

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
ORIGINAL APPLICATION NO.060/00652/2017

Chandigarh, this the 12th day of October, 2018

...
CORAM: HON'BLE MS. P. GOPINATH, MEMBER (A)

...

1. Premo, aged 52 years wife of Late Sh. Som Pal, resident of House No. 2236, Dadu Majra Colony, Chandigarh.
2. Anita aged 24 years daughter of Late Sh. Som Pal, resident of House No. 2236, Dadu Majra colony, Chandigarh.
3. Sangita aged 22 years daughter of late Sh. Som Pal, resident of House No. 2236, Dadu Majra Colony, Chandigarh.
4. Rahul Kumar aged years son of Late Sh. Som Pal, resident of House No. 2236, Dadu Majra Colony, Chandigarh.

....Applicants

(Present: Mr. Vikas Chaudhary, Advocate)

Versus

1. Union Territory Chandigarh through Administrator.
2. Principal Officer, Accountant General (A&E) Punjab, Sector 17-E Chandigarh, near Fire Brigade Office, Chandigarh.
3. Sanjay Kumar son of late Sh. Sompal, resident of House No. 2236, Dadu Majra colony, Chandigarh.
4. Meenu aged 28 years wife of Vishnu Kumar, daughter of late Sh. Sompal, resident of House No. 71, Naya Gaon, HIM Nagar, District Mohali.

.... Respondents

**(Present: Mr. Barjesh Mittal, Advocate for Respondent No. 2
Mr. J.R. Syal, Advocate for Respondent No. 3)**

ORDER

MS. P. GOPINATH, MEMBER (A)

1. Husband of the applicant died in harness on 15.02.2016. Applicant who is the second wife, first wife being deceased, of the applicant, filed a representation for grant of family pension and retiral benefits. The third respondent, who is the son of the first wife of the deceased employee, addressed the AG Office (Respondent No. 2) for a share in the retiral benefits, which, in response, informed him that his name was not indicated in the list of children on record.

2. The third respondent has filed a suit for declaration to the effect that he has a right to receive service/retiral benefits of the late

employee to the extent of half the share and equal share in the landed property of the deceased employee. The applicant had put in appearance in the above mentioned case and filed a written statement. Applicant also moved an application before the Hon'ble Court for issuing official directions to the respondents 1 & 2 to release 75% of the retiral benefits of the deceased employee and she was in need of money on account of marriage of her elder daughter.

3. The official respondent No. 2 also submits in his reply to the application that under order 39 Rule 1 & 2, the Hon'ble Civil Court has no jurisdiction to pass any order/direction to the respondent department. This was on account of the fact that retiral benefits being a service matter came under the jurisdiction of the Central Administrative Tribunal.

4. The applicant, by way of this O.A. has sought issuance of a direction to the official respondents to release the retiral benefits of her deceased husband, as per nomination made by the deceased official.

5. The official respondent No. 2 has filed reply reiterating the factual matrix of the case. Respondent No. 3 has filed reply staking his claim on half of the retiral benefits, being son of the deceased employee and prayed for dismissal of the O.A.

6. After hearing the arguments in part on 10.08.2018, this Court directed the Respondent No. 2 to place on record the order passed in application filed under Order 7 Rule 11 of CPC, by the Civil Court. In pursuance thereof, respondent No. 2, by way of MA No. 060/01446/2018, has produced the order of the Civil Court and the nomination form of the deceased employee. MA is allowed and both

the documents are taken on record. The relevant part of the order dated 09.07.2018 passed by Civil Judge, Chandigarh is extracted hereunder:-

"The basis contention of the defendant no. 2 is that the suit is barred by jurisdiction. However, this contention is to be supported by adequate and concrete proof which shall be adduced at the stage of evidence. The first and second relief sought by plaintiff are civil matter, whereas the third relief is service matter, which is to be decided by CAT. Hence no ground for rejection of the plaint to the extent of first and second relief under Order 7 Rule 11 CPC is made out."

Once the Civil Court has already opined that the service benefits are to be adjudicated by CAT who has exclusive jurisdiction under Administrative Tribunal Act, 1985, therefore, we are adjudicating the relief sought in the O.A., the Tribunal proceeds accordingly.

7. As per Rule 50(i)(b) of CCS (Pension) Rules, if a Government servant dies while in service, the death gratuity shall be paid to his family as in the manner indicated in sub rule (i) of Rule 51 of CCS (Pension) Rules. Rule 51(i) reads as follows:-

51. Persons to whom gratuity is payable

(1)	(a)	The gratuity payable under Rule 50 shall be paid to the person or persons on whom the right to receive the gratuity is conferred by means of a nomination under Rule 53 ;
	(b)	If there is no such nomination or if the nomination made does not subsist, the gratuity shall be paid in the manner indicated below -
	(i)	if there are one or more surviving members of the family as in *[clauses (i), (ii), (iii), (iv) and (v)] of sub-rule (6) of Rule 50 , to all such members in equal shares;
	(ii)	if there are no such surviving members of the family as in sub-clause (i) above, but there are one or more members as in clauses *[(vi), (vii), (viii), (ix), (x) and (xi)] of sub-rule (6) of Rule 50 , to all such members in equal shares.

8. The above notified CCS (Pension) Rules, therefore, clearly provide that gratuity be paid under Rule 50 to the person for whom the right to receive gratuity is conferred by means of a

nomination made by a Government servant under Rule 53. Likewise the GPF Rules also provide that the amount of GPF is payable to the person in whose favour the employee subscriber made nomination, which is extracted hereunder:

RULE 33

PROCEDURE ON DEATH OF A SUBSCRIBER

On the death of a subscriber before the amount standing to his credit has become payable, or where the amount has become payable, before payment has been made:

(i) When the subscriber leaves a family-

(a) if a nomination made by the subscriber in accordance with the provisions of Rule 5 in favour of a member or members of his family subsists, the amount standing to his credit in the Fund or the part thereof to which the nomination relates shall become payable to his nominee or nominees in the proportion specified in the nomination;

(b) if no such nomination in favour of a member or members of the family of the subscriber subsists, or if such nomination relates only to a part of the amount standing to his credit in the Fund, the whole amount or the part thereof to which the nomination does not relate, as the case may be, shall, notwithstanding any nomination purporting to be in favour of any person or persons other than a member or members of his family, become payable to the members of his family in equal shares:

9. The respondents were, therefore, directed to produce a copy of the nomination made by the applicant in respect of his retiral benefits. The respondents today produced a common nomination form for gratuity, GPF and CGEIS made by the deceased employee. The nomination in this document has been made in favour of Smt. Premo, second wife of the deceased (applicant herein) to the extent of 100%.

10. The rule position, as noticed hereinabove, regarding payment of retiral benefits i.e. gratuity, GPF and CGEIS is very clear that the one who has been declared nominee for this amount by the deceased employee in the prescribed form, under the relevant rules, would get the benefits. The applicant, thus, being declared the nominee, as per the nomination form (Annexure MA-2), duly filled by the deceased employee, is held entitled to the 100% share of the

aforesaid benefits, as mentioned therein. The respondents are directed to release the amount within a period of two months from the date of receipt of a copy of this order.

11. The prayer of the applicant is for payment of retiral benefits which includes family pension. Payment of pension has been made by the respondents to Smt. Premo, the living wife of the applicant. The son and daughter by the first married wife (deceased) are Respondents No. 3 and 4 in this O.A. We find that the payment of pension to Respondents No. 3 and 4 is covered under Rule 54 (6) (ii) (iii), which is reproduced hereunder:-

“ 54 (6) The period for which family pension is payable shall be as follows:-

- (i) Xxxxxxx
- (ii) Subject to second proviso, in the case of an unmarried, son, until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest.
- (iii) Subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she stars earning her livelihood, whichever is earlier.”

Hence the respondents are directed to disburse the family pension as per provisions of Rule 54 (6) (ii) and (iii)

The O.A. stands disposed of.

**(P. GOPINATH)
MEMBER (A)**

Dated:

‘mw’