

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH,  
MUMBAI.**

**O.A.210/00509/2018**

**Dated this Tuesday the 12<sup>th</sup> day of February, 2019.**

**Coram: Dr. Bhagwan Sahai, Member (Administrative).**

Smt. Kamal Malhari Sadafule,  
Wife of Shri Malhari Tulsiram Sadafule,  
Resident of Sambhaji Chowk,  
Bhagwan Dhuri Chawl, Room No.4,  
New Mill Road, Kurla (West),  
Mumbai - 400 070. .. Applicant.

**( By Advocate Shri Anupam Chattopadhyay ).**

**Versus**

1. Union of India, through  
Secretary,  
Ministry of Defence,  
South Block,  
New Delhi - 110 011.
2. Engineer-in-Chief,  
Kashmir House, Rajaji Marg,  
New Delhi - 110 011.
3. Garrison Engineer (NW),  
Naval Works,  
Mankhurd Defence Colony,  
Mumbai - 400 088.
4. Principal Controller of  
Defence Accounts (Pension),  
Draupadi Ghat,  
Allahabad Uttar Pradesh,  
Pin - 211014.
5. Shri Malhari Tulsiram Sadafule,  
Retired MT Dvr, retired from the  
Office of Respondent No.3,  
Now Residing in House No.2758,  
Post Office : Andur,  
Taluka : Tuljapur,  
District : Usmanabad  
Maharashtra, PIN-413 603. .. Respondents.

**( By Advocates Shri P. Khosla for R-1 to 4 and  
Shri A.D. Joshi for R-5 ).**

Order reserved on : 18.12.2018  
Order delivered on : 12.02.2019.

O R D D R

Smt.Kamal Malhari Sadafule, wife of Shri Malhari Tulsiram Sadafule, resident of Bhagwan Dhuri Chawl, Kurla (West), Mumbai has filed this O.A. on 20.07.2018 seeking relief in terms of-

(I) direction to the respondent No.3 i.e. Garrison Engineer (NW), Mankhurd Defence Colony, Mumbai to cancel the existing Pension Payment Order (PPO) issued to Respondent No.5 without containing name of the applicant as his wife and to issue the PPO afresh by including the applicant as his wife and sole claimant for family pension; to instruct pension paying Bank to withhold payment of pension and other terminal benefits till the PPO is revised and thereby to instruct the Bank to recover the maintenance payable to her before any payment is released to Respondent No.5; and

(ii). also direction to the Respondent No.3 not to release any amount other than monthly pension.

**2. Facts of the case :**

2(a). The applicant had filed earlier O.A.141/2017 which was decided on 15.02.2017 by this Tribunal directing the Respondent No.3 to consider pending representation of the applicant dated 10.12.2016 within a period of four weeks from the

date of receipt of copy of the order. The applicant claims that she is a legally married wife of Respondent No.5 but because of his stay with another lady he has illegally shown the other lady as his wife in the pension papers. Because of the decision of the Tribunal in the earlier O.A., that error was rectified by deleting the name of the other lady from the service record of Respondent No.5 and by entering the name of the applicant as the only legally wedded wife.

**2 (b).** It has also been claimed that Respondent No.5 disposed of flat purchased in his name with contribution of the applicant and her son and its sale proceeds were given to the other lady. This matter is subjudice before the Bombay High Court. There is also a dispute between the applicant and Respondent No.5 pending before Family Court, Bandra but before that case was initiated, the Respondent No.5 made withdrawal from the Provident Fund and he also has not been making regular payment of maintenance to the applicant as ordered by the Family Court.

**2 (c).** She claims that her complete details were available with Respondent No.3 when the Pension papers of Respondent No.5 were processed and did not require any specific nomination. The Respondent No.3 has finally forwarded the pension papers of

Respondent No.5 to Principal Controller of Defence Accounts (P), Allahabad informing the applicant also about it vide letter dated 06.12.2017 (Annex A-7). But a copy of this letter was not given to her by Respondent No.3.

**2(d).** The applicant claims that her Advocate also approached the Respondent No.4 on 02.02.2018 to allocate 50% lumpsum amount received by Respondent No.5. The pension papers sent by Respondent No.3 to PCDA (P), Allahabad did not contain the applicant's name as claimant of family pension. The Respondent No.5 retired from service on 30.04.2018 and according to CCS (Pension) Rules 1972, wife of a male Government servant is the first claimant of the family pension and the right to any other family member to claim the family pension can accrue only if the wife is not surviving. Therefore, when the applicant as legally wedded wife of Respondent No.5 is alive, it was legally required to mention her name in the PPO.

**2(e).** The applicant did not sign the pension application as no such signature is required for endorsing her name as wife when her PAN Card and date of birth were available with Respondent No.3. The erroneous PPO needs to be corrected and, therefore, this O.A.

**2(f).** The applicant married to Shri Malhari T.

Sadafule as per Hindu rites prior to the date of the claimed second marriage of Respondent No.5 with Smt.Asha. This fact has already been admitted by the Respondent No.5 before the Judicial Magistrate, First Class, Solapur where the applicant had filed an application for maintenance under Section 125 of CRPC and when she was granted maintenance of Rs.1300/- per month holding the so called second marriage of Respondent No.5 with Smt.Asha as illegal. The Family Court, Bandra to which the applicant approached for getting maintenance amount enhanced upheld the order of the Judicial Magistrate, Solapur.

**2(g).** Respondent No.5 allegedly contracted the second marriage with Smt.Asha on 04.06.1985 based on a fake news published on 10.05.1985 about his divorce with the present applicant.

**3.** Contention of the parties:

The applicant and her counsel have contended that -

**3(a).** as mentioned para 2(d) above, the applicant's name has to be there in the PPO as the person entitled for receipt of family pension;

**3(b).** As per CCS (Pension) Amendment Rules, 2014, filled in Form No.3 meant for details of family and Form No.5 meant for particulars are to be obtained by the Head of the Department from the retiring

Government servant. However, the Respondent No.5 did not include the name of the present applicant in the particulars of his family in Form No.3 and also did not submit joint Bank account no. with the present applicant for crediting the amount of pension as required under item No.6 of Form No.5. Pension and pension related matters fall under the jurisdiction of the Tribunal and, therefore, the present O.A. can be decided by the Tribunal.

**3(c).** As observed in the caselaw **Union of India and others Vs. Deep Chand Pandey and another (AIR 1993 SC 382) decided on 27.08.1992**, (Para 5), the Administrative Tribunals Act covers a very wide field, and there is nothing to suggest that the provisions dealing with the jurisdiction of the Tribunal should receive a narrow interpretation;

**3(d).** in the service documents the declaration by Respondent No.5 about another lady Smt.Asha as his wife was illegal, thereby attempting to deprive the present applicant of her legitimate claim in the retiral benefits of Respondent No.5 and family pension. For filling up Form No.5, the Respondent No.5 repeatedly refused to accept the condition of either or survivor for operating joint Bank account. This was wrong and illegal;

**3(e).** this has also been admitted by the respondents no.1 to 4 in their letter dated

31.10.2018 (Annex A-14). That letter also clearly mentioned in Para 5 that both the parties i.e. present applicant and Respondent No.5 could not come to a common agreement to provide requisite documents i.e. joint Bank Account, joint photographs and descriptive roll for processing the amendment in the PPO;

**3(f).** Respondent No.1 to 4 in their reply have now admitted the error and offered to rectify the PPO. Although the counsel for Respondent No.5 has informed the Tribunal that Respondent No.5 had deposited entire amount of arrears of maintenance in Family Court, Bandra (Rs.96,000/-), in fact only Rs.24,000/- have been deposited with the Family Court.

In their reply, the Respondent No.5 has contended that -

**3(g).** contentions stated in the O.A. are false and the reliefs sought are incorrect. This Tribunal has no jurisdiction to grant relief sought in the O.A. and on the basis of misleading statements made by the applicant in the O.A., the ad-interim order was passed by the Tribunal on 31.07.2018. This interim relief is highly prejudicial to Respondent No.5 and hence it needs to be vacated immediately;

**3(h).** the applicant has challenged the reply dated 11.07.2018, to her RTI application in which

certain information was not provided to her, but instead of challenging that reply before the appellate PIO, the O.A. has been filed before the Tribunal;

**3(i).** as provided under Section 3(q) of the Administrative Tribunals Act, jurisdiction of the Tribunal is only with respect to disputes and complaints related to recruitment and service conditions of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or any Corporation or Society owned or controlled by the Government in pursuance of Article 323-A of the Constitution;

**3(j).** as provided under Section 3(q) service matters mean all matters related to-

- (i) remuneration (including allowances), pension and other retirement benefits;
- (ii) tenure including confirmation, seniority, promotion, reversion, premature retirement and superannuation;
- (iii) leave of any kind;
- (iv) disciplinary matters; or
- (v) any other matter whatsoever.

Therefore, only a person having grievance with respect to the above service matters can approach

the Tribunal. The applicant has no locus standi to file this O.A. as she is not a Government servant and no specific order passed by the respondents on the representation or otherwise has been challenged;

**3(k).** under Section 19 of the Administrative Tribunals Act, a person making an application before the Tribunal must be having an enforceable right under the service rules. But the applicant not being a public servant cannot make such an application. For her claim/grievance related to terminal benefits of Respondent No.5, she may approach the competent Family Court and, therefore, this O.A. being not maintainable should be dismissed;

**3(1).** even if there is a dispute between the spouses, the employer cannot withhold the retiral benefits of Respondent No.5. In the pension papers, the mistake of mentioning name of Smt.Asha as his wife has been corrected but the applicant has not cooperated in completing the required pension papers. This fact also has been suppressed by the applicant in the O.A. Payment of family pension is an event which can take place only after the death of the pensioner and, therefore, no prejudice is being caused to the applicant at this stage since the pensioner himself is surviving and in absence of any order or decision of the Competent Family Court

to Respondent No.1 to 4, release of retiral benefits to Respondent No.5 cannot be withheld;

**3(m)**. as per order of this Tribunal in O.A.141/2017, the name of the present applicant has been corrected in the pension papers as nominee of Respondent No.5 by deleting the earlier name of Smt.Asha. Respondent No.3 has requested the present applicant on several occasions to sign the pension papers and submit joint photograph along with Bank account details to include her name in the PPO but she has not done that;

**3(n)**. as per the record available with the respondents, the earlier PPO was issued. Subsequently after the necessary correction in the papers, because of failure of the applicant to sign those papers, revised information and documents were submitted to PCDA (P), Allahabad for notification of correction in the PPO. The Respondent No.5 retired on 30.04.2018, but the pension papers are required to be processed 10 months in advance i.e. before his retirement and accordingly they were submitted. Submission of documents such as opening of joint Bank account, joint photographs, and signing of the descriptive roll of NOK is mandatory requirement for processing pension papers;

**3(o)**. in support of the contentions, Respondent No.1 to 4 have also enclosed copies of letters dated

22.05.2017, 25.06.2017, 08.07.2017, 09.08.2017 and 10.10.2017 asking the present applicant to submit details such as affidavit showing the date of birth, Pan Card, Aadhar Card, etc for processing the pension papers of Respondent No.5 but she has failed to cooperate in completing of the documents;

**3(p).** the applicant's name would be included as nominee of Respondent No.5 in pension papers and PPO provided she submits the details;

**3(q).** pension is exclusive property of the pensioner but because of the interim relief granted by the Tribunal, he has not been getting it, hence it should be vacated. There is no cause of action for the payment of family pension at this stage and completion of necessary formalities of pension papers can be done if the applicant cooperates and it can be done either in sequence separately by the applicant and Respondent No.5 or together in presence of the officers of Respondent No.1 to 4.

**4.** Analysis and conclusions:

I have perused the O.A. memo and its annexes, and rejoinder of the applicant, replies filed by the respondent No.1 to 4 and Respondent No.5, and considered the arguments advanced by all of them. From study of the above details, these four issues emerge for decision.

**4(a).** Whether the present applicant is a public

servant and does she have any grievance about service matters? From the record it is clear that Shri Malhari Tulsiram Sadafule was the employee of Respondent No.3. He has retired on 30.04.2018. The present applicant claims to be legally wedded wife of Shri Malhari T. Sadafule. Therefore, as contended by Respondent No.5, under the provisions of Administrative Tribunals Act, 1985, only a public servant can agitate before this Tribunal for getting his/her dispute / grievance redressed against the concerned employer authorities. The present applicant is wife of Shri Malhari T. Sadafule. But she is not a public servant. She has never been in public service and, therefore, she cannot have any dispute or grievance pertaining to the service matters of Respondent No.5. The contention of Respondent No.5 in this regard is correct and deserves to be appreciated.

**4 (b) .** The second issue is about nomination of the applicant in the pension papers of Respondent No.5. As per the relevant instructions for processing pension papers of Government servants, it was necessary to process pension papers of Shri Malhari T. Sadafule by the respondents No.2, 3 and 4 before his retirement. To get his pension papers processed, the Respondent No.5 appears to have deliberately omitted mentioning nomination of the

present applicant as his wife in the list of family members as the person entitled for receipt of family pension after the death of the pensioner. From the details submitted by the applicant in the earlier O.A. and this O.A., it is clear that even though he was a public servant, Shri Malhari T. Sadafule (Respondent No.5) seems to have contracted a second marriage with Smt.Asha and mentioned her name as his wife in the pension papers which were processed and accordingly the PPO issued by the respondents.

This contracting of the second marriage by Respondent No.5 while being a public servant was illegal and a serious misconduct. Also during survival of the present applicant as his wife, nomination of Smt.Asha as wife in the pension papers by Respondent No.5 was illegal and wrong. For such misconduct of contracting of second marriage while being in public service and submission of wrong and illegal details of his wife in the pension papers by Shri Malhari T. Sadafule, the competent respondents ought to have taken cognizance and initiated appropriate disciplinary and other legal action against Shri Malhari T. Sadafule. However, no information has been brought on record in this regard. But because of this false and illegal nomination of Smt.Asha in his pension papers by Shri M.T. Sadafule, and for contracting the second

marriage with her, the respondents should expeditiously initiate appropriate disciplinary and other legal proceedings against him.

After the present applicant filed earlier O.A., the respondent No.1 to 4 seem to have accepted her contention and subsequently they have agreed to include her name as wife of Shri M.T. Sadafule in his pension papers. This relief sought by the present applicant in the O.A. thus stands settled. However, as pointed out by the respondents, the present applicant has not presented herself to complete the required formalities. This she will have to do at the earliest in presence of officers of Respondent No.1 to 4.

**4(c).** The third issue involved in this case is of opening joint Bank account of the present applicant along with Respondent No.5 and submission of details of such joint account, joint photographs, etc for issuing fresh PPO by the respondents is necessary.

Unfortunately the applicant has not cooperated in submission of these required pension papers. She has mixed the issue of payment of maintenance as wife of Respondent No.5 and her claim for operating rights for the joint Bank account for release of pension to the Respondent No.5. It appears that both the applicant as well as Respondent No.5 want to submit the details of Bank

account only with exclusive operating rights to each of them. This seems to be the main bone of contention. If the applicant is apprehending that she would not be allowed to operate the joint Bank account, then the appropriate forum to get this issue settled would be a Family Court/Civil Court of competent jurisdiction. For apportionment, if any, of pension and other retiral benefits of Shri M.T. Sadafule between him and her, the present applicant will have to get necessary decision of the Family Court/Civil Court of competent jurisdiction. This Tribunal is not in a position to apportion between her and Respondent No.5 the amount of pension and retiral benefits receivable by Respondent No.5.

**4 (d)**. The fourth issue<sup>1</sup> of entitlement for family pension. In fact the ex-employee of the respondents i.e. Respondent No.5 in the present O.A. is the pensioner and till he survives, the issue of payment of family pension to the applicant will not arise. Therefore, the claim of the applicant for family pension at this stage is relevant only with reference to her nomination in the Pension Payment Order of Shri M.T. Sadafule so that she would be entitled for receiving the family pension in the event of death of Shri Malhari T. Sadafule.

**4 (e)**. An additional issue raised by the present applicant is about payment of maintenance to her by

Respondent No.5. While the Respondent No.5 has claimed to have paid full amount of maintenance on regular basis, the applicant has disputed it and mentions that only part of it has been paid by him. This is also a subject matter which the applicant has to get settled only by approaching the concerned Family Court which has passed the order of maintenance in her favour.

With these conclusions and directions, this O.A. is disposed of.

5. Decision :

The O.A. is disposed of with directions contained in Para 4 above.

Interim relief granted stands vacated.

(Dr.Bhagwan Sahai)  
Member (A).

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