family and now the applicant is furnishing the adoption document after the death of deceased employee which cannot be made the basis for releasing the retiral benefits in favour of the applicant.

5.9 It is also submitted that the claim of the applicant on the basis of fresh nomination is not tenable as the CCS (Pension) Rules and other governing nomination/payment of retira benefits, clearly defines family as:-

“For the purpose of this Rule and Rules 51, 52 and 53, ‘family’ in relation to a Government servant, means-

- i) Wife wives including judicially separated wife or wives in the case of a male Govt. servant,
- ii) Husband, including judicially separate husband in the case of a female Govt. servant.
- iii) Sons including stepsons and adopted sons,
- iv) Unmarried daughter including step-daughters and adopted daughters.
- v) Widowed daughter including step-daughters and Adopted daughters and son..”

and those having family are bound to nominate only family members. Thus, the nomination of the applicant Smt. Ram Mani Giri by late Ram Dulare was void- ab initio and need not be taken cognizance for release of retirement benefits. Further, the separation as alleged by

the applicant is contrary to the declaration on certificate furnished by late Ram Dulare in LTC claims for the Block years upto 2001 wherein the deceased employee has accepted that Smt. Archana Goswami is his wife as well as living and residing with him.

5.10 It is further submitted that as per CCS (Pension) Rules, 53 (i) when the wife of a Govt. servant is alive, she has the sole right for all retiral benefits. Late Ram Dulare has submitted a fresh nomination in the month of April, 2011 which was void ab-initio as the same was not documented with any legal divorce paper. For the sake of precaution matter, a letter dated 8.10.2007 has already been issued to both the parties to obtain the succession certificate from the competent authorities and the reply is still awaited.

5.11 It is further submitted that the evidence (affidavit) produced by the wife of late Ram Dulare proves that she is the legal wedded wife of late Ram Dulare and also supported by some office documents. Late Ram Dulare has also one daughter through this wife a is evident from the School T.C. (Annexure CA-3). In absence of any documents of divorce duly ratified by court, the nomination in the name of applicant who is outside family is void.

6. Private Respondent No. 4 has also filed counter Reply through which it is stated the applicant Smt. Ram

Mani Giri has claimed the payment of DCRG, Provident Fund, arrears of complete salary leave encashment, group insurance and unpaid bonus of late Ram Dulare the husband of the deponent, who had expired while in service as Senior Accountant in A.G. Office, Allahabad on 15.4.2007.

6.1 The deponent has also laid her claim to the aforesaid payments of her husband as she was entitled to get the same as she is his legally wedded wife.

6.2 It is further submitted that as the unpaid claims of late Ram Dulare has become undisputed between the applicant Smt. Ram Mani Giri and the deponent, hence Smt. Ram Mani Giri has filed succession case No. 996 of 2007 Smt. Ram Mani Giri Vs. Archana Goswami before the Court on the basis of forged will alleged to have been executed by late Ram Dulare and the deponent has filed objection/ written statement in the Succession case No. 996/2007.

6.3 The deponent has also filed Succession Case No. 360/2008 Smt. Archana Goswami Vs. Smt. Jaya seeking the Succession Certificate in favour of the unpaid claims of her husband late Ram Dulare and both the succession case have been consolidated and are being pending for disposal before the Civil Court.

6.4 The succession case filed by the applicant, the applicant Smt. Ram Mani Giri has claimed the

succession of leave fund, GPF, Gratuity, leave encashment, Group Insurance and unpaid bonus of late Ram Dulare whereas the deponent's claim for family pension on account of death of late Ram Dulare which was neither claimed nor disputed by the applicant Smt. Ram Mani Giri.

6.5 The deponent has denied the aforesaid forged Talaknama dated 10.2.1987 and the execution of the alleged wills dated 2.11.2001 and 13.4.2007. She claimed to be wife of the deceased Ram Dulare and as such she is entitled to receive all the claims which is payable after the death of her husband late Ram Dulare. Deponent also submitted that she was never divorced nor there is any such decree against her by the competent court.

6.6 The A.C. -II (Account) has ordered for the family pension on the basis of Rule 50(6)(i) of CCS (Pension) Rules and also on the basis of their own office record wherin the deceased Ram Dulare has claimed LTC for himself his mother and the deponent till 2001. The family pension payable to the deponent on account of death of her husband late Ram Dulare was never disputed by the applicant before any court or authority as such she is entitled to get the same.

6.7 The family pension has been stopped by the aforesaid authority, deponent has no mean of her

livelihood and she is at the verge of starvation, it is expedient in the interest of justice that Hon'ble Tribunal may kindly be pleased to order that the order dated 18.10.2007 does not cover the undisputed family pension of the deponent and as such the family pension is payable to the deponent be restored.

7. Counsel for applicant filed Rejoinder Reply, through which he has reiterated the facts as stated in the O.A. and denied the contents of Counter Reply filed by the official respondents as well as by the private respondent No. 4. However, it is submitted that due to serious internal disease of late Ram Dulare, the respondent No. 4 has herself executed a registered divorce deed on 10.2.1987 with mutual consent of late Ram Dulare and in witness her real uncle and elder brother of late Ram Dulare put their signature on deed. Thereafter, respondent No. 4 and late Ram Dulare have started living separately w.e.f. 10.2.1987. After execution of registered divorce deed, there was complete breakdown of matrimonial relationship and they never see each other and continued to live separately and on account of aforesaid deed, she cannot claim to be wife of late Ram Dulare and since 10.2.1987, respondent No. 4 had never come to help in spite of the fact that deceased Ram Dulare was very seriously ill. It is further submitted that the applicant was asked by the concerned authority of

Accountant General Office to produce the succession certificate, so as per their request the applicant has filed Civil Suit No. 966 of 2007 before the leave Civil Judge (SB) Allahabad on 5.10.2007.

7.1 It is further submitted by the applicant that in the divorce deed, the respondent No. 4 has already accepted that she will not contest each other before any court.

7.2 However, it is submitted that there is no dispute in regard to family pension as the deceased has already submitted Form 3 under Rule 54 (12) stating no family i.e. not applicable. Deceased had never indicated any name for family pension. Even he had given nomination of DCRG to the applicant only and thereafter, her son only which was submitted by the Sr. Account Officer to the learned Chief Judicial Magistrate , Allahabad on 9.11.2009. The applicant has claimed unpaid service benefits of deceased Ram Dulare on the basis of pension papers submitted by the deceased Ram Dulare and on the basis of registered divorce deed executed by the deceased and respondent No. 4 on 10.2.1987.

8. The applicant also moved an amendment application. However, the said amendment application was rejected by the Bench.

9. The official respondents also filed Supple. Counter Affidavit and refuted the allegations made in the Misc. Application No. 2373/2014.

10. The applicant also moved an application for recalling/ modification of order dated 22.2.2013. However, the said modification/ recall of order was also rejected.

11. Contempt Application No.146/2008 in O.A. No. 1030/2007 has also been filed by the applicant for non-compliance of order dated 18.10.2007. Respondent No.4 also moved M.A. No. 1963/2010 for modification of order dated 18.10.2007 and this Tribunal vide order dated 4.6.2010 observed that prima-facie, we are of the view that the aforesaid order of the Tribunal does not stop the respondents from paying the family pension to the respondent No. 4 which was sanctioned to her. Moreover, Court also observed that the applicant herein herself does not claim that she was entitled for any family pension after the death of late Ram Dulare. Further, the Court seen that once the family pension has been sanctioned to a person, it cannot be stopped or withheld by the respondents only except through due process of law prescribed in Rule 6 of the Pension Rules. However, since the advocates have suddenly declared strike and have abstained from judicial work, it is not in the interest of justice to pass any order without hearing the parties. This Tribunal again vide order dated 12.7.2010 observed that it is made clear that neither any relief has been claimed in O.A. No. 1030/2007 regarding stoppage of

family pension payable to Smt. Archana Goswami nor the interim order has been passed regarding stoppage of family pension, it is not justified for the Respondent No. 1 to 3 to stop family pension payable to Smt. Archana Goswami

12. Both the parties have also filed relevant documents in support of their claim and also filed written arguments.

13. Learned counsel for the applicant argued that the deceased Ram Dulare made nomination for family pension/retiral benefits in favour of the applicant. He referred the document of nomination enclosed with the Rejoinder Reply in which according to the applicant, it is declared by the deceased that there is no family member. Column of family member marked as N.A. which shows that the deceased was not willing to nominate his family member because he was issueless before the divorce. Counsel for the applicant further argued that the Succession Suit No. 966/2007 Ram Mani Vs. Archana Goswami and another Succession Suit No. 360/2008 Archana Goswami Vs. Jaya Goswami are pending before the competent Court, Allahabad and the decision is still pending. Therefore, the O.A. cannot be decided to violate its own order dated 18.10.2007.

14. The next argument of the applicant is that a Registered will Deed was made by the deceased in her

favour and the Registered Will Deed is final because the same was not challenged before the competent Court. He further argued that if any succession suit is pending before the competent court, Allahabad which is still going on under trial between the parties and since the Succession Suit is filed in compliance of the order of the Tribunal, the O.A. cannot be decided unless the Succession Suits were finally decided. Counsel for applicant further argued that vide order dated 11.3.2011, Tribunal directed to produce all concerned records of the deceased before the Tribunal for appraisal to adjudicate the dispute but the same was not filed till now and in absence of essential documents, the O.A. cannot be decided finally. The counsel further submitted that the Court vide interim order dated 18.10.2007 directed not to affect any payment out of the financial benefits occurring to late Ram Dulare till the succession issue is finally decided. However, in violation of interim order, family pension is being given to the respondent No. 4 which cannot be given until the succession suit is decided by the competent court. Counsel further argued that if the O.A. is being dismissed by the Tribunal violating his own order, the respondents would be certified to give pension/ retiral benefits to respondent No. 4 against law and it would be give a new birth of dispute in respect of

recovery of paid amount to respondent No. 4 after dismissal of succession suit.

15. The counsel for applicant further argued that respondents enclosed LTC of Ram Dulare, which prima facie appears as a forged document because in the same, date of birth of deceased and his mother are calculatively wrong. It shows that blunder has been committed by the respondents to prepare a forged document knowingly. It is also important to mention that mother of the applicant was died in 1983 and deceased has shown her name in LTC in 1999 to 2001. It also shows that the respondents falsely fabricated the name of step mother in LTC in 1990 to 2001.

16. Counsel for respondents argued that the applicant has filed this O.A. only with a relief that till disposal of the succession suit pending before the competent court, no amount shall be paid to any body. In reference to the retiral dues, although the applicant has relied upon number of documents i.e. Will, Adoption Deed claiming applicant as a legal heir of the deceased who expired during the service period. The counsel further submitted that as per official record, respondent No. 4 i.e. Arhana Goswami is the wife of deceased employee and Smt. Kallan Devi as mother of the deceased.

17. Rule 5 (6) read with Rule 53 of the Pension Rule contemplates that the nomination can only be made in

favour of family members wherein word 'Family' for the purpose of Rule 51,52 and 53 has been defined. In the definition of family, the applicant is not covered. Further Rule 53 (1)(i) provides that "the government servant has a family, the nomination shall not be made in favour of any person or persons other than the members of his family." Therefore, the applicant have no locus to claim any of the fund as defined under the Pension Rules, including family pension, death cum retirement gratuity, other emoluments including dearness allowances, contributory provident fund etc.

18. So far as, payment of GPF, PF, GIS, leave encashment etc. are concerned, which are being governed by the statutory rules framed wherein provision of nomination is given. However, nomination can only be made in favour of a family member. The relevant provisions are quoted below:-

- i) Employees Group insurance Scheme 1980 provides nomination under Para in favour of member of his family, page-13 i.e. para 19.3 and 19.4 Family defined at page 14 in para 19.3 (Rule 291)(c).
- ii) General Provident Fund (CS)Rule, Rule 5 provides for nomination with further certification to make a nominee if subscriber has no family (O.M. dated 16.8.1950).

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iii) Leave encashment as per CCS (Leave) Rule 1972, para 39 and 39 C provide payment in favour of family as defined under Rule 39 C.

iv) Pension and Death Gratuity are payable to family member under Rule 51, 52 and 53 of CCS (Pension) Rule, 1972.

19. Counsel for respondents further argued that the aforesaid O.A. filed by the applicant is not maintainable as she is not covered under the definition of family nor aggrieved by any order defined under Section 19 (1)(a & b) of Administrative Tribunal Act, 1985. If there is any dispute with regard to movable and immovable properties, will executed by the deceased employee, the proper remedy is Succession available under Section 373 of Indian Succession Act 1925. While if there is any dispute with regard to validity of will, then remedy also available by way of grant of probate/ letter of administration. The issue of adjudication of dispute on the ground of a Will or Adoption deed is not maintainable before the Tribunal.

20. So far as fact related to respondent No. 4 i.e. Archana Goswami is concerned, she is wife of the deceased, Ram Dulare cannot be disputed before this Tribunal as there is nothing on record of the official respondents showing that deceased employee has divorced Archana Goswami in the year 1987, while

contrary to the fact the deceased employee has taken LTC in the year 1982-85, 1990-93, 1994-1997 and 1998-2001 showing his wife Smt. Archana Goswami as his companion. Therefore, the arguments of divorce/legal separation of deceased with respondent No. 4 is not tenable.

21. Counsel for respondents relied upon judgment of **Punjab and Haryana High Court in the case of Chander Kanta Vs. Monika reported in Administrative Total Judgments 2001 (1) 460.**

22. We are unable to accept the contentions raised by the learned counsel for the applicant.

23. In the nut-shell, the applicant in this O.A. claimed for relief not to release any retiral dues (except family pension) in favour of either respondent No. 4 or in favour of the applicant before finalization of the succession suit.

24. Admittedly, the applicant is the daughter of sister of deceased Ram Dulare and it has not been disputed by the applicant that respondent No. 4 is legally wedded wife of deceased. However, applicant has contended that respondents No. 4 was divorced by the deceased employee. In the Pension Rule, the definition of family has been given and admittedly, the applicant does not fall within the definition of family member. She is claiming her right on the basis of a Will in her favour alleged to has been executed by the deceased Ram

Dulare. However, the said will is still under dispute in the succession suit. So far as the contention of the applicant regarding nomination is concerned, that the deceased Ram Dulare has filled up the papers in favour of the applicant will be of no value as the deceased has no authority to nominate any person other than the family member. According to the applicant, the only relief which the applicant is claiming is in the form of injunction restraining the official respondents from making payment to respondent No. 4 during the pendency of succession suits. Administrative Tribunal Act does not give such power to pass any final order in the form of injunction. Admittedly, the Civil Court has competent jurisdiction for adjudicating the succession matters and the Civil Court has ample power to issue injunction in respect of payment to a particular person or not or restraining the authorities not to make any payment to any person. The Tribunal has no authority to pass such type of injunction order. Hence, in our opinion, it will be better for the applicant to approach to the Civil Court which is the competent court in the matter to seek relief of injunction. So far as this Tribunal is concerned, this matter is not related to service dispute of deceased or any consequential benefits flowing from the service matter. Admittedly, the applicant does not fall within the definition of family member of the deceased. Her sole

right depends upon the validity or invalidity of Will which cannot be adjudicated by this Tribunal when the competent Civil Court is already adjudicating the same. Hence, as far as relief of injunction restraining the official respondents from making payment to respondent No. 4 is concerned, the Tribunal has no such authority to issue any direction of injunction. In view of the above, the Tribunal is of the view that applicant has no locus to initiate proceeding under the A.T. Act. before this Tribunal.

25. So far as family pension is concerned, the applicant has not prayed for family pension in her favour nor she can claim as she is not the wedded wife of the deceased nor she is family member of the deceased. It is not disputed that official respondents have started paying family pension to respondent No. 4. However, by means of mis-interpreting the interim order, the respondents have wrongly stopped the payment of family pension to Respondent No.4. The Tribunal while issuing interim order has no where directed the official respondents to stop the family pension in favour of respondent No. 4. Applicant herself does not claim that she is entitled for family pension after the death of deceased Ram Dulare. However, it is well settled that once the family pension has been sanctioned to a person, it cannot be stopped or withheld by the respondents only except through due

process of law prescribed in Rule 6 of the Pension Rules.

Hence it is clear that respondents have no authority to stop the family pension to respondent No. 4 without due process of law prescribed under Rule 6 of Pension Rules.

26. The case law relied upon by the respondents also help the respondent No. 4 in getting family pension as well other retiral dues like Gratuity, Group Insurance, GPF etc.

27. In view of the above discussion, O.A. is liable to be dismissed. Accordingly, it is dismissed. No order as to costs. Interim relief granted earlier, stands vacated.

28. Since interim relief dated 18.10.2007 passed by this Tribunal in O.A. No. 1030/2007 stands vacated, accordingly Contempt Petition No. 146/2008 for non-compliance of interim order dated 18.10.2007 filed by the applicant is also dismissed.

[Signature]
(NITA CHOWDHURY)
MEMBER (A)

[Signature]
(JUSTICE DINESH GUPTA)
MEMBER (J)

HLS/-