

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 277/97

Date of Decision: 18/9/97

Smt. Swati Manohar Parab

Applicant.

Shri S.S. Karkera

Advocate for  
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S. Masurkar.

Advocate for  
Respondent(s)

CORAM:

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

Hon'ble Shri. -

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to X  
other Benches of the Tribunal?

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 277 / 1997.

Thursday, this the 18<sup>th</sup> day of Sept 1997.

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

Smt.Swati Manohar Parab,  
C/o.J.D.Sali,  
MHB-17/1173, 1st Floor,  
Abhudaya Nagar, Kalachowki,  
Mumbai - 400 003.

... Applicant.

(By Advocate Shri S.S.Karkera)

V/s.

1. Union of India , through  
the Chairman, Telecom Board,  
Ministry of Communications,  
Sanchar Bhavan, Ashoka Road,  
New Delhi - 110 001.

2. The Chief General Manager,  
Maharashtra Telecom Circle,  
G.P.O., 2nd floor,  
Bombay - 400 001.

3. The Chief Superintendent,  
Central Telegraph Office,  
Fountain,  
Mumbai - 400 001.

... Respondents.

(By Advocate Shri V.S.Masurkar).

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

The issue in this O.A. is in a very narrow compass. It is not disputed that the applicant's husband <sup>was</sup> working as a Daftary with R-3. As per the certificate by the R.M.O., KEM Hospital dt. 25.4.1995 he <sup>(AIDS)</sup> was suffering from HIV +ve / Since 16.5.1995 the applicant's husband is missing (At page 31 (EX.'F')) is the certificate regarding the applicant having

registered a complaint with Missing Persons Bureau on 20.6.1995. It is not disputed that in terms of Government of India's decision No. 12 under Rule 54 of the CCS (Pension) Rules the applicant as a nominee of her ~~late~~ husband has been given the following benefits :

- "1. Leave Salary, paid on 06.02.96 Rs. 4014-00.
2. G.P.F. paid on 01.08.96 Rs. 2284-00.
3. D.C.R.G. paid on 11.09.96 Rs.18152-00.
4. D.C.R.G. paid on 03.02.97 Rs. 2016-00.
4. Provisional Pension of Rs.375/-  
+ DA were granted w.e.f. 01.03.96.
5. Pension arrears drawn after  
adjusting Society Loan of  
Rs.2010/- paid on 03.02.97 Rs.15,490-00.
6. C.G.E.I.S. paid on 21.03.97 Rs. 2994 -00.
7. The provisional family pension of  
Rs.375/- p.m. has been granted to the  
applicant."

2. What is at issue is refusal of the department to grant her ~~the~~ compassionate appointment. In the letter dt. 15.2.1996 (page 23) it is intimated that her request for employment on compassionate grounds cannot be considered since there is no such provision in the rules for employment of the near relative/wife of the Government servant who is missing. In the letter dt. 7.2.1997 (at page 24) it is stated that the missing official must complete 7 years from the date of report in police and till that time the case of compassionate appointment cannot be considered.

3. The contention of the applicant is that although she has been given benefits as per Rules they are not adequate because she has to support a son and that she had incurred heavy loans in connection with her husband's serious illness and that she has to rely on her own resources because neither her in-laws nor her parents are willing to support her.

4. The applicant, in this connection has relied on S. Rajeswari (Smt.) V/s. Controller of Accounts & Ors. ((1993) 23 ATC 578). The Tribunal rejected the contention of the respondents that the claim of the applicant for compassionate appointment cannot be acceded to under the Rules. It observed that strict rules of evidence especially Section 108 of the Evidence Act is not applicable to CAT and relying on Sushma Gosain (Smt.) V/s. Union of India and Phoolwati (Smt.) V/s. Union of India's cases directed grant of compassionate appointment. In Manju Rani (Smt.) V/s. Union of India & Ors. ((1994) 26 ATC 567) the Tribunal held that it was unreasonable to wait for 7 years for ~~from~~ raising the presumption of death - Possibility of kidnapping and murder could not be ruled out and directed the respondents to provide compassionate appointment to the applicant.

5. The respondents have opposed the O.A. The counsel for the respondents submits that whatever is possible has already been done. In the two cases cited by the applicant even pensionary benefits were not granted. In the present case the department had been very prompt in grant of pensionary benefits in terms of Government

of India's decision No.12 under Rule 54 of CCS(Pension) Rules. According to the counsel there are no provisions under the instructions of the Government of India in <sup>terms of</sup> which such compassionate appointment can be granted in the case of a missing employee and that the two cases of Rajeshwari (Smt.) and Manju Rani(Smt.) are distinguishable. In Rajeswari's case 7 years were almost over, inasmuch as, the employee went missing on 19.5.1986 and the date of Judgment is 20.8.1992. In the case of Manju Rani's case it was a grave case in which the Tribunal had observed that possibility of kidnapping and murder could not be ruled out in the circumstances. The counsel for the respondents, therefore, prays for dismissal of the O.A.

6. In my view, the two cases cited by the applicant are fully applicable to the facts of the present case. In both the cases, direction was to provide compassionate appointment to the wife of the missing employee even without waiting for the statutory period of 7 years in terms of Indian Evidence Act. So far <sup>present</sup> as the <sup>as</sup> case/being serious is concerned, considering the nature of illness from which the applicant's husband suffered viz. AIDS which is the most dreaded disease of which cognizance has been taken at International/ <sup>level by WHO;</sup> at National level ~~from~~ the National AIDS Control Programme as an operation. I have no doubt at all that the case of the present applicant is much more serious than the earlier cases. The applicant has also made out a case

...5.

that she is in dire financial stress.

7. The O.A. is therefore allowed and the respondents are directed to consider the applicant for compassionate appointment to a suitable post keeping in view her qualifications. In case the applicant's husband appears on the scene any time during the period of 7 years from the date he is missing and claims to be in service, his claim for emoluments for the period the applicant remains in service of the respondents after getting compassionate appointment shall be liable to be excluded for consideration.

8. The O.A. is therefore disposed of in the above terms with no orders as to costs.

*M.R. Kolhatkar*

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(M.R. KOLHATKAR)  
MEMBER (A).

B.