

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.20/757/2019

Hyderabad, this the 9th day of January, 2020



Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

M. Kumari, W/o. Ravi Kumar
(Ex. PA – Kannigiri HO),
Resident of H. No. 105/1, Stalinpet, Inkole,
Prakasam District – 523 167.

... Applicant

(By Advocate Mr.K. Venkateswara Rao)

Vs.

1. The Senior Superintendent of Post Offices,
Prakasam Postal Division at Ongole.
2. The Director of Postal Services,
O/o. The Postmaster General, Vijayawada Region,
Vijayawada.
3. The Post Master General,
Vijayawada Region, Vijayawada.
4. The Chief Postmaster General,
A.P. Circle, Vijayawada.
5. Union of India, Rep. by
The Director General of Posts,
Dak Bhavan, New Delhi.

... Respondents

(By Advocates: Mr. B. Venkanna, proxy counsel for
Mr. A. Radhakrishna, Sr. PC for CG)

ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. The OA is filed for not granting family pension and other retirement benefits to the applicant.



3. Brief facts of the case are that the husband of the applicant was reported to be missing from 06.10.2000 while working in the respondent organization as Postal Assistant. Applicant approached the Inkollu Police Station, but when they did not respond, she sent her complaint to the Police Station on 14.05.2015 by registered post and the same was also returned by the Inkollu Police. Therefore, she approached the Hon'ble Court of J.F.C.M., Parchur for a direction to the Police to take up investigation and accordingly, the competent court ordered investigation under Section 156 (3) of the Code of Criminal Procedure. The competent court held that the applicant's husband has to be presumed to be missing. In view of the observations of the Hon'ble Court of J.F.C.M., Parchur, applicant claims that she is to be granted terminal benefits and pension / family pension as are to be given to the family members of a missing employee. The respondents denying the same, has led to filing of the present OA.

4. The contentions of the applicant are that the husband of the applicant is missing from 06.10.2000 and his whereabouts are not known till date. The Hon'ble JFCM Court, Purchur has held that that the missing employee is presumed to be no more and therefore, the applicant is eligible for retiral benefits and family pension.

5. The respondents in their reply statement have stated that the applicant while working as Postal Assistant, Kannigiri HO was absconding from duties since 06.10.2000. Notices were given to him by the disciplinary authority on different dates, but there was no response or explanation to the notices. The disciplinary authority, once again, sent a notice on 30.11.2000 by registered post, which was returned with remarks that the addressee was not in town and the whereabouts were not known. Some more letters were sent to the applicant's husband, but the result was the same. The disciplinary action under Rule 14 of CCS (CCA) Rules was initiated and a charge sheet was also sent on 23.10.2002 by registered post to the last known address of the applicant's husband, but the same could not be delivered and was returned on 05.11.2002 with the remarks that the addressee was not in town. The respondents went ahead with the disciplinary case by appointing Inquiry Officer (IO) and Presenting Officer (PO). The IO held the charge as proved and based on the same, the applicant's husband was removed from service vide order dt. 29.07.2005. After a long gap, applicant represented on 09.01.2013 for grant of retirement benefits claiming that her husband was missing. Respondents in response informed that her husband was removed from service in the year 2005 for having absconded from duty. Copy of the disciplinary proceedings were also furnished to her. Thereafter, she sought compassionate allowance and she was advised by the respondents to file an FIR in regard to the missing of her husband from 2000. Without submitting the same, applicant went on making representations, but her claim for pension could not be considered on the ground that her husband was



removed from service and therefore, she is not eligible for any retirement benefits.

6. Heard both counsel and perused the pleadings on record.



7(I) The respondents have raised an objection contending that after long lapse of time, applicant has approached this Tribunal for the relief of pension and other retiral benefits. However, the contention of the respondents does not hold good for the reason that the applicant is seeking pension/ family pension, which is continuous cause of action.

II. The main contention of the applicant is that her husband was missing from 06.10.2000. She has approached the Inkollu PS, but since they did not register a case, the applicant approached the competent court and the Hon'ble Court vide order dt. 14.11.2017, observed as under:

“The Defacto Complainant/ Madugula Kumari, w/o. Ravi Kumar has filed a report in this Court and the same was forwarded to the S.H.O., Inkollu PS for investigation and report about missing of Ravi Kumar. Police have conducted investigation and filed a refer report as “Action Dropped” as the missing man is not traced. As per Section 108 of the Indian Evidence Act, 1872, the burden of proving that a person, who is unheard for 7 years by his close relatives and friends is alive, is on the person who asserts that he is alive. Nobody is asserting that Madugula Ravi Kumar is alive. He is unheard from October 2000. So, this Court is bound to presume that missing man is no more. Hence, the refer charge sheet filed by Police can be accepted.”

Thus, the Hon'ble Court emphatically observed that, since nobody is asserting that the applicant's husband is alive and is not to be heard from October 2000, the Court is bound to presume that the missing man is no more. In other words, the Hon'ble Court has come to conclusion that the

applicant's husband is missing from 06.10.2000. The respondents claim that after coming to know that the applicant was not attending to duties, he was given adequate opportunity by giving notice and an inquiry under Rule 14 of CCS (CCA) Rules was held before imposing the penalty by following the Rules on the subject. However, the reply statement filed by the respondents does indicate that the charge memo was not delivered to the applicant's husband and it was returned unserved. Therefore, as per law, a charge memo which is not delivered is not valid. Not serving the charge sheet would vitiate the disciplinary proceedings as an opportunity to the official has been denied to present his case. This Tribunal relies upon the observations of the Hon'ble Supreme Court in ***Union of India & Ors v. Dinanath Shantaram Karekar & Ors, (1998) 7 SCC 569***, which are as under:

"10. Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

The above judgement squarely cover the case of the applicant. Neither the show cause notice nor the charge sheet was served on the missed employee. Hence, the entire disciplinary proceedings are vitiated. Moreover, the respondents themselves are aware that the applicant's husband has been reported to be missing from October 2000 onwards. They have issued a charge memo, but did not ensure that it was delivered. If the charge memo



could not be delivered, the respondents were expected to publish the same in a newspaper. DOP & T, Govt. of India published Handbook for Inquiry Officers and Disciplinary Authorities in 2013 and under Chapter 12 thereof, it has been clarified as under:



"26. How to issue the charge sheet, if the delinquent employee is not traceable and the charge sheet issued through registered post is returned by postal authorities with the endorsement 'not found'?"

"When the delinquent employee is unauthorily absent and could not be contacted, copies of the charge sheet may be dispatched to all the known addresses of the delinquent official, available with the organization. If it fails, charge sheet or the gist thereof may be published in the local news paper; the charge sheet may be published in the web site of the organization and pasted in the notice board of the organization."

The respondents have failed to do so and therefore, principles of natural justice have not been followed to this extent and the relevant rule has not been abided by. Incidentally, since the applicant's husband was missing, there was no scope for any defence to be presented by him to the charge memo issued by the respondents under Rule 14 of CCS (CCA) Rules. Therefore, the respondents claiming that since the applicant's husband has been removed from service after initiating disciplinary action is invalid in view of the Rule and the law stated above. Further, one has to take notice of the observation of the Hon'ble Court of JFCM, Parchur, wherein it has been observed that the applicant's husband is missing from October 2000 and he is to be construed to be no more. Based on the observations of the competent court, the Respondents need to have considered that the husband of the applicant has been missing from October 2000.

III. In regard to the retiral benefits to be granted to the family members of the missing employee, OM No.F.No.1/17/2011-P&PW(E), dated 24/25.06.2013 of the Department of Pension and Pensioners Welfare, stipulates certain conditions to be complied with, which are extracted as under:



“4. In the case of a missing employee/ pensioner/ family pensioner, the family can apply for the grant of family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever has not already been received) to the Head of office of the organisation where the employee/pensioner had last served, six months after lodging of Police report. The family pension and/or retirement gratuity may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report from the Police, that the employee/pensioner/ family pensioner has not been traced despite efforts made by them. The report may be a First Information Report or any other report such as a Daily Diary/General Diary Entry

ii) An Indemnity Bond should be taken from the nominee/dependants of the employee/pensioner/ family pensioner that all payments will be adjusted against the payments due to the employee/pensioner/ family pensioner in case she/he appears on the scene and makes any claim.

5. In the case of a missing employee, the family pension, at the ordinary or enhanced rate, as applicable, will accrue from the expiry of leave or the date up to which pay and allowances have been paid or the date of the police report, whichever is later. In the case of a missing pensioner/family 'pensioner, it will accrue from the date of the police report or from the date immediately succeeding the date till which pension/family pension had been paid, whichever is later.

6. The retirement gratuity will be paid to the family within three months of the date of application. In case of any delay, the interest shall be paid at the applicable rates and responsibility for delay shall be

fixed. The difference between the death gratuity and retirement gratuity shall be payable after the death of the employee is conclusively established or on the expiry of the period of seven years from the date of the police report."

In addition, the Hon'ble Supreme Court has observed that in case the family members who are supposed to hear the person missing do not hear so, or the person is not found for a period of 7 years, then, the person concerned is presumed to be dead after lapse of 7 years. The observation of the Hon'ble Supreme Court in ***Rubabbudin Sheikh v state of Gujarat (2007) 4 SCC 404*** is relied upon to assert the above. The relevant portion is extracted hereunder:

"13. Before parting with this order, we may keep it in mind that under the law, there is a presumption that if the dead body is not found or the person concerned is not found for a period of seven years, only then the said person can be presumed to be dead."

Thus, in the present case, applying the law laid down by the Hon'ble Supreme Court and the conclusion of the Hon'ble Court of JFCM, Parchur, the date of missing of the applicant's husband has to be considered as 06.10.2000. From that date, till 7 years have lapsed, the family of the missing employee has to be granted full pension since till such date, it is presumed that the applicant's husband is alive. Hon'ble Delhi High Court in its judgment in WP (C) 1577/2016 held that full pension has to be granted to the eligible family member of the missing employee up to the date, which is considered to be as the date of presumed death as per law. The relevant portion of the judgment is extracted here under:

"11. Xxx Pension is payable till the pensioner dies or is presumed to be dead. Family pension is payable after the death of the pensioner and not





for the period before his death. The affect thereof is that the respondent would be liable to pay pension and not family pension, till the pensioner had died or is presumed to be dead. If any pension amount remains unpaid to the pensioner for the period when he was alive or is presumed as alive, the said amount would be paid to the legal heirs of the pensioner, who has died or has gone missing and is presumed to be dead. This unpaid pension amount does not get forfeited. The arrears or unpaid pension would be payable after the death of the pensioner to his legal heirs as per law. The OMs relied do not state that the unpaid pension would not be paid to the legal heirs/ representatives. This is not the purport and objective of the OMs. The first OM dated 29.08.1986, rightly observes that unpaid dues like salary, leave encashment and GPF would be paid. Therefore, we fail to understand the reason or cause as to why the respondents have failed to make payment of the arrears of pension to the petitioner.”

Therefore, the applicant is eligible to be granted full pension for a period of 7 years from the date of missing of her husband and the date of missing has been confirmed as 06.10.2000 by the Hon'ble JFCM, Parchur. After the period of 7 years, the applicant is eligible for family pension.

IV(a) In view of the aforesaid, the respondents are directed to grant pension to the applicant from 06.10.2000 till 05.10.2007 and other retiral benefits and thereafter, family pension to the applicant, as per the Rules on the subject by reckoning the date of missing as 06.10.2000.

(b) Time allowed is three months from the date of receipt of this order.

(c) OA is allowed accordingly, with no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

/evr/