

44

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Original Application No. 1111 of 1992

Smt. Manju Ran

Petitioner

Versus

Union of India and Ors

Respondents

CORRUM

HON'BLE MR. JUSTICE R.K. VARMA, V.C.

((By Hon. Mr. Justice R.K. Varma, V.C.)

This is a petition filed by the petitioner, wife of a government employee, Sri Anokhe Lal who is alleged to have died, for appointment to a suitable post on compassionate ground and for payment of family pension and gratuity in terms of Govt. Order No. 13/5/91-E-C-4(SUM) New Delhi, dated 11.5.91(vide Annexure-G to the petition).

2. The facts giving rise to this petition briefly stated are as follows:

Sri Anokhe Lal, husband of the petitioner was appointed as Pump Operator in CPWD under the control of the respondents in the year 1977. It is stated that while he was posted as Pump Operator at CPWD, C.R.P. Rampur, he after performing his duties on 15.6.1990 at Central Sub-division Rampur submitted his departure report for going to Bombay. It is alleged that Anokhe Lal was ~~kidnapped~~ by someone who had inimical terms with him and since then he is missing. An FIR was lodged in Police station Kotwali, ~~district~~ Rampur by the petitioner on 3.7.1990. The petitioner's mother sent a letter to Inspector General of Police Bareilly Range,

contd..p2

Bareilly on 17.7.90 stating therein that the petitioner's husband had been kidnapped and murdered by one Jai Prakash. The police after investigation, submitted a final report on 23.9.90 (vide Annexure-B to the petition) stating that the missing person Anokhe Lal could not be traced out inspite of sufficient efforts made in that behalf and advertisement given in radio and in news paper.

3. The petitioner's application for appointment on compassionate ground has been made on the supposition and allegation that her husband Anokhe Lal was kidnapped and murdered even though no evidence could be collected by the police about the death of Anokhe Lal who has been missing after 5.6.90. The petitioner is said to have four minor children whom she is required to support and she is not getting any salary of her husband, who is said to be missing.

4. Learned counsel for the petitioner has submitted that the petitioner is entitled to family pension and gratuity since the date of disappearance of her husband Anokhe Lal in pursuance of the Govt. order dated 10.5.91 (vide Annexure-G to the petition) aforesaid. In addition the petitioner is entitled for an appointment on compassionate ground on the supposition that the petitioner's husband is not traceable because he is dead. It has been submitted that in case the legal presumption of death cannot be raised unless expiry of seven years from the date he is said to be missing, the petitioner would be entitled to the salary of her husband on the presumption that he is alive and contract of his service subsists in the absence of any legal termination of service.

RKU

5. A decision of Patna High Court In 'Arhul Devi Vs. State of Bihar and Ors (1990) 2 UPLBEC 1316 has been cited in support of the above submission of the learned counsel for the petitioner.

:: 3 ::

6. The learned counsel for the respondents says that a just and proper order may be passed in the circumstances of the case.

7. Having heard the learned counsel for the parties, I am of the opinion that even though legal presumption of death of the petitioner's husband may not arise until his whereabouts remain unknown for complete seven years, the possibility of alleged kidnapping and murder being true in the circumstances, cannot be ruled out and it would, therefore, be unreasonable in the circumstances, to require the petitioner to wait for seven long years and remain in financial distress before making the application for compassionate appointment Seven years hence. That would also frustrate the very purpose of the redeeming provision meant for giving immediate relief by way of appointment on compassionate grounds consequent upon the death of the bread earner Govt. servant.

8. It is, therefore, directed that the respondents shall forthwith consider the petitioner for compassionate appointment to a suitable post appropriate to her qualification. In case the petitioner's husband Anokhe Lal appears on the scene any time during the period of seven years from the date he is missing and claims to be in service, his claim for emoluments for the period the petitioner remains in service of the respondents after getting compassionate appointment shall be liable to be excluded from consideration.

RK/

9. Subject to the observation as aforesaid, this petition is allowed. It is, directed that the respondents shall pay family pension and gratuity to the petitioner in terms of the Govt. order No. 13/5/91-(SUM) New Delhi (vide Annexure-G to the petition) from the date of disappearance of the petitioner's husband which is to be reckoned as the date the F.I.R is lodged with the police as per the said

:: 4 ::

Govt. Order. It is also directed that the respondents shall provide compassionate appointment to the petitioner on a suitable post on the basis of the petitioner's qualification.

10. In the circumstances, there shall however, be no order as to costs,

R. K. Sharma
Vice Chairman

Dated: 30 July, 1993

(Uv)