

**Central Administrative Tribunal
Principal Bench**

OA No.3531/2013

New Delhi this the 30th day of July, 2018

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

Prem Lata Devi @ Ansuia Devi,
W/o Shri Janardan Prasad Singh,
R/o Village Mai, PO Manjaur,
PS Warisaligang, Distt. Nawada (Bihar) - Applicant

(By Advocate: Shri RK Shukla)

Versus

1. Union of India
Through the Secretary,
Ministry of Road Transport & Highway,
Transport Bhawan, 1, Parliament Street,
New Delhi-110001
2. The Director General, (Road Development)
(For Regional Offices of
Ministry to Road Transport & Highway)
Ministry of Road Transport & Highway,
Room No.210, Transport Bhawan,
1, Parliament Street, New Delhi-110001
3. The Director (Highway)
Ministry of Road Transport & Highway,
Room No.239, Transport Bhawan,
1, Parliament Street, New Delhi-110001
4. The Director (MVL & VIG)
Ministry of Road Transport & Highway,
Room No.133, Transport Bhawan,
1, Parliament Street, New Delhi-110001
5. The Superintending Engineer,
Regional Office (Civil)
Ministry of Road Transport & Highway,
B-748, Sector C, Maha Nagar,
Lucknow-226006 (UP)
6. The Executive Engineer for Regional Office,
Office of the Regional Office, Patna,
Ministry of Road Transport & Highways,
17 IAS Colony, Kidwai Puri,
Patna-800001 (Bihar); and

7. Shri Janardan Prasad Singh,
Working as Head Clerk,
Regional Office Patna,
Under the control of Executive Engineer,
17, IAS Colony, Kidwai Puri,
Patna-800001 (Bihar) - Respondents

(By Advocate: Mr. Hanu Bhaskar)

ORDER (Oral)

This Original Application (OA) has been filed by a private person who is the wife of a Government servant in which it has been claimed that her husband has married second time without divorcing her and she seeks the following reliefs:-

- “(i) to direct the respondent no.2 to take appropriate action in respect of alleged misconduct complained by applicant herein vide representation dated 17.9.2013 and it may be further directed to respondent no.2 to initiate proceedings under Rule 9 of the CCS (Pension) Rules, 1972;
- (ii) to allow the Original Application of the applicant treating as very special case keeping in view necessity of demand of justice.
- (iii) to pass any other orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. It is stated that the respondent no.7 is the husband of the applicant who had been working in the office of the respondents and attained the age of superannuation on 30.09.2013. It is stated that from the office of respondent no.6, a letter was communicated to the applicant on

13.09.2013 whereby she has been directed to submit 10 numbers of photographs as in terms of office record, she is the nominee of respondent no.7. Since 1985, the respondent no.7 has started harassing the applicant thereby giving serious threatening to get her killed if she opens her mouth regarding second marriage. The applicant is running from pillar to post since 1985 to get her grievance sorted out. Being aggrieved by action of the respondents, she has to take resort of court of law for getting maintenance. The maintenance initially was fixed Rs.300/- and later on was enhanced to Rs.600/- per month, keeping in mind the dearness i.e. rising of price of articles. The applicant further filed petition before the 1st Additional Sessions Judge, Nawada and by an order dated 25.11.2009, the monthly maintenance was enhanced to Rs.4,000/- per month which was to be paid on or before 15th of each of subsequent month. Enhanced maintenance was applicable from the date of passing of the order. It is stated that her husband, i.e. respondent no.7 has committed serious misconduct by violating the Rule 3 of the CCS (Conduct) Rules, 1964 by getting a second marriage with Smt. Poonam which is not permissible. The applicant made representation to the competent authority but nothing has been done. The applicant apprehends that

having been committed serious misconduct, the respondent no.7 will get success to receive retiral dues, therefore, at this stage, it has become sine qua non to enquire into the matter by way of initiating departmental proceedings in accordance with law.

3. First of all, the respondents have raised a preliminary objection submitting that this Tribunal does not have territorial jurisdiction to decide and entertain the present OA

4. The respondents have submitted that there has been no departmental inquiry or proceedings conducted against respondent no.7 as there was no prima facie evidence that he has a 2nd wife besides the applicant. The department only had knowledge that there was some matrimonial dispute between the applicant and the respondent no.7 but at no point of time, there was any information of his 2nd wife. As per the directions of the competent court of law, i.e. the Family Court at Nawada, in maintenance case no.22/1995, the department was deducting Rs.4000/- from the salary of the respondent no.7 and depositing the same in the bank account of the applicant w.e.f. August 2010 till the date of superannuation of the respondent no.7. Further there were directions by the Family Court to deposit arrears amounting to Rs.1,11,600/- from January,

2005 to July 2010 and accordingly, the said amount was deducted from the salary of the respondent no.7 and deposited in the account of the applicant in 2 instalments of Rs.42,180/- and Rs.69,420/- in May 2013 and October 2013 respectively.

5. It is further submitted in the reply that at no point of time, the applicant had informed the department that the respondent no.7 had remarried and all her request were to release her maintenance amount. Even the Court did not mention that the respondent no.7 has remarried and rather the allegation of the applicant, as per Court order, was that the respondent no.7 is living separately from her. It is only for the first time that the applicant claimed that respondent no.7 has remarried in her letter dated 17.09.2013.

6. The respondent no.7 was, vide letters dated 23.09.2013 and 25.09.2013, asked to explain/clarify the matter regarding his re-marriage and respondent no.7, in response to the aforesaid letters, submitted that he did not have any other wife and that was never the case of the applicant before the Family Court. He further stated that he has not been judicially separated from the applicant and that he had never availed of any government facility for any person other than his wife and the son. In this view of the matter, the Department issued letters dated 25.09.2013

and 08.10.2013 to the applicant, advising her to approach the Family Court at Nawada.

7. It is also submitted that since the pension and retirement benefits of the respondent no.7 were put on hold initially, he requested to release the same vide letter dated 16.12.2013. the matter was taken up by the Department with the Department of Pension and Pensioner's Welfare and with Department of Legal Affairs in February 2014 and March 2014 and it was advised by them that unless there are any departmental or judicial proceedings pending at the time of retirement, it would not be possible to withhold the pension or gratuity of the retirement government servant.

8. It is also submitted that the applicant as well as respondent no.7, vide letters dated 25.04.2014 and 23.04.2014 were required to provide information regarding pending judicial proceedings at the time of retirement of respondent no.7. In a reply, respondent no.7 vide letter dated 23.04.2014 informed that there was no judicial proceedings pending against him at the time of retirement. However, the applicant, vide letter dated 15.05.2014 produced the petition filed before the Hon'ble Tribunal which was filed in the month of October, 2013 (case no. 3531/2013) and was also dismissed as withdrawn by Hon'ble CAT order dated 04.10.2013. She had also

forwarded a petition filed on 21.11.2013 before the Family Court, Nawada and a certification dated 12.05.2014 by advocate Shri Anjani Kumar Singh regarding filing of a petition on 05.05.2014 on the matter before Hon'ble High Court, Patna. As none of the cases was pending at the time of retirement i.e. 30.09.2013, it was decided in May, 2014 to release the pension and retirement benefits of respondent no.7.

9. I have heard both sides and perused the pleadings available on record.

10 This Tribunal finds that this Original Application is not within the competence jurisdiction of the CAT as this Tribunal can go into the validity of any action of the respondent Department, but cannot direct the respondent Department to take action against any retired official. The relief claimed in the instant case for a direction for granting retiral dues to the applicant from the salary of the retired employee is not permissible.

11. It is also noted that there was no judicial proceedings pending against the respondent No.7 at the time of his retirement, i.e., 30.09.2013, whereas the applicant has filed the OA before the Tribunal in the month of October, 2013, and she had also forwarded a petition before the Family Court, Nawada on 21.11.2013. As such, the

respondents after consulting with the Department of Legal Affairs have fairly released the pension and retirement benefits to the respondent No.7 as there were no departmental or judicial proceedings pending at the time of his retirement. Rules 9 (4) and 69 of the CCS (Pension) Rules, 1972 read as under:-

“9. Right of President to withhold or withdraw pension

4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in ²[[Rule 69](#)] shall be sanctioned.

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69. Provisional pension where departmental or judicial proceedings may be pending

(1) (a) In respect of a Government servant referred to in sub-rule (4) of [Rule 9](#), the Accounts Officer shall authorize the provisional pension equal to the maximum pension which would have been admissible on the basis of qualifying service up to the date of retirement of the Government servant, or if he was under suspension on the date of retirement up to the date immediately preceding the date on which he was placed under suspension.

(b) The provisional pension shall be authorized by the Accounts Officer during the period commencing from the date of retirement up to and including the date on which, after the conclusion of departmental or judicial proceedings, final orders are passed by the competent authority.

(c) No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon :

¹Provided that where departmental proceedings have been instituted under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, for imposing any of the penalties specified in Clauses (i), (ii) and (iv) of Rule 11 of the said rules, the payment of gratuity shall be authorized to be paid to the Government servant.

(2) Payment of provisional pension made under sub-rule (1) shall be adjusted against final retirement benefits sanctioned to such Government servant upon conclusion of such proceedings but no recovery shall be made where the pension finally sanctioned is less than the provisional pension or the pension is reduced or withheld either permanently or for a specified period.”

The aforesaid rules provides for certain mechanism for the civil servant and to his employer to act in a particular manner under certain circumstances, but neither of these rules confer any right on the applicant, estranged wife of a civil servant, for seeking a direction to the employer for not granting certain benefits to a civil servant.

12. The learned counsel for the applicant has thus miserably failed to show how the claim of the applicant can be enforced in terms of Rules 9 (4) and 69 of the CCS (Pension) Rules, 1972 or under any other provision of any other law.

13. Since the claim as to retiral benefits is being pursued in the Family Court at Nawada and Hon’ble High Court at Patna, this Tribunal cannot direct the department to

release the same to the applicant. The department will undertake any further action as per the directions of those Courts.

14. In view of the above facts and circumstances, the OA is bereft of merit and is accordingly dismissed. No order as to costs.

(NITA CHOWDHURY)
MEMBER (A)

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