

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1336/95

Date of Decision: 22.7.97

Smt.Simi Sidharth Kadam

.. Applicant

Shri G.K.Masand

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Shri Pandya for Shri M.I.Sethna .. Advocate for
Respondent(s)


CORAM:

The Hon'ble Shri B.S.Hegde, Member(J),

The Hon'ble Shri M.R.Kolhatkar, Member(A).

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? b


(B.S.HEGDE)

MEMBER(J).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1336/95.

----- this the 22nd day of July 1997. -----

Coram: Hon'ble Shri B.S.Hegde, Member(J),
Hon'ble Shri M.R.Kolhatkar, Member(A).

Smt. Simi Sidharth Kadam,
No.106/74, Sivaram Amrudwar
Marg, Worli,
Bombay - 400 018.

... Applicant.

(By Advocate Shri G.K.Masand)

V/s.

1. Union of India,
through Secretary in the
Ministry of Finance,
Department of Economic
Affairs, North Block,
New Delhi.

2. The General Manager,
India Government Mint,
Fort, Bombay - 400 023.

... Respondents.

(By Advocate Shri Pandya for
Shri M.I.Sethna).

ORDER

(Per Shri B.S.Hegde, Member(J))

Heard Shri G.M.Masand, counsel for the
applicant and Shri Pandya for Shri M.I.Sethna, counsel
for the respondents. The short question for considera-
tion is whether the present applicant is entitled for
family pension and other retiral benefits as was due
to her husband in the facts and circumstances of the
case.

2. The brief facts are that the applicant's
husband Shri Sidharth Laxman Kadam was working on
a regular basis as a Carpenter in India Government Mint
and he had put in six to seven years of service. He
suddenly dis-appeared from Office w.e.f. 19.2.1982 and
his whereabouts were not known, thereafter a complaint
was lodged about his missing on 8.3.1982 and the same

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was brought to the notice of the Respondents' Office on 30.4.1982. The present applicant sought for compassionate appointment ^{through representation} in the year 1985 after a lapse of three years of disappearance of her husband, the same was rejected by the Respondents on 11.4.1985 stating that her request for employment in Mint cannot be considered as per Rules. After the dis-appearance of the applicant's husband, the Respondent Department had been sending letters to his address which has been returned by the postal authorities with remarks "Addressee Missing". The present applicant made a representation to the Competent Authority, the General Manager for payment of terminal benefits by her letter dt. 25.10.1991, but there was no response from the respondents. The respondents in their reply only submitted that since the applicant's husband was removed from service from 15.12.1984 as a disciplinary measure. Such removal disentitles the applicant to the benefit of certain terminal dues such as Family Pension and DCRG etc, inter-alia, in view of the provisions of Rule 24 of CCS (Pension) Rules, 1972. In view of the removal order the question of any compassionate appointment cannot be considered in favour of the applicant. Further it is stated that the Disciplinary Proceedings was initiated within two years of the dis-appearance of the applicant's husband for his irregularity and his removal was in accordance with Rule 22 (ii)(a) & (s) of Mumbai Mint Standing Orders which regulate the service conditions of the Industrial Workmen of India Government Mint, Mumbai.

3. The learned counsel for the applicant Shri G.K.Masand submitted that it is an admitted fact

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that the applicant was missing right from 1982 and the representation of the applicant could not be considered favourably by the respondents in view of Section 108 of the Evidence Act, thereby they cannot take any positive decision until the expiry of a period of 7 years. Further he contended that the fact of missing is known to the respondents. The ex-parte decision initiated by the respondents is to be treated as null and void. Since the fact of his dis-appearance even after the expiry of 7 years as per Section 108 of the Evidence Act and thereby he is deemed to be dead after that period. The operation of that period would count from the date of his dis-appearance i.e. 1982. In that event of the matter, the removal order passed by the Respondents in the year 1984 should be treated as null and void. It is not the case of the respondents that they did not know the fact that the applicant was missing. The fact of his missing is brought to the notice of the Respondent Department and a Police Complaint has also been lodged and it is stated in the pleadings that the applicant² was paid some amount towards Provident Fund lying in the credit of the account of applicant's husband. As per Rules if a person has put in one year minimum service he is entitled to pension. Once the applicant's husband is entitled to pension, obviously the present applicant is entitled for family pension. The learned counsel for the applicant drew our attention to the fact that he had not made a specific prayer of compassionate appointment, because he had already made an application as far back as 1985 which was rejected on the ground of his alleged removal from service. Once the removal order is quashed, his request for

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compassionate appointment should be revived. While admitting the O.A. the point of limitation was raised. The applicant has filed M.P. No.798/95 for condonation of delay and it was ordered that it would be heard at the time of final hearing. In the facts and circumstances of the case the delay in filing the O.A. is condoned.

4. The counsel for the applicant drew our attention to a decision of the Madras Bench of the CAT in O.A. No.164/95 N.Radha Bai V/s. Union of India & Ors. (1996(2) ATJ 522) wherein the Tribunal has held that even if the applicant is not a pension optee the Tribunal has granted ex-gratia pension to the widow. In that case the facts were squarely similar to the facts of the present one except that the applicant's husband was a ~~COP~~ optee, despite that her son was given a compassionate appointment and wife was given ex-gratia payment. In the instant case the present applicant is admittedly entitled for family pension and should be given the compassionate appointment since her husband had dis-appeared from this world at an early age. The present applicant is fairly young and she should be given some work to depend upon her livelihood. In our view, the ratio laid down in the case of N.Radha Bai will squarely apply to the facts of the present case. Accordingly, we allow the O.A. and quash and set aside the disciplinary proceedings initiated against the applicant's husband in removing him from service and is deemed to have been dead w.e.f. 1982 and the present applicant's application

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for compassionate appointment may be revived and be considered by the respondents favourably and pass a appropriate speaking order within a period of two months from the date of receipt of ^{copy of} this order. The pensionary benefits due to her husband be paid to her within a period of three months from the date of receipt of this order. The O.A. is disposed of in the above terms. No order as to costs.



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B.S. Hegde
(B.S. HEGDE)
MEMBER (J).

P.T.O.

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