

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NUMBER 18 OF 1998

TUESDAY, THIS THE 4th DAY OF FEBRUARY, 2003

HON'BLE MRS. MRRA CHHIBBER, MEMBER (J)

Smt. Anjani Bala Saxena,
aged about 41 years,
w/o Shri Ram Prakash Saxena,
r/o G-1/514, Armapore Estate,
Near Central School (II)
Armapore, Kanpur.

.....Applicant

(By Advocate : Shri Rakesh Verma)

V E R S U S

1. Union of India through the
Secretary, Ministry of Defence,
New Delhi.
2. The Director General,
Ordnance Factories Board,
Auckland Road,
Kolkata.
3. The General Manager,
Small Arms Factory,
Kalpi Road,
Kanpur.

.....Respondents

(By Advocate : Shri Amit Sthalekar)

O R D E R

By this O.A., applicant has sought a direction to the respondents to consider the case of the applicant for appointment on compassionate grounds and to pass final order thereon within a stipulated period.

2. It is submitted by the applicant in the O.A. that her husband was working as Upper Division Clerk when he dis-appeared from the factory on 19.07.1993 and thereafter



his whereabouts ^{were} ~~is~~ not known to the applicant. Therefore, after waiting for some time, she lodged an F.I.R. to the Station Officer Incharge, Kotwali, Kanpur on 23.08.1993 (Annexure A-1). The employee had family consisting of applicant i.e. his widow aged about 41 years; one daughter aged about 17 years; who is alleged to be handicapped and a younger daughter aged about 13 years and one son aged about 15 years. Since all the children were minor and she was M.A. passed with Economics from Kanpur University, She gave an application on 09.10.1993 requesting therein that she may be given appointment on compassionate grounds. Vide letter dated 27.10.1993, applicant was directed to submit final report of the Police so that necessary action may be taken on her request (Annexure A-3). It is submitted by the applicant that she approached the Police authorities who noted down on the application itself that whereabouts of her husband are still not known (Annexure A-4). Therefore, on 23.12.1994, she gave another representation for grant of compassionate appointment but vide letter dated 10.01.1995 applicant was informed that case for compassionate appointment can be considered only after a lapse of 7 years from the date of missing of her husband (Annexure A-5). It is this letter which is challenged by the applicant and she has relied on 1998 (37) A.T.C. 179, Mumbai Bench, wherein Tribunal was pleased to hold that since the husband of applicant was missing it would be ^{not} ~~a~~ reasonable to wait for 7 years for raising presumption of death of the employee and in the facts of the case since the applicant's husband was suffering from AIDS, a lenient view was taken in the matter and respondents were directed to consider the applicant for grant of compassionate appointment with the stipulation that in case her husband appears during the period of 7 years from the date of his missing and claims to be in service, his claim for

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emoluments for the period, the applicant remains in service on the basis of compassionate appointment shall be liable to be excluded for consideration.

3. The O.A. is opposed by the respondents on the ground that applicant has come to the court with unclean hands in as much as she had been claiming compassionate appointment on the ground of missing of her husband, whereas the fact is that her husband had already died on 19.07.1993, as per her own application given to the authorities on 16.06.1998 on the basis of final report submitted by the applicant wherein the applicant was informed by police that her husband's whereabouts is not known vide letter dated 10.05.1994, the applicant's husband Shri R.P. Saxena was declared missing vide F.O. Pt.II No.853 dated 18.05.1994 (Annexure-4) and action regarding payment of dues outstanding at the credit of Shri Saxena was also initiated and the applicant was informed vide office letter No.SAF/106/R/E dated 30.06.1994 to make herself present on any working day (Annexure CA-5). The applicant thereafter moved an application on 23.12.1994 for appointment on compassionate grounds (Annexure CA-6). However, vide letter dated 10.01.95, she was informed that even though payments have been prepared but her request for compassionate appointment can be considered only after a lapse of seven years from the date of missing of the Government employees (Annexure CA-6 & CA-7). Thereafter, she approached the Governor and on receiving the letter from the Governor House, applicant was intimated vide letter dated 08.02.1995 to receive all her payments. Thus all the payments were made to her (Annexure CA-10). It is further submitted by the respondents that in the meantime, applicant's husband attained the age of superannuation on 31.07.1997, accordingly, he was retired in the afternoon of the same day i.e. on 31.07.1997 (Annexure CA-13). It is thus submitted by the respondents that neither a period of 7 years had lapsed nor the employee was declared dead, therefore, he was struck off

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the strength of the Factory w.e.f. 1997 but in the meantime applicant also sent a representation dated 17.10.1993 to the Ministry of Defence which is still pending. Therefore, according to them, the O.A. was premature at that stage. On the other hand, they have submitted that in her subsequent application dated 16.06.1998, applicant submitted a death certificate dated 26.07.1993 of her husband issued from Kanpur Nagar Mahapalika, wherein the employee is stated to have died on 19.07.1993 at 118/127 Kaushatpuri, Kanpur. In her affidavit, applicant had submitted that she could get this death certificate only through her relatives but they have submitted that since applicant's husband is shown to have died in Kanpur itself definitely, applicant would have come to know within 5 years about his death.

4. They have further submitted that applicant's averments that her husband died at his residence is absolutely false because the permanent address given by the employee in his records is village and post Nardoli, District Etawah and local address was given as GI-514, Armapora Estate, Kanpur while he died at some other address. Therefore, they have submitted that applicant is manipulating the things, in order to get compassionate appointment. They have further submitted that Shri Saxena allegedly died at Kaushalpur, Kanpur and applicant was residing at Armapore Estate, Kanpur, which is hardly at a distance at 4-5 kilometers from the alleged place. Therefore, the fact that she was not aware about her husband's death is not acceptable. They have thus submitted that it is not understandable as to how applicant can claim that she was not aware about her husband's death. They have further submitted that compassionate appointment can be granted only to the members of deceased employee and not to the dependents of missing employee. Therefore, her claim is not tenable in law. They have further submitted that since her case does not get covered under circular dated

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16.06.1998, therefore, she is not entitled to any relief. They have further submitted that by the office letter dated 12.12.1997, applicant was informed the rule position and reasons for not considering her case for compassionate appointment. They have also submitted that her family pension has been revised to Rs.1396/- w.e.f. 01.01.1996 as per Vth Pay Commission and DCRG has been paid as Rs,23,333/- apart from GPF etc. Moreover, they have also submitted that respondents referred certificate by the applicant to the Nagar Mahapalika, Kanpur for verification but the Additional Health Officer, Nagar Mahapalika, Kanpur has now intimated vide his letter dated 16.09.1998 that they have not issued any such death certificate in respect of Shri R.P. Saxena nor in the death register of the year 1993, name of Shri R.P. Saxena is mentioned on 27.07.1993 (Annexure CA-22). Thus, even the death certificate submitted by the applicant appears to be false and a manipulated document. In view of the facts as explained by them, they have submitted that applicant is not entitled to any relief and the O.A. is liable to be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

6. From the facts as narrated above, two-three things are absolutely clear:-

- (i) That respondents had already informed the applicant as back as on 12.12.1997 (Annexure CA-15) that neither 7 years of missing had elapsed on 13.07.97 when the applicant's husband had retired on retaining the age of superannuation nor he was declared dead by any court of law. Therefore,



it is not possible to give appointment to the applicant on compassionate grounds. Applicant has not disputed having received this letter. Therefore, if she was aggrieved by this letter, she ought to have challenged this particular order because her own averments in the O.A. are that respondents were to consider her case after lapse of 7 years, which was wrong and she could be given compassionate appointment even before the passing of 7 years from the date of reporting of missing her husband.

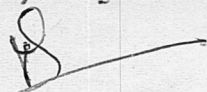
(ii)

She had relied on judgment given by Mumbai Bench in the case of Swati Manohar Pahar Vs. Union of India but Hon'ble Supreme Court has held in 2002 (1) SCSLJ 68 in the case of Union of India Vs. Geeta Devi that Tribunal was not right in granting the pension to a lady on the premise that her husband had been missing for more than 7 years, therefore, presumed to have died when the stand of dependent was that he had already been terminated. Hon'ble Supreme Court held that once the employee was terminated question of granting other relief would not arise.

In the instant case, it is seen that applicant had reported her husband to be missing on 19.07.1993 and the applicant's husband was retired on attaining the age of superannuation in normal course on 31.07.1997 by which time 7 years had not yet passed. Therefore, her claim for grant of compassionate appointment on the ground of her husband missing naturally could not have been considered by the respondents, specially when it is submitted by the respondents that after the retirement of applicant's husband all the dues which were due on his retirement have already been given to her, which is not disputed by the applicant, therefore, respondents were right in holding that applicant's case could not have been considered for grant of compassionate appointment.

(iii)

In the alternative, applicant's counsel had submitted that since applicant came to know in 1998 that her husband had died in the year 1993 itself, respondents ought to have considered her case for grant of compassionate appointment at least on the ground that her husband had died in 1993. It is seen that when the respondents verified the fact from the Nagar Mahapalika, KNP they have given in writing to the authorities that no such death is entered in the register on the said date nor any such certificate was issued by them. Therefore, naturally no reliance can be placed on such a document, authenticity of which itself is doubtful. Respondents have annexed all those letters issued by Nagar Nigam with their counter affidavit, if the contention of applicant was to be accepted that the death certificate was issued by Nagar Nigam and not by Nagar Mahapalika. A duty was cast on the applicant to produce the certificate from Nagar Nigam along-with her rejoinder to show that the death certificate produced by her was indeed issued by Nagar Nigam. No such effort



has been made by the applicant nor there is any other evidence on record to rebut the contention made by the respondents, except mere statement by applicant, therefore, naturally applicant's stands is not sustainable in law.

7. In view of the categorical statement made by the Nagar Mahapalika, Kanpur that they had not issued any death certificate showing the death of Shri R.P. Saxena. I am unable to accept the contention of applicant's counsel that the certificate was granted by Nagar Nigam and not by Nagar Mahapalika, since they have not taken any efforts to show to the contrary than what has been stated by the respondents by supporting their submissions with documentary evidence.

8. Even otherwise, since all this time applicant's claim was only to grant compassionate appointment to her on the ground that her husband was missing from 19.07.1993 while on 31.07.97 applicant's husband had already retired and she was already given the retiral benefits also to which applicant was entitled to in law, she could not have been given any other benefit as held by Hon'ble Supreme Court in Judgment Supra. Therefore, in the given set of facts, no interference is called for. The O.A. is accordingly dismissed with no order as to costs.



MEMBER (J)

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