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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Date of order: 04/03/2008

O.A. No.828/2002

Taramani Swain ... Applicant

versus

Union of India & Ors. ... Respondents

(FOR INSTRUCTIONS)

1. whether it be referred to the reporters or not?
2. whether it be circulated to all the Benches of the
CAT or not?


(C.R. MOHAPATRA)
MEMBER(A)


(DR. K. B. S. RAJAN)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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Date of order: 04/03/2008

PRESENT:

THE HON'BLE DR.K.B.S.RAJAN, MEMBER(J)
A N D
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

In the Matter of

O.A. No.828/2002

Taramani Swain ... Applicant

versus

Union of India & Ors. ... Respondents

(For Full details, see the enclosed cause title)

For Applicant: : M/s.A.K.Mishra, J.Sengupta,
P.R.J.Dash, D.K.Panda, G.Sinha,
Counsel.

For Respondents: Mr.S.B.Jena, ASC

O R D E R

Per DR.K.B.S.RAJAN, MEMBER(J):

- (a) The applicant's husband was proceeded *ex parte* in the disciplinary proceedings as he was not available and missing.
 - (b) There is a set procedure to conduct the proceedings *ex parte* vide Rule 14 of the Rules.
 - © Substituted service should have been resorted to by the Inquiry Officer as soon as the prosecution closes its case and a minimum of ten days notice should be given which obviously has not been given.
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- (d) Service of copy of the inquiry report should have also been effected by such a mode which also has not admittedly been done.
- (e) The point of disagreement by the Disciplinary Authority in respect of one of the charges, which according to the Inquiry Officer was not proved had also not been served upon the applicant's husband.
- (f) The final order has also not been served to the applicant.
- (g) From the above, it is clear that the entire disciplinary proceedings are vitiated and thus the order of removal is to be treated as non est.
- (h) Once the order of removal is treated as non est, the logical consequence is that the applicant's husband was in service when he was found missing.
- (i) The applicant had lodged a complaint with the police and the father of the applicant had also lodged complaint with the police about the missing of the applicant's husband.
- (j) The police had expressed that the applicant's husband could not be traced.
- (k) Seven years had passed and the husband of the applicant is deemed to have died.
- (l) Under the above circumstances, the applicant is entitled to family pension.
- (m) Decision by the Principal Bench dated 15th September, 2006 in OA No. 381/2006 supports the case of the applicant.

2. Counsel for the respondents on the other hand relied upon the counter and the additional counter filed by the respondents and reiterated the contents of the same.



3. Arguments were heard and documents perused. Sufficient materials are available to show that at no stage the applicant's husband was communicated of the progress in the proceedings. Irrespective of the fact that the applicant's husband did not participate in the proceedings, the rules provide for due notice at each significant stage by recognized mode of service. For example, as soon as the prosecution closes its evidence, the I.O. has to issue notice giving time to the delinquent. As soon as the Inquiry Report was given, the same should be sent to the delinquent. If there is a point of disagreement by the Disciplinary Authority, then the same should also be communicated to the delinquent and his representation called for. At last the copy of the final order indicating the authority before whom appeal lies and the limitation period for the same, should also be served by recognized mode of service. The respondents have annexed Annexure R-5 the relinquishment of charge report purportedly signed by the applicant's husband, which is dated 28th May, 1993. The applicant's husband was stated to be absenting himself even at the time when the charge sheet dated 29th April, 1993 was issued. It is puzzling that the individual had handed over charge (Charge report as well as receipt for cash and stamps on transfer of charge) on 28th May 1993 and there is no signature of the Relieving Officer! The applicant's husband was stated to have been placed under suspension on 28th May, 1993 but the suspension

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order was not made available by the respondents in the counter or additional counter. The applicant's husband is stated to have denied the charges vide Annexure R-6 dated 28-06-1993 wherein there is no indication that he was under suspension at that time. The claim of the applicant is that from May 1993 whereabouts of her husband was not known. Thus, the genuineness of Annexure R-5 and R-7 is not free from doubt. The contention of the respondents vide their additional reply, that "when the applicant initially participated in the Departmental proceeding, there is no need in publishing a notice in News Paper of his subsequent absent during the course of inquiry" is also not tenable. Independent of the same, it can be easily stated that the inquiry had been vitiated due to violation of the principles of natural justice. Consequently, the imposition of penalty is illegal. Hence, the order of removal from service is quashed and set aside. We order accordingly.

4. Once the order of removal from service is off the scene, the remaining aspect is about the disappearance of the husband of the applicant and the consequences thereof. The police had already given the requisite certificate. If the same would suffice to presume the husband of the applicant as dead, the applicant becomes entitled to family pension. This would be available under the normal circumstances from the date of expiry of seven years reckoned from the

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date of disappearance. In the instant case because of the complexity and the fact that the applicant had come to the Court only in August 2002, her entitlement to the family pension should be only from August, 2002.

5. The OA is therefore, allowed. It is declared that the applicant is entitled to family pension to be calculated on the basis of the last pay drawn by the her husband (subject to the minimum as provided for in the rules) and the same is payable to her from August, 2002. Arrears of family pension be paid within a period of three months and family pension for the current period and in future be paid as per the rules. However, no subsistence allowance or any other payment shall be made to the applicant. The case of compassionate appointment may be considered in accordance with Rules.

No cost.


(C.R. MOHAPATRA)
MEMBER(A)


(DR. K. B. S. RAJAN)
MEMBER(J)