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**Central Administrative Tribunal
Principal Bench**

OA No.2581/2004
MA No.2160/2004

New Delhi this the 23rd day of May, 2006.

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. N.D. DAYAL, MEMBER (A)

Smt. Bimla Devi,
W/o Shri Budhidhar,
R/o C/o Om Parkash Sharma,
Indira Park, H.No. RZ-3B/15,
Gali No.12, Palam Colony,
New Delhi-45.

-Applicant

(By Advocate Shri Yogesh Sharma)

-Versus-

1. Union of India through the Secretary,
Ministry of Defence,
Govt. of India, South Block,
New Delhi & Others

-Respondents

(By Advocate Shri Rajeev Bansal)

1. To be referred to the Reporters or ~~not~~? yes
2. To be circulated to Outlying Benches or ~~not~~? yes

S. Raju
(Shanker Raju)
Member (J)

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1. Union of India through the Secretary,
Ministry of Defence,
Govt. of India,
South Block,
New Delhi.
2. Directorate General of Sup. & Tpt.,
Quartermaster General's Branch,
Army Head Quarters,
Sena Bhawan,
New Delhi.
3. The Commanding Officer,
No.5121 ASC Bn (MT),
C/o 56, APO.

-Respondents

(By Advocate Shri Rajeev Bansal)

ORDER

Mr. Shanker Raju, Hon'ble Member (J):

Applicant, wife of deceased enrolled civilian driver, challenges respondents' order dated 23.1.2003, whereby retiral benefits of her husband had been denied to her, who had been missing from his

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service since 11.9.1998. By virtue of this OA she seeks grant of special family pension, DCRG, ex-gratia amount, leave encashment and other benefits with interest.

2. Husband of applicant initially enrolled in Army and after discharge was re-enrolled as civilian driver on 20.8.1980. While posted in the unit on 11.9.98 he had been missing from the unit, report of which had been submitted to the police. Respondents declared applicant as deserter w.e.f. 11.9.98 and dismissed him from service after three years from the date of declaration of deserter. The representation preferred for grant of retiral benefits has been turned down, leading to the present OA.

3. Shri Yogesh Sharma, learned counsel appearing for applicant states that husband of applicant being a civilian motor driver (re-enrolled) in the matter of retiral benefits is governed by CCS (Pension) Rules of 1972 and not by AO No.141/72, which has been applied wrongly by respondents in the case of applicant, as that relates to Civil General Transport Companies and Independent Transport Platoons which have applicability of Army Act, 1950, is misconceived. While referring to FR 54 (13-A), it is contended by Shri Yogesh Sharma that FR 54 (13-A) provides that a military pensioner on retirement from military service in the matter of family pension is entitled to more advantageous family pension.

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4. Learned counsel would contend that as per Section 108 of the Indian Evidence Act, 1872 after seven years from the date the FIR is lodged there is a presumption of the death of the civil servant and in that event on deeming the civil government servant as a deceased all the retiral benefits are to be paid to the legal heirs (LRs) which has been denied to applicant.

5. Learned counsel has placed reliance on a decision of the Division Bench of Apex Court of Delhi in *Harnandi v. Union of India & Others*, 2001 IV AD (DELHI)420, to contend that in case of missing person, pension and all other benefits are to be accorded to the concerned.

6. Learned counsel has also relied upon a decision of the Patna High Court in *Arti Devi @ Arti Pandey v. Union of India & Ors.*, 2003 (3) ATJ 126, to contend that if a person in CRPF is missing and is not traceable for seven years the declaration of his being deserter is misconceived. By referring to P&PW OM dated 20.9.86 it is contended that in case whereabouts of an official are not known for seven years, payment of retiral gratuity and family pension is to be accorded. A similar instruction dated 18.2.93 where seven years are to be reckoned from the date of lodging of FIR has been laid down.

7. On the other hand, Shri Rajeev Bansal, learned counsel appearing for respondents, relying upon AO No.141/72 contended that as the civilian motor drivers are governed by Army Act, applicant's

husband, who had been declared deserter, was dismissed after three years applicant is not entitled to any retiral benefits and it is stated that she had been paid provident fund, arrears of pay and allowances and insurance; DCRG is not admissible. Learned counsel would also contend that the family pension is being disbursed to applicant.

8. On careful consideration of the rival contentions of the parties and in the light of the rule position AO No.141/72 was issued in the year 1972. CCS (Pension) Rules, 1972 had come into being on 1.6.1972 and are applicable to civil government servants in defence services. These are the rules framed under Article 309 of the Constitution of India and do not offer as an exception the employees re-employed on civilian posts being discharged/erstwhile employees of the Army. In this view of the matter the provisions of CCS (Pension) Rules, 1972 would override the provisions of AO No.141/72. Moreover, in the matter of grant of family pension even to a deserter FR 54 (13-A) clearly rules that whatever is more beneficial to the LRs would be disbursed as a family pension.

9. As regards deeming, on a legal fiction, a person who has been missing from the date of lodging of FIR for seven years, as a deceased and thereafter entitlement of the LRs to the retiral benefits, the aforesaid has been admissible to holder of a civil post and admittedly the post of driver (civilian) in Army is a civil post. The aforesaid pension rules do not impede its extension to such an employee or there is nothing in the rules to bar his claim for entitlement to



pensionary benefits. In such an event, as the retiral benefits are in the form of welfare and beneficial legislation, in case of any conflict, the interpretation which favours the employee is to be adopted.

10. Moreover, it is trite that whosoever has gone missing as a civilian employee from the date of lodging FIR under Section 108 of the Indian Evidence Act, 1872, is deemed to have been dead and as a result thereof whatever emoluments, in accordance with rules *ibid*, are being made entitled to such deceased/employee, shall *mutatis mutandis* be admissible to the LRs of that employee who had gone missing for seven years.

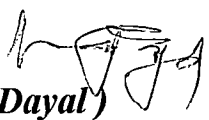
11. It is not disputed that a FIR lodged regarding missing of applicant's husband seven years period had elapsed.

12. Respondents' action of applying Army Act to declare applicant as deserter and thereafter dismissing him from service cannot be countenanced, as in a similar situation the Patna High Court in *Arti Devi* (supra) remanded back the matter to enable grant of retiral benefits. In *Harnandi's* case (supra) it is ruled that there is no provision in the Army Act to shunt out of service a deserter and in such an event retiral benefits are admissible.

13. In our considered view, the respondents have misconceived the provisions of AO 141/72 and wrongly applied in the case of late husband of applicant. Rather pension rules would have been applied and in such an event instructions issued in 1989 and 1993 clearly rule

that in case of missing government servant for seven years from the date of lodging of FIR, LRs are entitled, on deemed death, to the gratuity and other retiral benefits.

14. In view of the above the reasons accorded in the impugned order cannot be countenanced. The OA is partly allowed. Impugned order is set aside. Respondents are directed to deem the husband of applicant as dead on legal fiction under Section 108 of the Indian Evidence Act of 1872 and thereafter to disburse retiral benefits, including family pension, DCRG, leave encashment etc. to applicant being his legal heir, with arrears thereof, within a period of three months from the date of receipt of a copy of this order. No costs.


(N.D. Dayal)
Member (A)


(Shanker Raju)
Member (J)

‘San.’