

RECEIVED:
CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

...
REGISTRATION O.A. 1662 of 1992

Dated: 27 October, 1994.

Smt. Geeta Devi wife of late
Bhimcent Soora Dodrai, T.No. 1220/HT
Ordinance Equipment Factory Kanpur
at present resident of 15/11, Chinni Wala
Hata, Bhagwatdas Ghat, Kanpur Nagar ... APPLICANT.

(By Advocate Sri B.N. Rai)

VERSUS

Union of India through Director
Ordinance Equipment Factories
(O.E.F.C.) and others RESPONDENTS.

(By Advocate Sri S.C. Tripathi)

O R D E R

(By Hon. Mr. S. Dayal, Member(A))

The applicant has come to this Tribunal
under Section 19 of the Administrative Tribunals Act,
1985 seeking the following reliefs by way of directions
of the tribunal:

- ✓ (i) payment of arrears of salary and all other allowances due to her husband.
- ✓ (ii) payment of family pension to the applicant treating disappearance of the applicant in this case as death while on duty.
- ✓ (iii) payment of death cum retirement gratuity and Group Insurance amount as admissible under law to the next of kin of the government servant who dies while on duty.
- ✓ (iv) to give suitable employment to the applicant in Class-IV ~~under~~ under dying in harness Rules.



2. The facts narrated by the applicant in her application are that her husband was appointed as labour in Ordnance Equipment Factory, Kanpur and was regularised with effect from 24.9.1980. However, Annexure- 1A shows that the applicant was given appointment as casual labour by letter dated 19.9.1979 and Annexure- 1 shows that he was treated as regularly appointed on temporary post with effect from 6.3.1985. The applicant claims to be a legally wedded wife and has produced family identification card for OPD/ indoor treatment in which her name is mentioned as wife (Annexure-2) and a certificate given on behalf of the District Magistrate that she is the wife of the disappeared person Shri Bhimsent Soora Dodrai, (Annexure- 3). It is said that Shri Bhimsent Soora Dodrai went on duty on 4.4.1981 and did not return. The applicant went in search of her husband and came to know that he had become mentally insane and was sent to the combined hospital of the Ordnance factory where he was found by the applicant to be tied up by ropes on the bed. The applicant visited her husband everyday and on 14.4.1981 evening when she visited, she found that her husband had been discharged from the hospital without



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any information to the applicant. She tried to trace out her husband and when she could not find him, she reported the matter by applications dated 18.4.1981 and 25.4.1981 to the S.S.P. (Annexure- 4) and the General Manager, Ordnance Equipment Factory, Kanpur (Annexure- 6). On a query from the management dated 5.9.1988 (Annexure- 7), the applicant produced a copy of her report dated 25.4.1981 to the police (Annexure- 8) and the final report of the police regarding their inability to trace her husband dated 11.5.1990 (Annexure - 9). The applicant made a representation to the Factory Management on 17.2.1990 for payment of amounts due to her and for compassionate appointment and received a reply dated 23.8.1990 from the factory management that the services of the husband were terminated on 22.5.1981 and absented himself from 22.5.1981. He was only entitled to salary for the month of May and bonus for the year 1981-82 for which bills had been sent to Accounts office. He has also mentioned that the averment of the applicant that her husband disappeared after being discharged from the hospital on 14.4.1981 was false. By another letter dated 10.9.1990, the applicant was informed that her request for compassionate appointment could not be acceded to (Annexure- 11). The applicant has stated in paragraph 1 of the application that the documents showing the applicant's husband in service till 21.5.1981 were fraudulently and illegally manipulated ones.

3. The respondents in their written reply have stated that Sri Bhimcent Soora Dodarai, was appointed as Labourer-B on casual basis w.e.f. 24.9.1979. They have mentioned that he was appointed on temporary basis on 8.12.1980 and was kept on probation for 6 months. The respondents have mentioned that the applicant was admitted to the factory hospital on 4.4.1981 and was discharged on 14.4.1981. They have also mentioned that the applicant attended his duties upto 25.1.1981 and remained unauthorisedly absent from 22.5.1981. A registered letter sent to his address came back undelivered with the remark that the receiver was out for many days. It is mentioned that another registered letter was sent but was not received back. They have mentioned that his services were terminated under Rule 5(2) of the Central Civil Services (Temporary Service) Rules, 1965 vide factory order part-II No. 2207 dated 23.9.1982. They have said that the first representation/intimation was received from the wife of Sri Bhimcent Soora Dodarai on 1.8.1988. However, they have admitted to the receipt copies of applications dated 18.4.1981 and 25.4.1981 made by the applicant to the S.S.F. Kanpur ^{along with her letter dated 26.9.88.} It is further said that the Senior Medical Officer Incharge vide his letter dated 7.9.1988 had ^{admitted} ~~stated~~ that Sri Bhimcent Soora Dodarai was admitted in C.H. Kanpur on 4.4.1981 and was discharged from C.H. on 14.4.1981 declaring him fit for duty w.e.f. 15.4.1981. The respondents have stated that the application dated 12.7.1988

addressed to S.S.P. Kanpur reveals that G.D. is of 13.7.1988 ^{and} the police has submitted the report on 16.9.1988, therefore, the petitioner's contention is misconceived and contradictory. They have admitted that application dated 1.2.1989 was received from the petitioner and the competent authority decided that it was not deserving compassionate appointment. They have mentioned that another application dated 22.3.1990 was received from the applicant that her husband has been missing since 25.4.1981 which is contradictory to her earlier contention and it was decided in the negative. They have further stated that her application dated 21.5.1990 was considered and replied to on 13.8.1990 giving reasons for not ^{acceding} ~~excessing~~ to her request. It is mentioned that another application forwarded by the Additional Director General, Ordnance Factory, letter dated 10.8.1990 was received and in response to it, a letter dated 23.8.1990 was sent to the Ordnance Equipment Factory Headquarters giving comments and copy of which was endorsed to the Ministry. Another application dated 17.8.1990 was endorsed to the Ordnance Equipment Factory Headquarters and the Ministry in similar manner. Ordnance Equipment Factory, Headquarters have issued a letter to the petitioner on ^{10th February, 1991} ~~20.2.1990~~ in which the factory letter dated 23.8.1990 was quoted. They have said that the payment of out standing dues was made to the petitioner on 28.5.1991 and the ^{possession} ~~possession~~ was intimated to the Ordnance Equipment Factory, Headquarters, vide letter dated

27.6.1991. It has also been stated that the Ministry of Defence has issued an order dated 2.1.1992 to the Ordnance Equipment Factory for appointment of petitioner on compassionate ground. The case was sent to O.F. Cell on 10.2.1992 even after this, other representations dated 3.2.1992 were received from the petitioner. It is mentioned ~~that the case of~~ that the case of the petitioner ^{was} still pending with the Ministry and a decision in this regard is still awaited and that a letter dated 24.12.1992 was issued to the Ordnance Factory Board and the Ordnance Equipment Factory, Headquarters.

4. They have clarified in the written reply that the husband of the applicant was appointed on Casual Basis w.e.f. 24.9.1979 for 89 days and was granted 5 extensions of 89 days after that. He was appointed on temporary basis w.e.f. 8.12.1980. The regularisation of Casual Appointments were made subject to the condition that the services were to be recorded as having started from the date of appointment on temporary basis. The respondents have admitted that the applicant is the wife of Shri Bhimcent Socra Dodrai vide paragraph No. 6 of the reply. They have mentioned that Annexure- 4 filed by the petitioner is dated 18.1.1981, whereas, she has alleged that her husband is missing from 18.4.1981 which is contradictory. They have also mentioned that the applicant had submitted a final report ~~dated~~

dated 16.9.1988 from several authorities along with her representation dated 26.9.1988 after a lapse of more than 7 years from the date of termination of service. They have said in paragraph no. 9 that after a Government employee is not traceable for a period of 7 years, he is deemed to have died and compassionate appointment can be given to dependents of the deceased employee. But, in the present case, the services were terminated before the missing report was received, hence he has ceased to be a Government Employee. They have mentioned that if the wife had made any report regarding the fact that her husband was missing, her case would have been covered under Government Report but no report/representation was received from her before the termination of service of the employee. The respondents have mentioned that Sri Dodrai was discharged from the hospital on 14.4.1981 and was declared fit for duty. They have mentioned that they cannot confirm whether Sri Dodeai was handed over to his family or sent to his residence under security guard. They have further stated that since he was fit, there was no necessity of sending him under security guard. They have further stated that since the applicant's husband was not in service after 21.5.1981, it cannot be said that he died during his service due to his alleged disappearance and that the provisions of the Evidence Act is not applicable in this case.

5. The rejoinder affidavit filed on behalf

of the applicant states that attendance of duty upto 21.5.1981 by the applicant's husband as well as sending on registered A.D. letters was a story which is false and cooked up. It has also been mentioned that the services of the applicant's husband could not have been terminated without any enquiry and that the order of termination is not annexed to the counter affidavit. She has denied that temporary service rules, 1965 were applicable to the confirm employees. She has mentioned that the matter of disappearance of her husband was reported to the factory authorities as well as police on 18.4.1981 and 25.4.1981. She has stated that the contents of para 1b. 3(e) to 3(m) are matters of record but the respondents have not filed any record which proves the falsity of the story of the respondents.

6. The counsel for the applicant Sri B... Rail as well as the counsel for the respondents Sri S.C. Tripathi were heard. The counsel for the applicant reiterated the facts and the grounds given in the application. He has also mentioned that no proofs of sending of registered letter, holding an enquiry since he was regular employee making of termination order and notice to the applicant before that have been given by the respondents. Besides,

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the order is said to have been made from retrospective effect which is not permissible. The husband of the applicant was not terminated on the date from which he was missing. He has further pointed out that the services could not have been terminated in 1982 when regularisation was done in 1985, therefore, the termination order was fabricated. He cited the case of Charanjit Kaur Vs. Union of India and others, (1994) 2 UPLBEC, 907. He has cited this case to bring home the point that no investigation in such circumstances entitles the dependent not only to special family pension but also to compensation.

7. The counsel for the respondents on the other hand said that the case has been referred to higher authorities and the matter was pending. He has said that the applicant did not exhaust the departmental channel. He has said that all the dues have been given to the applicant. He has said that Sri Dodrai was not a regular employee because a ~~high post~~ officer in a high position is making counter affidavit ^{and has} stated it on oath. He said that the Doctor has certified that he was well and admitted that the patient was hospitalised in Mental Hospital. He has said that the decision by the respondents is taking a long time because of long well established channel in the department.

8. It is quite clear from the facts given that one of the two parties is trying to mislead the Tribunal. One would have thought that such an attempt could have been resorted to by the applicant.

that the record suggests that this attempt has been made by the respondents in this case. In their reply dated 23.3.1990 (Annexure- 10 of the application), the respondents have stated that it was totally wrong that the applicant disappeared on or after 14.4.1981 because of insanity. It is said that the record of the factory shows that the applicant's husband was working in the factory till 21.5.1981. However, latter in their counter affidavit, the respondents have admitted that the applicant remained in the hospital from 4.4.1981 to 14.4.1981. The respondents have tried to cast a doubt on the reporting of disappearance of the husband of the applicant to the police and the factory authorities on 18.4.1981 and 25.4.1981. However, the applicant has produced a certified photo copy from the records of the Superintendent of Police which was dated 25.4.1981, reporting about the disappearance of her husband from the hospital on 14.4.1981. In this photo copy a mention has been made about the application dated 18.4.1981 also. This leaves no doubt that the applicant reported the matter to both the police as well as the factory for which she has produced copies (Annexure- 6).

9. It has been suggested on behalf of the respondents that the applicant had made claims for arrears of any dues and for compassionate appointment in the year 1988 only. However, Section- of the Evidence Act raises a presumption of

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death only after 7 years. The respondents have admitted that the dependents of persons who disappeared while in service were entitled to compassionate appointment only after a period of 7 years which is the contention based on the above mentioned Section of the Evidence Act. Therefore, the applicant became legally entitled to raise the claim of payment of dues as well as giving of compassionate appointment only for 1988.

10. It has been stated on behalf of the Respondents that the husband of the applicant was no longer in service when he disappeared and as a dependent of a disappeared ex-employee, the applicant had no rights. The facts shows that the order of termination of services was passed on 23.9.1982. It is also quite clear that no enquiry was made before termination. The respondents have stated that the order of termination was made under section 5 of the Central Civil Services (Temporary Service Rules), 1965, without ^{producing any} order of termination. ~~was produced before him~~. This was not a case in which a discharge simplicitor would have been resorted to. Besides ~~an~~ order of termination is given retrospective effect which makes it invalid, therefore, the order of termination has to be treated as ~~if~~ 'non est' in this case. The husband of the applicant was, therefore, a Government Servant in service at the time of his disappearance. The presumption of death will operate w.e.f. 18.4.1988.

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11. In view of the findings given in last ~~two~~ three paragraphs, the respondent no. 1 is directed to give all the dues to which the applicant is entitled to under the ~~present~~ rules treating her husband to have died on 16.4.1988. The respondent no. 1 is also directed to give suitable employment to the applicant in Class-IV as dependant of an employee who dies in harness, and in addition thereto, a compensation of Rs. 50,000/- shall be paid to the applicant ^{as ex gratia payment} for denial of her rights so far. The compliance of the directions in this paragraph shall be made within a period of 3 months from the date of communication of this order by the applicant to the respondent no. 1. There will be no order as to costs.

TRUE
COPY

D. S. Dab

D. S. Dab
Seated Officer
Central Adm. Tribunal
Allahabad

S. Dayal
Member (A)

(n.u.)

Rev 1/95

OA 1662/92

A/1

ex

Rev App. 1/95

in OA 1662/92 has
been filed by U.O.I. 20.
against the Judgment
dt 27.10.94. passed

by Hon Mr. S. Dayal. A.M.

Rev app. is supported
by Judgment and delay
condonation app.

submitted.

for

9.1.95

sgc(S). Submitted
under circulation Ruls.
9/1/95

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CENTRAL ADMINISTRATIVE TRIBUNAL ALIAHABAD BENCH

Allahabad this the 22 day of February 1995.

Review Application no. 1 of 1995

In

Original Application no. 1662 of 1992

Hon'ble Mr. S. Dayal, Administrative Member

- i. Union of India, through Director, Ordnance Equipment Factories (O.E.F.C.).
- ii. Additional Director General Ordnance Equipment Factories (O.E.F.C.) E.S.I.C. Bhawan, Sarvodaya Nagar, Kanpur.
- iii. General Manager, Ordnance Equipment Factories, Kanpur.

... Applicants.

C/A Shri S.C. Tripathi.

Versus

Smt. Geeta Devi, wife of Late Shri Bhimcent Soora Dodrai, T.No. 1220/Ordnance Equipment Factory, Kanpur, at present residence of 16/11, Chimni Wala Hata, Bhagwatdas Ghat, Kanpur Nagar.

... Respondent.

C/R

O R D E R

(Hon'ble Mr. S. Dayal, Member-A)

This application has been filed for review of the order dated 27.10.1994 in O.A. No. 1662 of 1992.

Cont2/-

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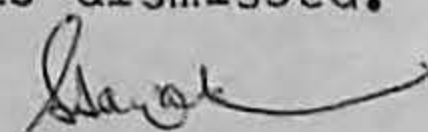
2. It is well settled that power of review may be exercised;

- i. on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made.
- ii. where some mistake or error apparent on the face of the record is found and,
- iii. Any other analogous ground.

3. I have perused the review application and I find that the grounds taken for review suggest that the decision was erroneous on merit. The review provisions cannot be invoked to correct error if any, committed in deciding the case on merit. The applicant has precisely done the same. It does not appear from the review application that new and important matter or evidence, which after exercise of the due diligence was not within his knowledge or could not be produced at the time when the case was argued, has been discovered or that, mistake or error apparent on the face of the record has been found justifying interference with the order in exercise of review jurisdiction.

4. In view of the above, I find no merit in this application and the same is dismissed.

/pc/


Member-A