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**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 15th day of Sept., 2006.

HON'BLE MR. P.K. CHATTARJI, MEMBER- A

ORIGINAL APPLICATION NO. 1394 OF 2003

Smt. Vidya Devi, Adult, a/a 40 yers,
Wife of Sri Vinod Kumar, R/o House No. 4/213,
Manni Purwa, Purana Kanpur, Kanpur.

.....Applicant.

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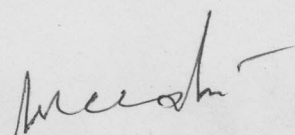
1. Union of India through the Secretary,
M/o Defence, New Delhi.
2. The Secretary, Ordnance Factories Board'
10-A, Saheed Khudiram Bose Road,
Calcutta- 1.
3. The General Manager, Ordnance Equipment Factory,
Post Box No. 76, Kanpur Nagar.

.....Respondent

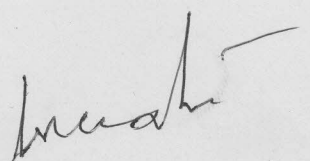
Counsel for the Applicant: Sri K. Lal
Counsel for the Respondents : Sri R.C. Shukla

ORDER

The applicant in this O.A is the wife of Sri Vinod Kumar, who was working with the respondent No. 3 i.e. General Manager, Ordnance Equipment Factory , Kanpur. The applicant submits that from 09.01.1992, her husband Sri Vinod Kumar



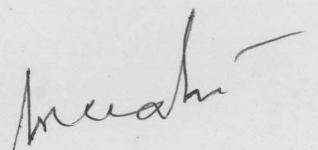
was missing and she brought it to the notice of Leabour Officer, Ordnance Equipment Factory , Kanpur , on whose advise, she lodged FIR in Police Station, Kakadeo, Kanpur . On 28.01.1992, she submitted an application before respondent No. 3 giving copy of the FIR and requesting him to trace out her husband. Thereafter, the applicant regularly approached the respondent No. 3 inperson and in writing for knowing the where about her husband. But the respondent No. 3 neither intimated about the presence of her husband nor any action was taken by him till forwarding of their letter No. PC/54/IE dated 12.11.1998. In this letter, the respondent No. 3 requested the applicant to submit a copy of FIR and final report of the Police. The applicant complied with the direction and furnished a copy of FIR as well as the final report of Kakadeo Police Station, Kanpur dated 30.11.1998, in which, it was confirmed that there was no criminal history of the missing employee. Thereafter the applicant was intimated vide Letter No. LB/3/Dis dated 03.04.1999 that her husband had attended the factory in the month of February, 1992, i.e. after the date from which he was reported to be missing by the applicant, and taken the payment of his presence . But the applicant submitted that this fact was never intimated to her till 12.11.1998 and alleges that this is a concocted story to justify their action in terminating the services of the applicant. She further alleges that it is to justify the rejection of her request for family pension, which she had submitted before the respondents. As directed by the respondents, she had already submitted a copy of FIR and was



expecting that these information were required in connection of drawal of the family pension.

2. The applicant approached the Additional D.G, Ordnance Factories, Kanpur on 16.04.1999 for her family pension but The D.G., Ordnance Factories, Kanpur, rejected the claim of the applicant. Aggrieved by the aforesaid rejection, the applicant filed O.A No. 393/2003 (Vidya Devi Vs. UOI& Ors.) and the Tribunal passed an order on 20.04.2003 directing the respondent No. 3 to consider the representation of the applicant and pass reasoned order within three months. When the applicant submitted the direction of the Tribunal vide her representation dated 31.05.2003, the respondent No. 3 rejected the request of the applicant.

3. The applicant further alleges that while deciding the application, the respondent No. 3 vide his order No. VIG/C-34/SMT.VD dated 04.08.2003 cited the concocted story of her husband being present in the factory after the so called disappearance. Moreover, she was also informed that disciplinary proceedings were initiated against her husband by memorandum VIG/D-52/VK dated 02.04.1992 and Court of Enquiry was constituted. She was further informed by the respondent No. 3 that they tried to serve the notice of disciplinary proceedings to Sri Vinod Kumar but these were returned more than once from his address. A copy of charge sheet has been annexed by the applicant in the O.A alongwith copy of final order of removal from service dated 27.06.1995.



The first paragraph of the order, which clearly shows that the main charge of misconduct, for which disciplinary proceedings were initiated and thereafter Sri Vinod Kumar was removed from service is that of absence from duty w.e.f. 23.12.1991 to 12.02.1992, is being reproduced below: -

"Whereas Sri Vinod Kumar, T. No. 525/BP,P/No/ 104120 Labour/Semi Skilled, OEFC was informed of the proposal to take action against him under Rule 14 of CCS (CCA) Rules, 1965 vide this factory memorandum No. LB/52/VK dated 02.04.1992 on the charge of misconduct of habitual unauthorized absence from duty including the period of re-unauthorized absence from duty w.e.f. 23.12.1991 to 12.02.1992 without prior intimation or sanction of leave. A statement of imputation of misconduct or misbehavior on which the article of charge was framed together with the list of documents by which and a list of witnesses by whom the charge was proposed to be sustained was also furnished alongwith aforesaid memorandum dated 02.04.1992."

4. The applicant has sought the following relief: -

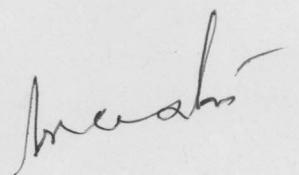
- "1. To issue a writ order or direction in the matter in the nature of mandamus directing the respondent No. 3 to consider the case of the petitioner and payment of the dues of late husband vinod Kumar.
2. To issue writ order or direction in the matter in the nature of mandamus directing the respondent No. 3 to consider the case of the applicant on compassionate ground appointment.
3. To issue any other suitable order or direction in the facts and circumstances of the case, which this Tribunal deem fit as proper."

5. The respondents vide their Counter Affidavit have denied that any story was concocted. They have submitted that that

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Sri Vinod Kumar reported for duty on 13.02.1992 and submitted application alongwith medical certificate for illness from 23.12.1991 to 12.02.1992 issued by the private Medical Practitioner. He was directed to present himself to the P.M.O/C/H. As he was declared fit, he was allowed to join the duties on 15.02.1992. Respondents have submitted in paragraph 9 of the Counter Affidavit that Sri Vinod Kumar was charge sheeted under Rule 14 of CCS(CCA) Rules, 1965 for unauthorized absence from duty w.e.f. 23.12.1991 to 12.02.1992. they have further averred that the contention that Sri Vinod Kumar was missing w.e.f. 09.01.1992 ,is incorrect as his very presence in the factory had shown. The respondents have rejected the claim of family pension in favour of the applicant for the reasons that her husband was already removed from service, therefore, she is not entitled for any pensionary benefit. It was due to non-linking of papers/case between Vigilance Section and Pension Cell of the factory that the letter asking the applicant to submit copy of FIR and final report of the Police was erroneously issued. This has created an impression for the applicant that respondents were considering her request for payment of family pension. As per rules, after removal from service, the employee and his family is not entitled to any family pension.

6. During the final hearing of the case, learned counsel for the respondents reiterated the same point as made in the CA and further emphasized that the applicant was not entitled to the relief, which she had sought for the reasons that without



modification/cancellation of the order of punishment of the disciplinary authority, no family pension can be sanctioned and the applicant has not impugned the order of disciplinary authority at any stage. This, however, was contradicted by the learned counsel for the applicant, who stated that they have brought this fact into consideration of the Tribunal while filing RA, in which the applicant has mentioned that the disciplinary proceedings was vitiated as the proceedings were ex-parte and without any service of summon. Learned counsel for the applicant has particularly stressed upon the **Apex Court judgment in Dr. Ramesh Chandra Tyagi Vs. U.O.I & Ors., [1994 SCC (L&S) 562]** and submits that since the intimation of disciplinary proceedings was not served upon the applicant, the same is liable to be quashed. In paragraph 7 of the said judgment, on which the applicant has placed reliance, the Apex Court has held as under: -

" We are pained to observe that entire proceeding do not leave very happy and satisfactory impression. It was vehemently argued that there was no procedural irregularity. But that is writ large on the face of it. No charge sheet was served on the appellant. The Enquiry Officer himself stated that the notices sent were returned with endorsement "left without address" and on other occasion "on repeated visits people in the house that he has gone out and they do not disclose where he has gone. Therefore, it is being returned". May be that the appellant was avoiding it, but avoidance does not mean that it gave a right to the enquiry officer to proceed ex parte unless it was conclusively established that he deliberately and knowingly did not accept it. The endorsement on the envelop that it was

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refused, was not even proved by the examining the Postman or any other material to show that it was refusal by the appellant, who denied on oath such a refusal. No effort was made to serve in any other manner known in law. Under postal Act and Rules, the manner of service is provided. Even Service Rules take care of it. Not one was resorted to. And from the endorsement, it is clear that the envelop containing the charge sheet was returned. In absence of any charge sheet or any material supplied to the appellant it is difficult to agree that the enquiry did not suffer from any procedural infirmity. No further need be said as the appellant having been removed for not complying with the transfer order and it having been held that it was invalid and nonest the order of dismissal falls automatically and submitted that intimation of disciplinary proceeding was not served upon the applicant."

7. I have applied my mind to the facts of the case, pleadings, and considered the arguments of learned counsel for the parties at length.

8. The point, which has to be decided is whether the contention of learned counsel for the respondents is acceptable that the Tribunal cannot decide the question of family pension because in the O.A the applicant has not challenged the order of removal under which the family pension is not payable. On this point, the learned counsel for the applicant expressed the view that the Tribunal has to take a decision based on the entire material adduced before disposal of the O.A. This could include all affidavits exchanged between the parties including RA. If the applicant

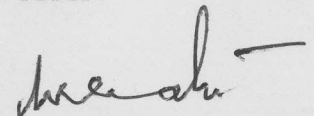
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is precluded to bring any other fact into light during the proceedings in the O.A, the purpose of exchange of further submissions become irrelevant and futile. He further stated that reference made to the Apex Court Judgment (Supra) by the applicant is quite relevant. The case of the applicant bears verisimilitude with the same case. In this O.A also the learned counsel said, the intimation of disciplinary proceedings could not be served. It was expected by the respondents that they would be patient and wait for some time before taking any decision. In this case, the allegation was for unauthorized absence for less than 2 months and that too under the pretext of illness. It is true that as per the settled law, the employer can terminate the services of an employee for prolonged absence. But in this case, the respondents have shown inexplicable haste in disposal of the case particularly when it is not denied that the wife of the employee had informed the respondents that her husband was missing. Not only that, the order of removal from service was issued three years after the date of the report of missing of her husband by the applicant. The facts remain that he had not returned to his home even today i.e. 14 years after the date of report of missing. In this back Ground, the learned counsel said, the extremely hasty decision of the respondents to dispense with the services, that too for unauthorized absence for less than 2 months remain inexplicable.

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9. Having applied my mind, I am of the view that notwithstanding the forceful plea of the learned counsel that ratio of case of Dr. Ramesh Chandra Tyagi (Supra) will apply in the present case, the fact remains that quashing the order of removal was not amongst the relief sought in the OA . Therefore, I refrain from commenting on that aspect. Without cancellation or modification of the order it is not possible to provide the relief i.e. family pension etc to the applicant.

10. For the reasons the OA is not allowed. No costs.


MEMBER- A.

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