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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 598/86 1986.
T.A. No.

DATE OF DECISION 29.8.1988

Smt. Kamla Devi W/o Late **Petitioner**
Shri Ram Chander Singh Chauhan

Shri Anand Swaroop Saxena **Advocate for the Petitioner(s)**

Versus

Union of India & Others **Respondent**

Shri K.C. Mittal **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. P.K. Kartha, Vice-Chairman(Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *NO*

S.P. Mukerji
(S.P. Mukerji)
Administrative Member

P.K. Kartha
(P.K. Kartha)
Vice-Chairman(Judl.)

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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-598/86

Date: 29.8.1988

Smt. Kamla Devi W/o Late Applicant
Shri Ram Chander Singh Chauhan

Versus

Union of India & Others Respondents

For the Applicant Shri Anand Swaroop
Saxena, Advocate.

For the Respondents Shri K.C. Mittal,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri S.P. Mukerji, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant is ^{the} widow of late Shri Chauhan who had worked as Telephone Operator, Dehradun before he expired on 22.11.1985. In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has claimed several reliefs, including the following:-

- (a) Payment of pay and allowances for the period from 13.11.1967 to 6.9.1974;
- (b) recalculation of pension on the basis of revised emoluments;
- (c) payment of G.P.F. & Group Insurance amount;
- (d) appointment of one dependant of the deceased official in the department on compassionate ground; and
- (e) compensation of Rs.10,000/- on account of injustice done to the deceased official.

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2. The total amount due to the applicant has been claimed to work out to Rs.1,50,000/-.

3. The facts of the case in brief are that the husband of the applicant was appointed as a Telephone Operator on 16.4.1958. He remained on Extraordinary Leave w.e.f. 13.5.1967 to 24.11.1967, for more than six months. His services were terminated w.e.f. 13.11.1967 under Rule 14 of the Revised Leave Rules, 1933 by D.E.T., Dehradun vide Memo., dated 7.11.1967. Thereafter, he was reinstated w.e.f. 7.9.1974 vide the Memo. of the Postmaster General, Lucknow, dated 29.7.1974. The deceased official thereafter represented to the authorities to get his broken period of service from 13.11.1967 to 6.9.1974 regularised. No decision has yet been taken on the representation.

4. When the question of admission of the application came up for consideration before this Tribunal on 27.11.86, Shri K.C. Mittal, the learned counsel for the respondents contended that the application was barred by limitation. While admitting the application, this Tribunal directed that opportunity would be given to the learned counsel for the respondents to argue on this count at the time of final hearing.

5. The learned counsel for the applicant submitted ^{or} during the final hearing that this is a case of great hardship. Despite repeated representations to the authorities concerned and appeals to the President of India and the Prime Minister, the request of the applicant for regularising the broken period from 1967 to 1974 did not bear fruit. In para.6 of the application, it has been

stated that the husband of the applicant was in a state of persistent mental worry, starvation and all the consequences which follow poverty. It has been alleged that all these were due to the unsympathetic attitude of the departmental officials which had made the husband of the applicant desperate and he had even intended to commit suicide which he conveyed to the Deputy Director General (Complaints), New Delhi, in one of his representations.

6. The respondents have not denied the allegations made in the application. Nor have they given any satisfactory explanation for not taking a decision on his representation for all these years.

7. We have carefully gone through the records and have heard the learned counsel for both the parties. The learned counsel for the respondents did not seriously press his objections to the maintainability of the application on the ground of limitation as the records revealed that this is a case of hardship. The Supreme Court in the Madras Port Trust Vs. Hymanshu International, 1979(1) SLR 757, has observed that the Government and public authorities should not adopt the practice of relying upon technical pleas for the purpose of defeating legitimate claims of citizens. (See also Dilbagh Rai Jerry Vs. Union of India & Ors., 1974(1) SLR 1; Mrs. Asha Rani Lamba Vs. State of Haryana & Another, 1983(1) SLR 400; and Gujarat State Deputy Engineers Association & Ors. Vs. State of Gujarat & Ors., 1983(3) SLR 38.). The learned counsel for the applicant argued that as this is a case of hardship, at least the pay and allowances which the deceased Government servant would have drawn during the period from 13.11.1967, when his services were terminated, and 6.9.1974, when he was reinstated in service, should be paid to the applicant. He stated that he would have at least been entitled to get around Rs.25,000/- towards his pay and allowances during the said period.

8. It goes without saying that the services of the

applicant's husband were brought to an end by the mischief of rule 14(c) of the Revised Leave Rules, 1933 by deemed resignation. But the fact remains that he had already completed 9 years of service when he fell ill. Had he been given quasi-permanent status after 3 years of service, he would have been beyond the pale of the aforesaid provision of the rule. Besides, the Supreme Court has in Jai Shankar Vs. State of Rajasthan, A.I.R. 1966 SC 492, declared any provision of automatic termination of service by overstaying of leave as unconstitutional. Automatic resignation as in this case where the respondents themselves had granted leave beyond 13.11.1967, but refused to take the applicant's husband back to work when he reported for duty, seems to be more deserving of judicial clemency. We feel that at least his service between 1958 and 1967 should also be counted in reckoning pensionary benefits and gratuity, etc., and some compensation for the period of absence. In the facts and circumstances of the case, we are of the opinion that in the interest of justice, the respondents should pay the applicant a lump sum amount of Rs.15,000/- in full and final satisfaction of the claim towards arrears of pay and allowances for the period of forced absence between 13.11.1967 and 6.9.1974. We direct the respondents accordingly. We further direct that pecuniary benefits including gratuity and encashment of leave, Group Insurance and Provident Fund amount should be recalculated after taking into account also the service rendered between 1958 and 1967 and all payments admissible to the applicant under the rules be made good along with interest at prescribed rates, within a period of three months from the date of communication of this order.

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9. There will be no order as to costs.

S.P. 29.8.58
(S.P. Mukerji)
Administrative Member

P.K. 29/8/58
(P.K. Kartha)
Vice-Chairman (Judl.)