

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

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C.P.C.350/48 of 2018  
O.A. No. 662 of 2017

In the matter of :

An application for contempt of Court under Section 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for non-compliance of the order passed by the Hon'ble Mr. A.K. Patnaik (Judicial Member) sitting with Hon'ble Ms. Nandita Chatterjee (Administrative member);

-And-

In the matter of :

Smt. Jharna Dutta, wife of Adhir Chandra Dutta, residing at 43, Feeder Road, Asha Neer B-1, Belgharia, Kolkata - 700056.

....Applicant

-Versus-

1. Union of India, service through the Secretary, Ministry of Finance, North Block, New Delhi-110001.

2. The Chief Commissioner,  
Central Excise, Kolkata Zone,  
having office at Custom House,  
15/1, Strand Road, Kolkata-  
700001.

3. Commissioner of Central  
Excise, Kolkata-I Commissionerate  
having Office at Custom House,  
15/1, Strand Road, Kolkata-  
700001.

4. The Assistant Commissioner,  
Central Excise, Cal (C) Division,  
Podder Court, Gate No.3, 5<sup>th</sup> Floor,  
18, Rabindra Sarani, Kolkata-  
700001.

5. Assistant Commissioner,  
Central Excise, Taratala-I, Division  
Kolkata-I, Commissionerate, 180,  
Shantipally, Raj Danga Main Road,  
Kolkata-700107.

...Respondents

-And-

In the matter of :

Smt. Jharna Dutta, wife of  
Adhir Chandra Dutta, residing at  
43, Feeder Road, Asha Neer B-1,  
Belgharia, Kolkata - 700056.

...Applicant

:Versus:

1. Shri R.K. Sharma,  
Chief Commissioner of Central  
Excise, Kolkata North  
Commissionerate having Office at  
CGST and CX, GST Bhavan,  
Shanti Pally, Kolkata-700107.

...Contemner/Opposite  
Party

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CPC/350/48/2018  
(O.A.350/662/2017)

Date of Order: 27.8.19

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

JHARNA DUTTA

VS.

UNION OF INDIA & ORS.  
(R.K. SHARMA, CHIEF COMMISSIONER OF CENTRAL EXCISE  
KOLKATA, NORTH COMMISSIONERATE)

For the applicant : Mr. A. Neogi, counsel  
For the respondents : Mr. A. Roy, counsel

ORDER

Bidisha Banerjee, Member (J):

The applicant has alleged violation of the order dated 19.09.2017

passed in O.A.No.350/662/2017. The order is extracted hereunder:-

"4. Mr. K. Prasad, *Id. counsel for the respondents* vehemently opposed the maintainability of the O.A. stating that the applicant cannot be given the retiral benefits of Sri Adhir Chandra Dutta as per the Service Rules as he was removed from service due to unauthorised absence, therefore, the respondents have not done anything *per se* illegal in this matter and the O.A. should be dismissed.

5. We have considered the submissions made by *Id. counsel for both sides* and perused the records. We are very much conscious about the law laid down by the Hon'ble Supreme Court and different High Courts. In this case the applicant is having a decree of the Civil Court declaring the Civil death of her husband under Section 108 of Indian Evidence Act, 1872. Therefore, the period from the date when the husband of the applicant was found missing to the date of the decree cannot be termed as unauthorised absence as per the rules governing the field.

As the Respondent No.5 has already intimated the applicant vide letter dated 11/12.06.2015 that the applicant is entitled to get only the GPF and not the family pension/gratuity as per rules, we may remand the

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*matter to the respondents to reconsider the entire issue as per the rules and regulations in force keeping in mind the decree passed by the Civil Court.*

6. We find that the applicant made a representation on 03.01.2017(Annexure A/5) to the Chief Commissioner, Central Excise, Kolkata Zone(Respondent No.2) requesting for release of the service benefits of the employee annexing a photocopy of the decree of the Civil Court. Therefore, the Respondent No.2 i.e. the Chief Commissioner, Central Excise, Kolkata is directed to reconsider the entire matter in view of the decree passed by the Civil Court and the rules and regulations governing the field within a period of six weeks from the date of receipt of a copy of this order and communicate the decision to the applicant forthwith. After such consideration, if the applicant's claim is found to be genuine, then we hope and trust that expeditious steps will be taken by the respondents to extend the consequential benefits to the applicant within a period of six weeks from the date of taking decision in the matter.

6. It is made clear that we have not gone into the merits of the case and all the points are kept open for consideration by the respondent authorities as per rules and guidelines governing the field.

7. A copy of this order along with the paper book may be transmitted to the Respondent No.2 for which Id. counsel for the applicant shall deposit the cost within one week.

8. With the above observations the O.A. is disposed of. No order as to cost."

2. Pursuant to the said direction the respondents have issued an order dated 29.11.2018 wherefrom it appears that the employee who was declared dead by a court of competent jurisdiction, himself appeared in person before the Assistant Commissioner and upon notice hearing was afforded to him and that the employee appeared on 15.11.2018 before the Assistant Commissioner. The present petitioner, in presence of the person claiming himself to be Adhir Chandra Dutta (the employee), was heard. The petitioner even denied that the said person was her husband whereas his brothers have identified him as Adhir Chandra Dutta and in view of such contradictions and disputes the respondents have decided to disburse the service benefits to the employee concerned i.e. Adhir Chandra Dutta and not to his

spouse/nominee. Respondents have, therefore, decided that Jharna Dutta, the petitioner herein, the claimant of family pension is not entitled to any service benefits of Sri Adhir Chandra Dutta, the Ex Superintendent. Therefore, her representation has been rejected.

3. In view of such, we do not find any wilful violation of the direction of this Tribunal "to reconsider the entire matter" and to release the benefits "if found genuine" having not entered into the merits of the case at all. Accordingly the contempt proceedings are dropped. Notices, if any issued, are discharged. Needless to mention that the applicant shall be at liberty to challenge the speaking order dated 29.11.2018.

(Dr.Nandita Chatterjee)  
Member (A)

(Bidisha Banerjee)  
Member (J)

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