

(5)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 318/92

Transfer Application No:

DATE OF DECISION 27-8-93

Smt. Hirabai M. Vahile Petitioner

Smt. K. U. Nagarkatti Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

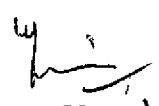
Shri R. K. Shetty Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M. Y. Priolkar, Member(A).

The Hon'ble ~~xxx~~ Smt. L. Swaminathan, Member(J)

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

  
(M.Y. Priolkar)  
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY

(6)

O.A.No.318/92

Smt.Hirabai M.Vahile

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Applicant

vs

Union of India & Ors.

..

Respondents.

Coram: Hon'ble Mr. M.Y.Priolkar, Member (A)  
Hon'ble Smt. L.Swaminathan, Member(J)

Appearance:

Smt.K.U.Nagarkatti  
for the applicant.

Shri R.K.Shetty for  
the respondents.

Dated: 27-8-93

Oral Judgement

(Per: Hon'ble Mr. M.Y.Priolkar, Member(A))

The applicant is the widow of a Mazdoor who was working in the Ordinance Depot, Dehu Road, since 5-9-59 and is missing from 12-7-69. It is stated that on that date namely 12-7-69, the husband of the applicant left home for pilgrimage to Pandharpur for a few days and never returned home. The grievance of the applicant is that no ex-gratia payment as admissible to her under Govt. of India Ministry of Personnel O.M. dated 13-6-88 is paid to her and that gratuity and other retirement benefits are also denied to her on the ground that the applicant's husband had been removed from service by the department for unauthorised absence by order dated 27-2-1970.

2.\* The applicant has submitted a report from the Police dated 21-12-91 in which it is certified that the complaint regarding the applicant's missing husband had been lodged with them in 1970. Admittedly, since the applicant's husband is missing and could not be traced even after 7 years he is presumed to be dead under the

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provisions of the Indian Evidence Act. The respondents by their letter dated 11-3-91 have rejected the claim for the ex-gratia payment of the applicant only on the ground that " as per existing Govt. order ex-gratia payment is to be granted to the families of only those individuals who were on CPF benefits and retired or died while in service. There is no indication in the above Govt. order regarding the grant of ex-gratia payment to the families of missing personnel". The learned counsel for the respondents further submitted that the applicant's husband was removed from service with proper disciplinary enquiry as per the CCS CCA Rules and that decision cannot now be reopened. The learned counsel for the respondents also stated that a public notice had been issued by them requiring that the applicant should report for duty but none intimated to the department at that time of the fact that the applicant was missing and that his whereabouts were not known.

3. We are not impressed by any of these arguments of the respondents for rejecting the claim for pensionary benefits of the applicant. The applicant is an illiterate Widow of a Mazdoor who was a permanent employee of the respondents. It is unfair to deny her claim, if legally due, only for the reason that the respondents had issued a public notice asking the applicant's husband to report for duty but none informed them about the applicant being missing at that time. There is no evidence that the department had asked any one from their welfare organisation to meet the family of the applicant in this regard. In view of the report of the Police department, it is clear that the report about the missing employee had been lodged by the family within a few months

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of the missing of the applicant's husband. In regard to the payment of ex-gratia etc. we are therefore of the view that this is <sup>a</sup>the fit case where the applicant should be given whatever retirement benefits are admissible under the rules, on the footing that her husband is considered to have died on 12-7-69 while in service. The respondents are directed to pay the retirement benefits accordingly as per the rules. Any payments due to the applicant shall be made within 6 months from the date of receipt of a copy of this order. No order as to costs.

*Lakshmi Swaminathan*  
(Smt. L. Swaminathan)  
Member(J)

*M.Y. Priolkar*  
(M.Y. Priolkar)  
Member(A)

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