

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 923/99

DATE OF DECISION: 6/10/2000

Smt. Suman Shankar Ghanekar

Applicant.

Shri S.S.Karkera

Advocate for
Applicant.

Versus

Union of India & 4 Ors.

Respondents.

Shri R.K.Shetty

Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not? NO
2. Whether it needs to be circulated to NO other Benches of the Tribunal?
3. Library. Yes

Shanta S.
(SHANTA SHAstry)

MEMBER(A)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:923/99
DATED THE 6th DAY OF OCT. 2000**

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

Smt.Suman Shankar Ghanekar
Widow of Shankar Kishan Ghanekar
@ Sarangmuni Mahanubhav
aged about 49 years, occupation
housemaid residing at 43
Bombay Pune Road Bhopodi,
Pune - 411 001.

... Applicant

By Advocate Shri S.S.Karkera

V/s.

1. The Union of India,
Through the Secretary,
Ministry of Defence,
Central Secretariat,
New Delhi 110 001.
2. The Director General,
G.S.Branch,
Army Head Quarters,
New Delhi - 110 001.
3. The Commandant,
College of Military Engineer,
CME Post Office, Pune - 411 031.
4. The Principal,
Controller of Defence Accounts,
No.1, Finance Road,
Pune - 411 001.
5. The Chief controller of Defence,
Accounts, (pensions) Drawpati Ghat,
Allahabad. Respondents.

By Advocate Shri R.K.Shetty

(ORDER)

Per Smt.Shanta Shastry, Member(A)

The relief sought by the applicant in this case is to quash and set aside the Impugned orders dated 15/9/99 and 27/9/99 denying her Family Pension and DCRG. She has further prayed that

...2.

she should be declared entitled for Family Pension and DCRG with a direction to respondents to grant her the arrears from 25/12/1983 with 12% interest.

2. The applicant's husband was working as a messenger since 1967 in a Civilian post with Respondent No.3 i.e. College of Military Engineering, Pune. It is the case of the applicant that the applicant's husband disappeared from 24/12/1983. The applicant therefore gave a report of missing of her husband in December, 1983 itself. She also lodged a police complaint in the Police Station at Kirkee. As per the then existing provisions of Rule 54 of CCS Pension rules, unless the person was deemed to have been dead, seven years after the missing date of employee, the family was not entitled to Family Pension and DCRG. The applicant also sent a police report alongwith the representation, on 8/7/87 regarding non traceability of her husband and requested for granting of Family Pension. Later on she found that her husband had joined an Ashram in Aurangabad and had also changed his name to Sarangmuni Mahanubhav. Thereafter her husband was admitted in the Medical College Hospital, Aurangabad on 28/11/86 and he expired on 3/12/86 due to cardiac failure. She intimated to the respondents about the death of her husband, there was no response. Sometime in 1991 as per the verbal orders of the respondents, she applied for succession certificate and was granted the same on 20/11/98. She submitted the same on 5/1/99 to the respondents. She was given the Provident Fund amount and the Group Insurance amount of her late husband but the respondents rejected her claim vide letter dated 15/9/99 for Family Pension on the ground that her husband had been removed from service w.e.f. 7/5/86. The applicant preferred a

representation on 20/9/99. The Respondents rejected the same on 27/9/99 again. The Learned Counsel for the applicant pleads that the applicant is illiterate. She was made to run from pillar to post and even after submitting the police report and various representations to the respondents, the respondents have denied her the Family Pension and DCRG which is illegal. The applicant had no knowledge about the charge sheet nor about the punishment. According to the applicant after having informed the department about the missing of her husband, any removal order passed without serving a chargesheet to the employee is contrary to the provisions of rules and law. It is the contention of the applicant that on the basis of the OM dated 29/8/86 of the DOP&T, after obtaining the Indemnity Bond from the applicant, the applicant ought to have been sanctioned Family Pension. There is no provision under the rules for issuing any charge sheet to a missing employee and any action taken thereby and termination of the services of the missing employee is contrary to provisions of rules and law.

3. The Learned Counsel for the Respondents opposes the claim of the applicant and states that the applicant's husband was a messenger until 19/12/1983, thereafter he remained absent from duty without prior permission or sanctioned leave, and he continued to remain unauthorisedly absent. A charge memo under Rule 14 of the CCS Rules was framed against him and sent to him vide letter dated 9/10/84. It was received back undelivered. Thereafter the Respondents issued a notification in the local newspaper in regard to the Charge Sheet on 25/11/85 giving the applicant's husband one month's time to give his defence

statement. However, even thereafter the applicant's husband did not turn up and enquiry officer was appointed and ex parte enquiry was conducted ^{resulting in} imposition of the penalty of removal from service vide order dated 7/5/1986. The respondents contend that since the husband of the applicant was removed from service, there is no question of paying any Family Pension to the Applicant. From the account given by the Applicant, her husband was very much alive on 7/5/1986 when the order of removal was passed by the Respondents. He alone could have challenged the order of removal at that time. Unless, therefore the order of removal from service of her husband is quashed and set aside, the applicant cannot be entitled to any Family Pension or DCRG. The applicant's husband was removed from service in 1986. The cause of action therefore arose in 1986. The applicant cannot now challenge the removal order after a lapse of 13 years. She cannot also pursue the litigation as heir of the deceased husband by way of an OA because her husband had not filed any OA during his life time. Thus, she would be barred from challenging the removal order after 13 years. The department had made reasonable attempt to serve the charge sheet upon the applicant's husband by sending the same by Registered A.D. to the Applicant's husband at his last known address and also by publishing the same in the newspaper. None responded to the same, neither the applicant nor the family members.

4. The Learned Counsel for the applicant has cited the judgement in the case of Dr.Ramesh Chandra Tyagi Versus Union of India reported in 1994 SCC (L&S) 565 wherein it has been held that if the termination order was not served it cannot be sustained and therefore the punishment is non est. The Learned Counsel is also relying on SC SLJ 1991(1) 245 in the case of

Union of India Versus J.S.Karekar in support. The Learned Counsel has further pleaded that this being a pension case, limitation does not apply as has been laid down in the case of M.R.Gupta 1995(5) 357. ^{SCALE 29 sc 4} The Learned Counsel for the Respondents further reiterated that the judgement in M.R.gupta's case is not applicable. Her husband was given every reasonable opportunity. She did not make any single attempt. The Learned Counsel is citing the case of Vidhata wife of late R.Verma Versus Union of India reported in 1998(2)ATJ 506, the delay of 14years cannot be overlooked. Further, there is no application for condonation of delay. The Learned Counsel further submits that limitation applies even in such cases.

5. I have heard both the Learned Counsel for the Applicant as well as the Respondents. As pointed out by the Respondents, the OA is time barred. The applicant's husband died in 1986 whereas she has approached the Tribunal in 1999 i.e. 13 years later. Though in matters of Pension being a continuous cause of action, delay can be overlooked, there has to be a satisfactory explanation for the delay. Even if the applicant is to be considered, she has not produced any documents, either the copy of the FIR lodged with the police or the police report or the letter sent by her in 1987 to the respondents intimating about her husband's death. On the ground of illiteracy and ignorance, the applicant has pleaded that she is not able to produce any records as she has not maintained any copies. In the absence of any documents, it is difficult to consider the case of the applicant. Even assuming that there was a delay, if the husband had not been removed from service, she would have been entitled

to Family Pension but the fact is that her husband was removed from service, She cannot get any pension as her husband himself was not entitled to any Pension due to removal. Unless the order of removal is quashed, the applicant's claim for Family Pension cannot be considered. The applicant is taking the ground that the charge sheet was not properly served on her husband. It is no use her challenging the charge sheet or the removal order after a lapse of 13 years. She cannot challenge it as her husband had not challenged the same when he was very much alive. The applicant herself is to be blamed for it.

6. In view of this position, I am unable to grant any relief to the applicant. Accordingly, the OA is dismissed. No costs.

Shanta Shastri

(SHANTA SHASTRY)
MEMBER(A)