

Pensionary Scrutir (Jud)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

XXXXXX DEPT
AHMEDABAD BENCH

(7)

O.A. No. 396 of 1987
~~XXXXXX~~

DATE OF DECISION 7.06.1991

Smt. Amarben Chandubhai Petitioner

Mr. B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. M.M. Singh : Administrative Member

The Hon'ble Mr. S. Santhana Krishnan : Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *W*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*

(S)

1. Smt. Amarben,
Widow of Chandu Bijal
2. Shri Babulal alias Rajeshkumar
Son of Shri Chandu Bijal
3. Shri Dhirajlal
Son of Shri Chandu Bijal

All residing at :-

Inside Garden,
Near Temple of Shankar Bhagvan,
Post Nota Dahisara,
Maliya Miyana Taluka,
DISTRICT RAJKOT.

: Applicants

Versus

1. Union of India,
Owning and Representing
Western Railway,
Through The General Manager,
Western Railway,
Churchgate,
BOMBAY.
2. Divisional Railway Manager,
Western Railway,
Kothi Compound,
RAJKOT.

: Respondents

J U D G E M E N T

O.A./396/87

Date : 7.06.'91

Per : Hon'ble Mr. S² Santhana Krishnan

: Judicial Member

1. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants require the respondents to release terminal benefits due to Shri Chandu Bijal who was employed under them as Trolleyman from 3.5.1952 and whose whereabouts were not known from 7.6. 1976 onwards.
2. The respondents in their reply admit that Shri Chandu Bijal was working under them and that he was absent from 7.6.1976 onwards, but, they contend that as per the Discipline and Appeal Rules an enquiry was conducted by the competent authority and thereafter following due process of law and notice of imposition of penalty was issued by the order dated

[Signature]

23.6.1978, and thereafter necessary notification of the removal was also issued by the competent authority by their memorandum dated 22.7.78. Hence after the removal, the employee losses all nebefits of terminal gratuitation. Further it was oligatory on the part of the dependent to lodge a complaint before the police authorities to find out whether Chandu Bijal is living or not, but till today this has not been done by the respondents and therefore after removal of the employee if the dependents starts claiming for retirement benefits in that case it cannot be given as it is not legal. Hence the applicants cannot claim any relief in their application.

3. The applicants have also filed a rejoinder.
4. Heard both counsel appearing for the parties. Records were also perused.
5. Shri Chandu Bijal was admitedly working under the respondents as Trolleyman from 3.5.1952 onwards. He was absent from 6.6.1976 onwards and he did not report for duty. The applicants claim is that as Shri Chandu Bijal was not heard off for seven years he is presumed to have been dead as per Section 108 of the Indian Evidence Act.
6. Section 108 is as follows :-

" Provided that when the question is whether the man is alive or dead and it is proved that he has not been heard for over seven years by those who could naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it. "
7. In view of the above said provision the applicants, who is closely related to Chandu Bijal claim that he has not been heard off for over seven years and as such the presumtion is that he is not alive. Hence the claim for terminal benefits due

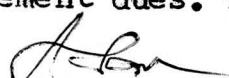
[Signature]

to him by the persons next entitled to claim the same. The fact that the applicants are entitled to claim the terminal benefits is not disputed by the respondents.

8. The main objection of the respondents as we see from their reply is that as Bijal was absent from 7.6. 1976 onwards they conducted an enquiry and removed him from service as per the order dated 22.7.'78. This Tribunal by an order dated 6.12.1990 directed the respondents to produce the files to appreciate whether the removal order is based on the mere fact of absence and the nature and circumstances of the case. Again this Tribunal by its order dated 12.2.'91 gave last opportunity to the respondents to produce the removal order. Yet the respondents have not chosen to produce the file whereby Chandu Bijal was removed from service, Hence we are justified to draw adverse inference against the respondents (viz), that there is no such removal order.

9. As Chandu Bijal was not heard off from 7.6.1976 onwards, the applicants waited till 1983 and produced Annexure A-1. to show that in the Mota Dahisara Gram Panchayat they also found that Chandu Bijal was not heard off for more than seven years. Thereafter the applicants presented Annexure A-2 claiming the terminal benefits from the respondents, Annexure A-4 is the representation made by the union. Annexure A-7 is the notice issued by the applicants through their advocate.

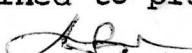
10. Annexure A-10 is an important document wherein it is admitted that Chandu Bijal is reported ^{missing} since 7.6-1976 and his whereabouts is not known. It is also admitted that the first applicant who is wife of Chandu Bijal filed an affidavit to this effect. It further states that the first applicant is declared as rightful claimant to receive settlement dues of her husband as a period of seven years is already over as required under the Rules for arranging settlement dues. This



memorandum was issued by DRM (E) Rajkot. It is significant to note that in this order it is not even stated that Chandu Bijal was removed from service by an order as claimed by the respondents. Even thereafter the applicants sent Annexure A-11 claiming terminal benefits yet, the respondents failed to pay any amount to the applicants.

11. The respondents placed reliance on Annexure A-13 a circular issued by the respondents regarding the grant of settlement dues eligible to family members of Railway Employees who have suddenly disappeared and whose whereabouts were not known. It is admitted in this circular that there are number of such cases and as per the circular "family" ~~cannot appeal~~ apply to the head of the office of the Government Servant for pension DCR Gratuity etc. after one year from the date of disappearance of the Government Servant. But it contemplates filing of the report by the family with the concerned police station and also executing an Indemnity Bond. This circular was issued on 13.10.1986 and as such it cannot have any retrospective operation. Hence, the respondents cannot be allowed to stay that the applicants ought to have filed a report to the police and hence they cannot claim the terminal benefit.

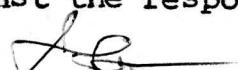
12. Annexure A-15 is the final order passed by the respondents wherein they claim that Chandu Bijal was removed from service and as such the first applicant is eligible to get PF dues only. As already stated no reliance can be placed on Annexure A-15 as the respondents failed to produce either the file or the order dated 22.7.78. The applicants in their rejoinder specifically claim that there is no such order and the respondents could not have conducted any such enquiry as Chandu Bijal was not available even for service of notice. They also claim that they also did not receive any intimation from Railway Administration. Hence we are not inclined to place



any reliance on Annexure A-15. Further the order passed under Annexure A-10 is in force and it is not set aside by the order under Annexure A-15. As the applicants have established that Chandu Bijal was not heard off from 7.6.1976 onwards they are entitled to rely on the presumption under Section 108 of the Indian Evidence Act. The respondents failed to produce any document to show that Chandu Bijal was alive. Further they also failed to produce any record to show that they conducted an enquiry against Chandu Bijal and removed him from service on 22.7.78 as contended by them. Hence the applicants are entitled in this application to all the terminal benefits of Chandu Bijal including Provident Fund, Pension and Death-cum-Retirement Gratuity. We hereby direct the respondents to pay to the applicants the terminal benefits due to Chandu Bijal including PF, Pension, Death-cum-Retirement Gratuity as per law within 3 months from the date of receipt of the order.

13. The applicants also claim employment in the Railway Services on compassionate grounds. Their claim was negatived on the ground that Chandu Bijal was removed from service. It has already been found that Chandu Bijal is presumed to have died and he was not removed from service. Hence the applicants are entitled to require the respondents to consider their claim for employment on compassionate grounds.

14. In view of the above discussion we hereby direct the respondents to release all terminal benefits of Chandu Bijal including PF, pension and death-cum-retirement gratuity, as per law within three months from the date of the receipt of the order failing which the applicants are entitled to claim the same with interest at 12% thereafter against the respondents.



(B)

15. We also hereby find that the applicants are entitled within one month\$ from the date of the order to make the necessary application to the respondents for employment on compassionate grounds and the respondents are required to consider the same sympathetically as per Rules. We hereby make no orders as to costs.

S. S. Krishnan
(S. SANTHANA KRISHNAN)
Judicial Member

M. M. Singh
(M. M. SINGH)
Administrative Member