

Open Court

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 22nd DAY OF DECEMBER, 2010)

HON'BLE MR. JUSTICE S.C.SHARMA, MEMBER (J)

Original Application No. 1667 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Phoolpati Devi, Aged about 55 years,
Wife of Ram Briksh resident of Mohalla-Dargahiya,
Po-Kurha Ghat,
District-Gorakhpur.

..... Applicant

Present for Applicant: Shri R. P. Dubey, Advocate.

Vs.

01. Union of India, through Secretary, Ministry of Defence
South Block, DHQ, P.O. 1101, New Delhi.
02. Engineer-in-Chief, Army Headquarter, New Delhi.
03. Chief Engineer (Pension Cell),
Central Command, Lucknow.
04. Chief Engineer (Air Force), Bamrauli, Allahabad.
05. Garrison Engineer (Air Force), Gorakhpur.

..... Respondents

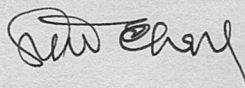
Present for Respondents: Shri R.K.Srivastava, Advocate.

ORDER

(Delivered by Hon. Mr. Justice S. C. Sharma, Member-J)

Heard Shri R.P. Dubey, Advocate for the applicant and Shri Dharmendra Tiwari, Advocate holding brief of Shri R. K. Srivastava, Advocate for the respondents.

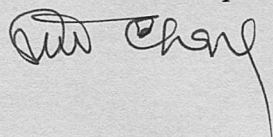
2. Under challenge in this O.A. ^{2/5} the order dated 24.2.2000 passed by the respondent No. 5. By the impugned order, the claim



of the applicant to grant the family pension was rejected. Further, prayer is to give direction to the respondents to consider and grant family pension to the applicant along with arrears in accordance with law.

2. The pleadings of the parties may be summarized as follows: -

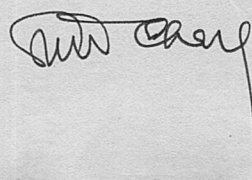
That the husband of the applicant namely Ram Briksh was employee of the respondents. He ^Rwas joined on 6th October, 1965 on the post of Choukidar (G.I.) and got posted Garrison Engineer (P) at Allahabad. In the month of Feb, 1967 the husband of the applicant was transferred to Gorakhpur and thereafter, on 6th may 1968 the husband of the applicant left Allahabad to join his duties at Gorakhpur. After that the applicant never heard anything regarding her husband. The applicant being illiterate lady and not aware of any legal proceedings and being *Parda Nassen* lady, she could not move out of her residence to find out whereabouts of her husband. She waited for him for long time. On the advise of family members she made a representation before the respondents to enquire whereabouts of her husband. Applications were moved to the police authorities but, no response was given by the respondents or police authorities. For the last more than 28 years the applicant could not gather any information or whereabouts of her missing husband. The applicant is convinced that her husband met with an accident and a prayer was made to the respondents to grant family pension to the applicant as per law and rules. Respondents required certain documents from the applicant and as per letter of the respondents, requisite information was furnished. FIR was lodged as per instruction of the respondents and thereafter, relevant documents were submitted to the respondents. There had



been long correspondence with the respondents but ultimately claim of the applicant was rejected and hence the OA.

3. Respondents contested the case and filed counter. It has been admitted by the respondents that the husband of the applicant was transferred to Garrison Engineer (Air Force), Gorakhpur in 1967 on compassionate ground and was employed under Garrison Engineer (Air Force), Gorakhpur. Thereafter applicant remained absent from duties w.e.f. 06.5.1968. It is stated that the applicant after laps of 28 years woke up from a long slumber and wrote a letter dated 30.12.1996 to the Chief Engineer (Pension Cell) Central command, Lucknow with a copy to others. In that application, the applicant had expressed about pathetic condition of the case regarding disappearance of her husband since 06.5.1968. A request was made by her to grant family pension and the required documents were submitted to the Chief Engineer vide letter dated 15 April, 2003 wherein it was mentioned that the husband of the applicant rendered only 2 years and 7 months temporary service, as such, applicant is not entitled any type of pension as per CCS (Pension) Rules, 1972. Disciplinary proceeding was initiated against the husband of the applicant for unauthorized absence from 6th may, 1968 and as he did not appear in the enquiry proceeding hence, it was presumed and deemed to have resigned from the date of absence. The letters of the applicant were duly replied wherein it was mentioned that her case is liable to be dismissed.

4. I have heard Mr. R.P.Dubey, learned counsel for the applicant and Dharmendra Tiwari holding brief of Shri R. K. Srivastava,



learned counsel for the respondents and perused the entire facts of the case.

5. From the pleadings of the parties it is admitted fact of the parties that husband of the applicant was an employee of the respondents. He was employed under the Assistant Garrison Engineer E/M, Gorakhpur in the department of Garrison Engineer (Air Force), Gorakhpur. It has been alleged by the respondents that the husband of the applicant remained absent from duties w.e.f. 06.5.1968 and thereafter, never resumed the duties. He put up only 2 years 7 months service and he was a temporary employee and that a disciplinary enquiry was initiated against the husband of the applicant and enquiry was submitted with the conclusion that it shall be deemed that he has resigned from the service. It has been argued by the learned counsel for the applicant that the applicant was unaware about legal complication and intricacy of the law and since she could not react immediately after disappearance of the husband on 06.5.1968, ^{since} when the husband of the applicant is ^{was} missing. The missing report was ^{lodge} ~~alleged~~ to the concerned police in accordance with law. Thereafter, as per direction of the respondents ^{lodge} ~~alleged~~; matter was investigated and all the documents required by the respondents, as per letters, were submitted through the respondents.

6. Learned counsel for the applicant argued that lastly Garrison Engineer (A/F), Gorakhpur wrote a letter to Superintendent of Police, Gorakhpur on 22nd May, 2002, Annexure-13 is the copy of that correspondence. It was expected from the Superintendent of Police, Gorakhpur vide this letter that a thorough investigation may

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be conducted and copy of investigation report may be submitted to the respondents along with the recommendations. It was also opined that in case information is not received then obtain the final report to the effect that "all efforts have been made to traced out." That it should also be published in Hindi Daily Newspapers.

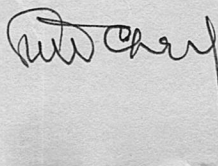
7. Learned counsel for the applicant argued that nothing was done by the SP, Gorakhpur in accordance with this letter. If proper investigation might have been conducted on this letter of the Garrison Engineer then it could have been ^{revealed} ~~revealed~~ that the husband of the applicant ^{had been} ~~missing~~ ^{for} ~~from~~ the last 28 years. The learned counsel for the applicant also expected from this Tribunal that a direction be given to the Respondent No. 3/Chief Engineer (Pension Cell), Central Command, Lucknow to act according to the report of the Police and in case complete report has not been submitted by the SP, Gorakhpur as per satisfaction of the respondents then they may require the S.P. concerned to submit detailed report on the guidelines mentioned in that letter. But without ascertaining the contents of the letter, the matter of family Pension was wrongly rejected by the respondents. He also argued that the applicant is widow of the deceased employee and he was employee of the respondents.

8. Learned counsel for the respondents argued that applicant put in only 2 years 7 months service and as per CCS (Pension) Rules 1972, the husband of the applicant or the applicant is not entitled for the pension or family pension. Learned counsel for the applicant argued that matter had already been contested up to the Hon'ble Apex Court and it was held that even substitute is entitled

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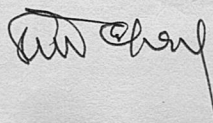
for the family pension. He cited a judgment reported in *JT 1996 (Supp) SC 674 Prabhavati Devi Vs. Union of India and others*. It has been held by the Hon'ble Apex Court that substitute shall be afforded all the rights and privilege as will be admissible to temporary railway servant from time to time, on completion of 6 months continuous service. In the present case the deceased had been in service and that too continuously. Having become temporary servant in this manner, he became entitled for family pension under sub rule 3 B 2311: - where under it is provided that the "*widow/minor children of a temporary railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para-801 of the Manual of Railway Pension Rules*" hence in these circumstances and in view of the Judgment of the Hon'ble Apex Court even a substitute who has continuously worked for the 6 months, acquired temporary status and in case of death his dependent or widow shall be entitled to family pension. In the present case the husband of the applicant had put in about 2 years 7 months service.

9. Learned counsel for the respondents argued that this judgment of the Hon'ble Apex Court is not applicable to the present case because the husband of the applicant was Railway employee and CCS (Pension) Rules, 1972 are different from the Railway Pension Rules. But I disagree with the argument of the respondents' Advocate. The principles have been laid down to the effect that substitute is also entitled for family pension. There is no provision in CCS (Pension) Rules, 1972 that only family members or



widow of a deceased employee shall be entitled for family Pension if an employee put in certain qualifying period of service.

10. Learned counsel for the applicant also argued that the applicant's husband was a permanent employee of the respondents and that as per the Judgment of the Hon'ble Apex Court even a substitute who had worked for 6 months, acquired the status of the temporary employee, his dependents and widow are entitled for a family pension. That the case of the applicant is at similar footing with the case before the Apex Court (cited above) and no Rule has been cited by the Respondents debarring a widow of a Government servant from family pension only it has been alleged that as per Rules of CCS (Pension) Rules 72 as applicant's husband put in only 2 years 7 months in service hence, he is not entitled for family pension. It is stated that this short period service cannot be termed as a qualifying service in order to entitlement of the applicant for family pension. But in view of the judgment of the Hon'ble Apex Court applicant is also entitled for family Pension and she had done a long correspondence with the respondents at no point of time they have alleged that the applicant's husband had been absent since 6.5.1968. Hence, in a disciplinary enquiry deemed to have resigned and he is not entitled for any family pension. Several directions were issued to the applicant by the respondents and it was expected that he will fulfill requirements mentioned in the correspondence. If the applicant was debarred from any family pension then outright such initiation could have been turned down instead of favouring the applicant such a long correspondence. Now the question is only regarding authenticity of the fact that applicant's husband had died. Although law provides that if the close relation of the deceased have



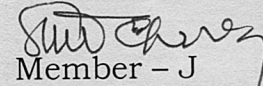
not heard anything about whereabouts of the persons then presumption may be drawn of his death. It is stated that as the whereabouts of the applicant is not known since 1968 hence, presumption will be drawn of his death. The police neither searched out husband of the applicant nor submitted any Report to this effect. Vide letter dated 22nd May, 2002 it was expected from the SP, Gorakhpur to submit report on certain facts. A search report was called from the concerned police to the effect that whereabouts of the husband of applicant is not known in spite of sincere and best efforts. But learned counsel for the applicant argued that in response of this letter no reply was submitted by SP, Gorakhpur.

11. Learned counsel for the applicant also argued that a direction may be given to the respondents to act according to the report of the S,.P., Gorakhpur, if so received. So, Superintendent of Police, Gorakhpur may be directed to submit in accordance to letter of the year 2002.

12. In view of the fact, it is just and proper to give a direction to the SP. Gorakhpur to submit a report in accordance to letter dated 2002 within a specified period and thereafter, the respondents shall consider and decide the matter of the admissibility of the family Pension to the applicant as per Rules. O.A. deserves to be disposed of. O.A. is disposed of accordingly. The S.P., Gorakhpur is directed to submit a report in the light of letter dated 22 May, 2002 wrote by Garrison, Engineer (A/F), Gorakhpur within a period of 3 months from the date a copy of the order produced them. Applicant shall produce the copy of this order. The copy of the letter dated 22may, 2002 shall also be produced before the SP, Gorakhpur for

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immediate compliance within time. The Garrison Engineer / Respondent No. 5 thereafter, respondent No. 3/Chief Engineer Pension Cell Central Commandant, Lucknow on the receipt of the report of the SP, Gorakhpur shall decide the matter of the family Pension of the applicant within a period of 3 months from the date when the report of the S.P., Gorakhpur received by him. Copy of order shall also be produced before respondent No. 3 for compliance accordingly. No order as to costs.


Member - J

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