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CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.119 OF 1995.

Cuttack this the 7th day of September, 1997.

Smt. Kappa Bairamma Applicant.

Versus.

Union of India and others. . . . Respondents.

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

S. Som
(S. SOM)
VICE-CHAIRMAN. 7/3/97

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CENTRAL ADMINISTRATIVE TRIBUNAL : CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 119 OF 1995.

Cuttack this the 7th day of March, 1997.

CORAM :

THE HONOURABLE MR. S. SOM, VICE-CHAIRMAN.

Smt. Kappa Bairamma, aged about 60 years,
W/o Late K. Appanna, resident of Konda-Devili
village, Kambirigam Post, Patrapur via,
Ganjam District, Orissa.

.... Applicant.

By the Advocate :- : Mr. B.P. Yadav.

Versus.

1. The Union of India, represented by the
Defence Secretary, Ministry of Defence,
New Delhi.
2. The Commandant, Central Vehicles Depot,
Kendriya Gachi Depot, Panagarh,
Burdawan District, West Bengal.
3. The Controller of Defence Accounts,
Droupadi Ghat, Allahabad, U.P.

.... Respondents.

By the Advocate :- : Mr. Akhay Kumar Mishra,
Addl. Standing Counsel (Cent

O R D E R.

S. SOM, VICE-CHAIRMAN : This is a petition under Section 19 of the
Administrative Tribunals Act, 1985 filed by Smt. Kappa Bairamma,
widow of K. Appanna. The respondents are Union of India, represented
by Secretary, Ministry of Defence, New Delhi (respondent No.1),
the Commandant, Central Vehicles Depot, Panagarh (respondent No.2)
and the Controller of Defence Accounts, Allahabad (respondent No.3)

Smt. Bairamma
7/3/97

Petitioner has prayed for a direction to the respondents to pay her Rs.150/- per month plus Dearness Allowance as admissible from time to time with effect from 1.1.1986 in accordance with the Department of Pensions and Pensioners' Welfare, Government of India's Office Memorandum No.4/1/87/P.& P.W.(PIC) dated 13.6.1988. The facts of the case are indicated below in brief.

2. The case of the petitioner is that her husband K. Appanna was an employee of Central Vehicles Depot, Panagarh, district Burdwan, West Bengal under the Ministry of Defence. Petitioner is a permanent resident of village Kondadevili in the district of Ganjam, Orissa and as such she has filed this application before the Cuttack Bench. It is her case that her husband was working as a Mazdoor and was a subscriber to Indian Ordnance Factories Workmen's Provident Fund and the number allotted to him was 2649. Petitioner's husband died while in service on 22.4.1963 and in terms of circular dated 13.6.1988 referred to earlier she is entitled to Ex-Gratia allowance from 1.1.1986. The petitioner submitted an application for Ex-Gratia payment to respondent No.2 on 27.9.1991 and in reply, she was directed to submit death certificate along with any service document relating to her husband. Petitioner submitted a statement of Indian Ordnance Factories Workmen's Provident Fund Account Slip for the year 1954-55 and also a copy of the nomination form making the petitioner nominee for the above Provident Fund. She also sent the death certificate dated 23.1.1992 showing that the date of death

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of her husband as 22.4.1963. Thereafter there has been a series of correspondence between the office of respondent No.2 and the petitioner asking for any further documents etc. but ultimately respondent No.2 referred the matter to the Joint Controller of Defence Accounts, Meerut for tracing out the service documents, if any, for the purpose of settling the claim. Further correspondence thereafter ensued between the office of respondent No.2 and respondent No.3. The applicant also sent a lawyer's notice to the respondents. Ultimately the records, according to the respondents, could be traced out and office of respondent No.2 informed the lawyer of the petitioner in letter dated 17.12.1994 that after thorough search records could be traced out and it was seen that K. Appanna was continuously absent from April, 1962 and was subsequently discharged from service on 10th November, 1962. As he died on 22.4.1963 when he was not in service, it was informed that his widow, the present petitioner, is not entitled to any Ex-Gratia payment in terms of the circular dated 13.6.1988. Thereafter the petitioner has come up before this Tribunal with the present petition.

3. On the basis of the facts as stated above from the petition and the counter filed by the respondents, it is clear that the petitioner's husband was working as a Mazdoor. In the Provident Fund Account slip for the year 1954-55 submitted by the petitioner the account number has been mentioned as 2649. On checking with the departmental records, it was found by the Joint Controller of Defence Accounts

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that Account No.2469 relates to one Iswar Dutt Pandey and not to K. Appanna, husband of the petitioner. On getting this information, office of the respondent No.2 again wrote a letter to the Joint Controller of Defence Accounts vide letter dated 15th July, 1992 for making a further check for locating the correct account number of K. Appanna. The matter was further taken up by the office of respondent No.2 with the Controller of Defence Accounts, Patna for locating the correct Provident Fund Account number and ultimately it was found that the correct P.F. Account number of K. Appanna was 35487. It seems that initially Account No.2649 was allotted to late Appanna but subsequently deductions were made through Account No.35487. The Account Slip furnished by the petitioner is of the year 1954-55 and apparently subsequently this number was changed. It has been mentioned in letter dated 29.5.1992 of the office of respondent No.2 to the Joint Director, Funds, Meerut, a copy of which was sent to the petitioner, that the petitioner in one of her applications to the office of respondent No.2 has admitted receipt of Provident fund accruals in respect of her husband after his death on 22.4.1963. From this it is not clear if Provident fund accruals have been paid to her. In any case, no prayer has been made in this petition for payment of accruals in the Provident fund of her husband.

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4. As regards her entitlement for receipt of Ex-Gratia allowance in terms of circular dated 13.6.1988, the respondents in support of their contention that the petitioner's husband

was discharged from service on 10.11.1962 have produced a copy of Check Roll No.24 (Yard-II) for the month of October, 1963 (Annexure-R/2) and also Check Roll No.7 for the month of March, 1955 (Annexure-R/1). From the Check Roll for the month of March, 1955 (Annexure-R/1) it is seen from Serial No.945 that Appanna, husband of the petitioner, bearing P.F.Account No.35487 had been present on certain days and had been absent on certain days in March, 1955. From Check Roll for the month of October, 1963, it is seen that an endorsement has been made in the Check Roll stating that he has been discharged from service with effect from 10th November, 1962. These records have been maintained in the normal course of business in the office of respondent No.2 and there is no reason to disbelieve the same.

5. Learned lawyer for the petitioner has raised two points for assailing the genuineness of Annexures-R/1 and R/2. His first point is that the contention of the respondents that the petitioner's husband was discharged from service with effect from 10th November, 1962 must be disbelieved because of the fact that in the Check Roll for the month of October, 1963 petitioner's husband has been shown as absent continuously. Learned lawyer for the petitioner submitted that in case petitioner's husband was actually discharged from service in November, 1962, there was no need to maintain his name in the Check Roll as late as October, 1963 showing him as absent. In reply, it is submitted the learned Additional Standing Counsel

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for the respondents, that even though the petitioner's husband was discharged with effect from 10th November, 1962 his name might have continued in the Check Roll and he was marked absent in the first three weeks of October, 1963 and in the last week endorsement regarding his discharge on 10th November, 1962 was recorded. This appears to be a reasonable explanation for this entry. It is possible that the order of discharge was not known to the formation which maintained the Check Roll and because of that his discharge on 10th November, 1962 was not taken notice of till October, 1963 and therefore, he was marked absent in the Check Roll. In any case, petitioner's assertion is that her husband passed away on 22.4.1963. Obviously therefore, these entries marking the petitioner's husband as absent from his duties in October, 1963 does not in any way prove that at the relevant time he was in service but was absent from his duties.

This ground for assailing the correctness of Annexure-R/2 therefore fails.

6. The second contention of the learned lawyer for the petitioner is that in the counter filed by the respondents it has not been mentioned whether due process of law was observed for discharging the petitioner's husband from service and as such, such an order of discharge must be held to be illegal and the petitioner's husband must be deemed to be continuing in service till his death on 22.4.1963. I am unable to accept this contention of the learned lawyer for the petitioner because in her application,

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the petitioner has not challenged the legality of discharge of her husband from service. In any case, after expiry of about thirty-five years, it is not open for her to question the order of discharge of her husband.

7. In consideration of the above, I hold that the petitioner's husband who, according to the petitioner, died on 22.4.1963 was not in service under respondent No.2 at the time of his death having been discharged from service on 10th November, 1962. For this reason, the case of the petitioner does not come within the benefit of circular dated 13.6.1988 and the petitioner is not entitled to get Ex-Gratia allowance. Petition, therefore, fails and is dismissed. There shall be no order as to costs.

8. Before parting with this case, I would like to record that from the annexures filed by the petitioner and the respondents to their petition and the counter, I find that the office of respondent No.2 did make strenuous efforts to locate the old records to try to establish the claim of the petitioner for Ex-Gratia allowance. This goes to the credit of the officers who dealt with the petitioner's case.

S. Somnath Singh
(S. SOM)
VICE-CHAIRMAN. 3.97

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