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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 527
T.A. No.

1989

DATE OF DECISION 15.2.1990

Adhikesavalu B. Naidu Petitioner

Mrs. K.U. Nagarkatti Advocate for the Petitioner(s)

Versus

Chief Engineer, Bomay Zone & others Respondent

Mr. R.K. Setty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, V.C.

The Hon'ble Mr. P.S. Chaudhuri, M(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? X
4. Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(G. Sreedharan Nair)

Vice-Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY

Registration No. O.A.527 of 1989

Date of decision 15.2.1990.

Adhikesavalu B. Naidu

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Applicant

- versus -

The Chief Engineer, Bombay Zone and others..

Respondents

CORAM : Hon'ble Shri G.Sreedharan Nair, Vice-Chairman

Hon'ble Shri P.S. Chaudhuri, Member (A)

Counsel for the applicant : Mrs. K.U. Nagarkatti.

Counsel for the respondents : Mr. R.K. Setty.

O R D E R

G.Sreedharan Nair, Vice-Chairman :- Smt. Kamini Adikesavalu Naidu, the wife of the applicant, was working as Stenographer and Personal Assistant to the Deputy Chief Engineer, Bombay Zone. It is alleged that she is missing from 29.9.1982 and that all efforts to trace her were in vain. The grievance of the applicant is that his request for grant of family pension and other retiral benefits to the eligible members of the family treating her as a missing permanent Government employee was turned down by the Chief Engineer by the communication dated 19.5.1988 on the ground that she was removed from service with effect from 23.3.1984 on account of long absence from duty. The further representation submitted by the applicant was also rejected by the Chief Engineer by the order dated 30.7.1988. The applicant has challenged these orders and has also prayed for setting aside the order removing Smt. Naidu from service.

2. It is urged that the proceedings initiated against Smt. Naidu and the order of removal from service are illegal since the Chief Engineer was ~~fully~~ aware that she was missing

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and the Police had been duly informed about it. It is pointed out that Smt. Naidu was allowed commuted leave from 28.6.1982 to 6.7.1982 on the ground of sickness and even thereafter she did not attend to her duties on account of sickness and that it was not a case of unauthorised absence. It is stressed that, in any event, the proceedings initiated against a missing person are of no effect. Reliance is placed on the O.M. dated 29.8.1986 issued by the Ministry of Personnel, Government of India, ^{which} This provides that when an employee disappears leaving his family, the family can be paid in the first instance the amount of salary due, leave encashment due and the amount of G.P.F., having regard to the nomination made by the employee, and after the lapse of a period of one year other benefits like DCRG/family pension subject to the fulfilment of the conditions that 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 have been made by the Police, and on production of an 'Indemnity Bond' from the nominee/dependents of the employee that all payments will be adjusted against the payments due to the employee in case he appears and makes any claim.

3. In the reply filed on behalf of the respondents, it is contended that the application is barred by limitation as Smt. Naidu was removed from service by the order passed on 23.3.1984. It is stated that the memorandum of charges dated 18.3.1983 was sent to her in her local address which was received by the applicant, and thereafter notice of the proceedings was published in newspapers. It is pointed out that

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the disciplinary proceedings were initiated against her since she did not report for duty from 7.7.1982, and after complying with due process of law, she was removed from service. It is contended that the applicant had at no stage informed the Department about the disappearance of Smt. Naidu except through a letter dated 8.9.1983. According to the respondents, unless it is proved that the employee is no more, the Department is bound to proceed against the employee for unauthorised absence.

4. The question that falls for determination is whether the family of Smt. Kamini Adikesavalu Naidu is entitled to family pension and other retiral benefits. It is not in dispute that Smt. Naidu was a permanent Government employee in the Military Engineering Service. It is established from the records that she is missing and is unheard of from 29.9.1982. The applicant had promptly lodged a complaint before the Police on 30.9.1982 itself but the Police were unable to trace her. A further complaint was lodged by the applicant with the Missing Persons' Bureau, Crime Branch, C.I.D., Bombay on 5.10.1982 which was also of no avail. On 4.11.1982 the fact relating to the missing of Smt. Naidu was published in the 'Daily' newspaper, along with a photograph. Announcements were also made through the Audio-Visual Media.

5. The scheme for grant of family pension to the eligible family members of an employee who suddenly disappeared and whose whereabouts are not known was there at that time, though the benefits were being allowed only after the expiry of a period of seven years, based on the principle incorporated in section 108 of the

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Indian Evidence Act that when the question is whether a man is alive or dead and it is proved that he has not been heard of ~~for~~ seven years by those who would 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. In view of the scheme as it existed then, there was no scope for the applicant to put forward a claim for family pension or other benefits. It was only by the O.M. dated 29.8.1986 that the scheme was liberalised by enabling the family to claim the amount of salary due, leave encashment due and the amount of G.P.F. immediately on being satisfied about the missing of the Government employee, and the other benefits, after the lapse of a period of one year subject to the condition that the family must lodge report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts by the Police, and on production of an Indemnity Bond that payments will be adjusted against the payments due to the employee in case he appears and makes any claim.

6. It is in evidence that when the memorandum of charges was issued against Smt. Naidu on 18.8.1983 for unauthorised absence, the applicant had informed the Chief Engineer through the letter dated 8.9.1983 that Smt. Naidu is missing since 29.9.1982 and is yet to be traced, and that the fact has been intimated to the Police/Missing Bureau as well as to the office of the Chief Engineer. The receipt of this letter is admitted by the respondents. Indeed, a copy of the same has been produced by the respondents. It is at Exhibit R-3.

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The report of the Enquiry Officer holding that the charge unauthorised of absence from duty stands proved, was submitted only on 31.10.1983. Actually, the enquiry itself was conducted by him after the Chief Engineer was intimated about the missing of Smt. Naidu. From the report of the Enquiry Officer it is seen that the facts relating to the enquiry addressed to Smt. Naidu was returned by the Postal authorities. However, he chose to proceed with the enquiry ex parte. The Chief Engineer passed the order on 23.3.1984 imposing upon Smt. Naidu the penalty of removal from service accepting the report of the Enquiry Officer and the conduct of the enquiry ex parte on the ground that Smt. Naidu failed to attend the enquiry. When the applicant had duly informed the Chief Engineer through the letter dated 8.9.1983 that Smt. Naidu is missing from 29.9.1982 and all attempts to trace her were in vain, the Chief Engineer should not have proceeded with the enquiry and passed the impugned order. No doubt, at that time there was no scope for the application of the provision under section 108 of the Indian Evidence Act. Nevertheless, there was the definite ^{Oliver} information from none than the husband of Smt. Naidu that she is missing from 29.9.1982 and could not be traced. In the face of the said information, the proceedings should have been held in abeyance, especially as it related to alleged misconduct on account of unauthorised absence from duty.

7. The claim for family pension and other retiral benefits put forward by the applicant was rejected by the Chief Engineer by the order dated 19.5.1988 only

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on the ground that Smt. Naidu was removed from service with effect from 23.3.1984. On receipt of the said communication the applicant had submitted a detailed representation to the Chief Engineer on 5.7.1988 wherein he had set forth the entire facts about the missing of Smt. Naidu from 29.9.1982. Reference is also made there to the furnishing of the Police Report as well as the Indemnity Bond as required by the office of the Chief Engineer for the grant of the benefits in accordance with the O.M. dated 29.8.1986. Yet, the request was rejected by the Chief Engineer by the order dated 30.7.1988, again based only on the order of removal from service passed by him on 23.3.1984. It is significant to note that the said order discloses the fact that Smt. Naidu was on authorised leave till 6.7.1982. The fact that the applicant had lodged a complaint with the Police about the missing of Smt. Naidu is also acknowledged therein.

Nevertheless

~~Yet~~, the Chief Engineer did not allow the benefit as Smt. Naidu had been removed from service.

8. In view of our discussion in the preceding paragraphs, the conduct of the proceedings *ex parte* against Smt. Naidu after being informed about her missing, and the imposition of the penalty of removal from service cannot be sustained in law. It follows that the denial of the request for the family pension and other retiral benefits based on the order of removal from service cannot be supported.

9. There is no merit in the contention of the respondents that the application is barred by limitation, for the application is filed within one year of ^{the} order of the Chief Engineer dated 29.9.1988 under which the pensionary benefits were finally negatived after holding

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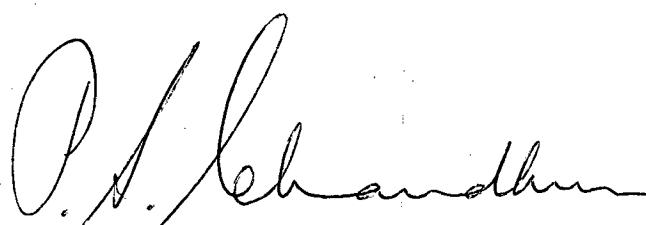
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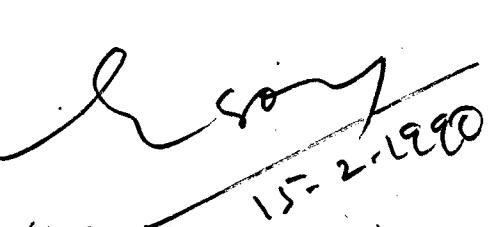
that the disciplinary proceedings against Smt. Naidu and the order passed thereon are tenable. The copy of the aforesaid order is at Annexure-9.

10. In the result, we quash the order dated 23.3.1984 removing Smt. Naidu from service. We also set aside the order of the Chief Engineer rejecting the request of the applicant for family pension and retiral benefits and direct him to allow the applicant such benefits as he is entitled to in accordance with the rules, treating Smt. Naidu as missing and whose whereabouts are not known. This shall be done within a period of three months from the date of receipt of copy of this order.

11. The application is allowed as above.



(P.S. Chaudhuri)
Member (A)



15-2-1990

(G. Sreedharan Nair)
Vice-Chairman

Order dt 15.2.90
Served on Q.No 1402
on 28.3.90

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9/4/90

M.P. 374190 for
extension of time,
fixed on 31/7/90

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