

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application.No.559/99

Dated this, 30th the day of March, 2001.

CORAM: HON'BLE SMT. SHANTA SHASHTRY, MEMBER (A)

Smt. Mandabai Balu Dhindale,
W/o late shri Balu Dhindale
Ex-Fireman in Loco Steam Shed
Kalyan (C.Rly.)

R/o. 6-Bungalows,
Railway Outhouse,
Igatpuri, Dist. Nashik. ... Applicant

(Applicant by Shri K.B.Talreja, Advocate).

vs.

1. The Union of India, through
the General Manager,
Central Railway,
Mumbai CST.
2. The Divisional Railway Manager,
Central Railway,
Mumbai CST. ... Respondents

(Respondents by Shri A.I. Bhatkar, Advocate):

O R D E R

[Per: Smt. Shanta Shastri, M (A)]:

By the present O.A. the Applicant is claiming her settlement dues with interest at 18% per annum on the delayed payments.

2. The Applicant's husband was a Railway Employee serving in the Central Railway under Loco Foreman as Fireman at the Kalyan Loco Shed since 1975. According to the Applicant her husband's whereabouts are not known since January 30, 1985. She had searched for him everywhere but in vain. She therefore, filed

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a missing report at Igatpuri Police Station and had registered the case in the Missing Persons Bureau (Crime Branch), Mumbai vide Up Country No.20/97 dated 16.9.1997.

3. The Applicant and her 3 children are the dependents of the missing Railway Employee Shri ^{Baloo} Dhondiba Dhindale. She has produced a certificate issued by the Senior Police Inspector (Missing Persons Bureau), Crime Branch, Mumbai vide letter dated 9.10.1998 intimating that her husband was not traceable.

4. The Respondents have opposed her claim at the admission stage itself. They raised the preliminary plea that the Applicant's O.A. is barred by limitation because her husband is said to have disappeared in 1985. She has not given any details of the efforts made by her to find out the whereabouts of her husband from 1985 onwards, and ^{reasons} as to why she did not report the matter in the year 1985 itself. She has registered the complaint with the Police only on 10.9.1996. Similarly the applicant's husband was removed from service as he had remained unauthorisedly absent from duty w.e.f. 9.4.1984. He was removed w.e.f. 30.4.1989, and therefore, the Application of the Applicant filed in June 1999 is hopelessly time barred and requires to be rejected at the admission stage itself.

5. The Respondents submit that since the Applicant's husband was removed from service he was not entitled to any Pension and hence his widow also not entitled to any settlement dues such as Family Pension etc. The Respondents have also stated that the Service Book of the Applicant's husband is not traceable as a long time has lapsed since the Applicant's husband was unauthorisedly absent.

6. The Applicant contends that the Respondents have failed to follow the directions given by the Railway Board. The Railway Board has issued Orders from time to time in respect of entitlement for settlement dues by the widows of missing employees of the Railways. These Circulars are Circular No.63/91 dated 27.3.1991, 8/94 dated 16.1.1992 and 3/94 dated 21.1.1994. According to these Circulars the families of disappeared employees are eligible for Family Pension and other benefits after expiry of one year from the date of disappearance of the Railway Servant. It has also been clarified that the date of disappearance of the employee is to be reckoned from the date the First Information Report is lodged with the Police and the period of one year after which the benefits of Family Pension and gratuity are to be sanctioned will also to be reckoned from this date. It also provides from arrears of Family Pension payable from the date the employee has been reported as missing. The latest Circular of 21.1.1994 states that the Family Pension will continue to be sanctioned and paid one year after the date of lodging of the F.I.R. However, it will accrue from the date of lodging of the F.I.R. or the expiry of leave of the employee who has disappeared, whichever is later. In view of these directions the Applicant claims that she is entitled to the Family Pension and other dues.

7. The Applicant has further urged that even the ground that her husband was removed from service cannot come in the way of her receiving the Family Pension as the Railway Board Orders

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are again clear in this matter. The Applicant has produced a copy of the Railway Board Order No.130 from the AIRE Compendium 1991 relating to cancellation of penalty of removal from service imposed on the charge of unauthorised absence where later on it transpires that the case is one of genuine missing and grant of consequent benefits to the missing person's family. It has been clarified that in such cases where it is established that the Railway Employee was really missing and was not unauthorisedly absent the disciplinary action should be treated as initiated on invalid premises and the ongoing disciplinary actions/punishment orders should be annulled. Sincer her husband has disappeared from January, 19985 and the Police have given a Certificate to that effect the Applicant states that she is entitled to the settlement ~~and~~ dues.

8. The Applicant has also questioned the inability of the Respondents to retain/^{produce} the Service Record of the Applicant. The Learned Counsel for the Applicant has cited the relevant Rules in this context. The Learned Counsel has further produced a copy of the Order dated 16.5.2000 in O.A.No. 918-HP/99 of the Chandigarh Bench reported in 2000 (2) ATJ 319 in support of the Applicant's claim for entitlement of settlement dues.

9. I have heard the learned Counsle for the Applicant as well as the Respondents and have perused the various Rules and the judgement cited by the Applicant. As rightly pointed out by the Respondents the Application is really time barred. The Applicant's husband disappeared in 1985 and she has approached the Tribunal in 1999. Again it is to be noted that she has

filed the Complaint regarding missing of her husband only in 1996 i.e. 11 years after his disappearance. Strictly speaking the Application being beyond the limitation period the O.A. does not deserve to be entertained. However, Family Pension is a continuing cause of action and therefore, I am inclined to condone the delay in this matter.

10. The directions of the Railway Board as referred to by the Applicant are very clear in the matter of dealing with settlement of dues wherever the Railway Board employee is genuinely missing. I, therefore, hold that the Applicant is entitled to Family Pension and other benefits in this matter though the Respondents are not ready to accept that the Applicant's husband has been missing since 30.1.1985. They themselves have admitted that the Applicant has remained absent from 9.4.1984. They have not been able to produce any material to show that the Applicant's husband is alive. Also they took 5 years to remove the Applicant from service in 1989. No Service record has been produced except a sheet showing that the Applicant was removed from service (Ex.R.I). In the facts and circumstances of the case family pension and other benefits become payable to the Applicant. Since the Applicant has approached this Tribunal after 15 years of the disappearance of her husband no arrears shall be payable. The Family Pension becomes payable from the date the Applicant lodged the F.I.R. with the Police i.e. on 10.9.1996 as per Rules. Since however, the Applicant filed the O.A. on 1st June 1999 the family pension and other dues shall be paid by the Respondents from one year before the filing of the O.A. This shall be

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complied with within a period of 3 months from the date of receipt of a copy of this Order.

11. In the facts and circumstances of the case, the O.A. is allowed. I do not order any costs.

Shanta

(Smt. Shanta Shastry)

Member (A)

sj*

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None present for Applicant
Shri S.C. Dhanwan, Counsel for
Respondents.

On 31/5/2002, it was
brought to our notice
that the order of Tribunal
stands complied with.
We discharge the notice
and drop the Contempt
proceedings.

We left it open for
Applicant (wrongly
mentioned as respondents
in the order) to have
instructions whether the
order has been complied
with and in case it
is not complied, then an
affidavit be filed.
As no affidavit has been
filed, nothing survives
and the case is
discharged.

At 7.6.2002
Order/Judgment pronounced
in Applicant/Respondent (s)
on 12.6.2002

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(Smt. Shanti Shastri)
M(A)
slp

B. D. Dhanwan
(B. D. Dhanwan)
N.C.