

In the Central Administrative Tribunal
Calcutta Bench

OA 49/96

Present : Hon'ble Mr.S. Biswas, Member(A)
Hon'ble Mr.N. Prusty, Member(J)

Manika Nath, Wife of Dilip Nath, aged 43 years, Care of Shankar Das, Das Industries, Vill : Thekia, Malancha Road, P.O. Nimpura Dist. Midnapore

...Applicant

-Vs-

- 1) Union of India, represented by GM, S.E. Rly, for Union of India and himself, Garden Reach, Calcutta-43
- 2) The Senior Dvl. Personnel Officer, S.E. Rly, Kharagpur, Kharagpur-1
- 3) Inspector of Works Line-I, S.E. Rly, Kharagpur, P.O. Kharagpur-1

...Respondents

For the applicant : Mr.M.M. Roy Choudhury, Counsel

For the respondents : Mr. S.R. Kar, Counsel

Date of Order :

5/1/93

ORDER

Mr.S. Biswas, Member(A)

By this OA the applicant who is the wife of the Government employee who left home since 1981, went traceless and did not contact the applicant, has sought appropriate directions upon the respondents so that family pension, and settlement dues in respect of her husband are paid to her along with arrears.

2. Heard rival counsel and went through the written submissions, legal and factual points emanating from the case. The learned counsel for the applicant Mr.Roy Choudhury did not press for compassionate appointment.

3. The applicant's husband Dilip Nath was statedly appointed as a Railway employee sometimes in 1963 while working under IOW - LI Kharagpur he left home and became traceless since 1981 (9-12-81). The applicant lodged a complaint with the Police on 16-2-82 (D.E. No.307). She made another D.E. on 2-1-88 to the

same effect. After about 7 years when her husband did not return on 21-1-88, she made a representation to the respondent authorities along with the copy of the police diary claiming settlement dues and compassionate appointment as her husband was by then had become traceless and he never returned home on her own. The respondent authorities then called for certified copies of the diary entry and report regarding the fact that the employee has not been traced out vide letter dated 28-5-88. A copy of the police report dated 28-5-88 statedly addressed to the CPO, S.E. Rly, Kharagpur has also been appended to the OA as supporting evidence that her husband was till upto that date missing. The applicant submitted further prayer for family pension etc. on 26-6-91. She also furnished copy of affidavit sworn before the Notary. It is stated that they received a "dilapidated" letter from the respondent dated 13-9-95 calling for diary entry and birth certificate of the applicant.

4. Recordwise the applicant had only stated that her husband, a railway Khalashi from the likely year of 1963 was missing since 1981. Apart from police entry she swore an affidavit about all that she thought was correct particulars in support of her claim but without any avail. She did not get any positive response in respect of her claims, like family pension and retiral dues, which is why, this OA has been filed.

5. The respondents have repudiated the facts furnished by the applicant in several ways. That her husband was missing was reported first only in 1988 - not 1982. Though it is averred now that her husband is missing since 1981 he was present in Kharagpur in 1985 for which the respondents statedly hold documentary proofs in course of the DA proceedings like receipt of registered letter by him in 1985. It is also concluded that the applicant was actually removed from service w.e.f. 11-4-86 on conclusion of the DA proceeding initiated against him. At least 4 employees of the office saw him in Kharagpur recently in 2000. In view of these abiding evidence about his existence in Kharagpur

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the authorities called for legal evidence regarding his missing - so that he does not reappear to claim the pensionery and retiral dues himself as he is primarily entitled to.

6. The respondent authorities have contended that they have cautiously proceeded by taking necessary legal safeguards, as it deserves in such case. As the retiral dues or even family pension are liable to be paid only to the legal heirs, she was called upon to furnish requisite affidavits. It has been acknowledged further that she was asked to fill up GP 47 and pensionery forms. She neither could furnish police report, nor complied with other official formalities like form filling. Authorities sent the Welfare Inspector for the purpose. More particularly, in the absence of documentary and legal reports about her husband's remaining traceless they had called for indemnity bond which the applicant did not comply. Pertinently in ~~the~~ face of evidence that her husband a retrenched employee is playing truant, the respondents have to take such safeguards as are legally called for.

7. In course of the hearing it has come to light however that the respondents have not raised the question of any succession certificate to be on the safeside nor any supporting evidence that the applicant is indeed legally dead.

8. We have considered the legal impediments standing in the way for a clear and forthright ground for her claim for family pension. The respondent authorities raised the point that as the applicant was formally removed from service at the conclusion of a DA proceeding, the applicant or her legal heirs are not entitled to any pensionery benefit including family pension. It is however seen from the written averment that the CPO (Adm) conveyed the orders of the G.M. to treat the case of the employee as 'left service of his own accord' and not removed from service as such. No such order has been produced though legally a formal order against the removal order ought to be there. However, if the appellate authority has suo moto taken any

such decision, we would not like to go into its merits at this stage. In the face of this averment, in our considered opinion, there is no legal impediment to grant family pension/pension and pay other retiral dues to legal heirs.

9. As regards payment of family pension - pending the likely representation, the legal provision as contained in P/S/Pen/Procedure/86 dated 8-10-86 is placed before us. The relevent extract thereof is reproduced below :

(ii) After the elapse of a period of one year, other benefits like DCRG/family pension in respect of pensionery staff and the Government contribution/Special Contribution towards Provident Fund in respect of staff governed by SRPF (Contributory) Rules may also be granted to the family subject to the fulfilment of conditions prescribed in the succeeding paragraphs.

3. The above benefits may be sanctioned after observing the following formalities :

- i) The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts had been made by the Police.
- ii) An indemnity Bond should be taken from the nominee/dependents of the employee that all payments will be adjusted against the payment due to the employee in case he appears on the scene and makes any claim.

This is to be further read with para 5 thereof.

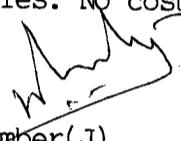
5. The family can apply to the Head of the Office of the Government Servant for grant of family pension and DCRG Gratuity. Government contribution/SC to PF, as the case may be, after one year from the date of disappearance of the Government Servant in accordance with the prescribed procedure. In case the disbursement of DCR Gratuity or SC to PF, as the case may be, is not effected within three months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed in accordance with extant orders.

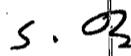
10. The provisions on the subject being abundantly clear, and self contained, we dispose of the OA with the following directions :

- i) payment of family pension, other dues may be considered by the respondents to the legal heir against legal safeguard as per the

above cited rules.

However, we in disposing of the applicant's claim, hold the removal order be commuted to 'Left Service' as done in CPO's Communication of GM's order. This communication in disposal of appeal should be enforced in letter & spirit as if the applicant's husband was not removed. The remaining formalities should be observed as per rules and instructions ruling the field. The applicant would make a representation within 2 weeks of receipt of this order, which should be considered and disposed of subject to the above order within 8 weeks thereafter as per rules. No costs.


Member (J)


Member (A)