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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION No.387/90

DATE OF JUDGEMENT: 18/5 JUNE 1992

BETWEEN

Smt Amina Begum

.. Applicant

AND

Accountant General
Office of the Accountant General
A.P. Hyderabad

.. Respondents

Counsel for the Applicant :: Mr. R. Radhakrishnamurthy

Counsel for the Respondents:: Mr. G. Parameswara Rao
SC for AG

CORAM:

THE HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (ADMN)

THE HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDL.)

This is an application filed under Section 19 of the Administrative Tribunal Act to direct the respondents to pay the applicant, (who is [redacted] widow of one Late Sri Mohd. Nooruddin, [redacted] worked as UDC in the office of the respondents) the family pension with all consequential benefits and pass such other orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA, as stated by the applicant, are as follows:

3. One Sri Mohd. Nooruddin is the husband of the applicant. The said Mohd Nooruddin was UDC in the office of the Accountant General, AP, Hyderabad. The applicant was on leave for several years as he was cronicallly ill and died on 15.7.1980, after undergoing major abdominal operation at St. Theresa Hospital, Hyderabad.

2. According to the applicant, the husband of the applicant Mr Mohd. Nooruddin died while he was in service. No pension was paid to the husband of the applicant as the services of Mohd. Nooruddin had not been terminated by the respondents. The said Mohd. Nooruddin had a right to receive the pension. After the death of the said Mohd. Nooruddin, the applicant is entitled to be paid pension as per rules and regulations. The applicant therefore, approached the respondents for [redacted] payment of pension to her. But the respondents had turned down the representation of the applicant through their letter dated 11.4.1988. The rejection of the respondents

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of her representation for payment of family pension is illegal. Hence, the present OA is filed by the applicant for the relief already indicated.

3. Counter is filed by the respondents opposing the OA.

4. In the counter, it is maintained that the said Mohd. Nooruddin, husband of the applicant, was working as U.D.C. in the office of the respondents, applied for Earned Leave for one month from 10.7.1956. The said Mohd. Nooruddin was admitted to K.E.M. Hospital for medical opinion. After medical check up, the Superintendent of the Hospital opined that he was fit to resume duty with effect from 21.8.1956. But the said Mohd. Nooruddin did not choose to join duty. The respondents came to know that the said Nooruddin died in the year 1980. Had the deceased (Nooruddin) continued in service he would have retired on 31.3.1976 on superannuation.

5. It is also further maintained that the applicant's husband did not resume duty for a continuous period of 5 years after remaining on leave and as the said Nooruddin, the applicant's husband, after expiry of leave remained absent from duty that it should be deemed that the said Nooruddin had resigned his job and thus ceases to be in Government service. It is also stated that the said Nooruddin had stayed back from duty after being declared fit for duty by the Superintendent of the KEM Hospital and so, the applicant's husband Mohd. Nooruddin should be deemed to have resigned his post and ceased to be in Government service w.e.f. 10.7.1961 F.N. It is also maintained that

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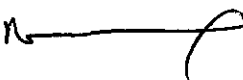
(28)

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as the applicant's husband did not die while in service and after retirement, the said Nooruddin was ^{not} drawing any pension that the applicant does not have a right to receive pension from the respondents. So, it is maintained that on the said grounds that this OA is liable to be dismissed.

6. The learned counsel appearing for the respondents drew our attention to FR 18 which reads as follows:
"F.R.18. Unless the President in view of the exceptional circumstances of the case otherwise determines, no Government servant shall be granted leave of any kind for a continuous period exceeding five years."
He also drew our attention to Rule 26 of CCS(Pension) Rules 1972, which says that 'resignation from a service or post, entails forfeiture of past service by the Govt. servant.'

Our attention was also drawn to the relevant Leave Rules which says where a Government servant does not resume duty after remaining on leave for a continuous period of five years or where a Government servant after expiry of his leave remains absent from duty otherwise than on foreign service or on account of suspension, for any period which together with the period of the leave granted to him exceeds five years, he shall unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned and shall accordingly cease to be in Government employment.

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7. The admitted and proved facts in this OA are as follows:

The applicant's husband Mr Mohd. Nooruddin was working as UDC in the Office of the Accountant General, AP, Hyderabad. He went on leave from 10.7.1956 onwards. He was medically checked up by the Competent Authority who opined that the said Nooruddin was fit to resume his duties w.e.f. 21.8.1956. However, the said Nooruddin did not choose to join his duty. The applicant's husband, in the usual course would have retired on 31.3.1976 on superannuation. The applicant's husband died on 15.7.1980;

8. As already pointed out, it is the case of the applicant that her husband Nooruddin had a right to receive the pension and so she had a right to receive family pension from the respondents. On the other hand, the contention of the respondents is that the applicant was continuously absent w.e.f. 11. 7.56. So, due to his continuous absence in view of FR 18 and CCS (Pension) Rules 26, it is contended on behalf of the respondents ~~that~~ due to his continuous absence for over a period of the applicant's husband five years / ceased to be a government servant as the services of the applicant's husband automatically stood terminated and hence (the said Nooruddin) the applicant's husband was not entitled for pension.

9. The Department has produced before us the x file that is available with them relating to the applicant wherein at page 11, we find a copy of the letter of the applicant's husband, Nooruddin dated 15.9.56 which reads as follows:

"To

The Accountant General,
(Establishment Branch)
Hyderabad - Dn

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Sir,

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With reference to your Memo No.95/EB/UDC d/11.9.56 I beg to state, that I had been suffering from rheumatism and my heart is also affected, and therefore, I could not attend the KEM Hospital (Secunderabad) in time on receipt of the first notice No.AG/EB/UDC/63 d/27.7.56, and a second notice No.90/EB/UDC d/29.8.56 was issued to me. In the meantime, when I was feeling a little comfortable, I hurried upto the KEM Hospital. The Civil Surgeon kindly inspected me, but the correspondence being of a confidential nature, neither the letter was handed over to me nor any intimation regarding my fitness, was given to me. Hence, there was no chance for me to think about joining prior to the date of termination of my leave requested for i.e. 9.9.56, and still my health condition does not permit me to resume duty. My physician advises me to continue the treatment till the health is fully recovered, as previously, I had been seriously ill due to the same reason in 1950, and in view of the said condition, I was compelled to join the Osmania Hospital Hyderabad and a tail length of eleven months was needed for recovery. Once again, during 1953, I had suffered for the same reason. My physician does not consider that my health condition as a satisfactory one and I had myself experienced comfortable with some intervals during my ill-healths and therefore the physician's advice is not to take any risk against this state of health by resuming duty.

Hence, I humbly request you to grant me leave, due for a further period of 2 months from 10.9.56 to 9.11.56, for which act of kindness, I shall ever remain grateful to you.

Medical certificate is herewith attached.

Yours faithfully,

Sd/-

Md.Nooruddin (U.D.C.) Ag
Office "

15.9.56

(emphasis supplied)

So, from the said letter dated 15.9.56, it becomes amply evident that the applicant had been requesting the response to grant him leave. At this stage it will be be worth to note Rule 25(2) of CCS leave Rules which reads as follows:

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"(2) Willful absence from duty after the expiry of leave renders a Govt. servant liable to disciplinary action."

So, from the above rule, it is amply evidence that Willful absence on the part of the Government servant after expiry of leave would make him liable for disciplinary action.

10. As already pointed out, it is pleaded in the counter that the applicant's husband had been on leave for a period of one month from 10.7.1956. The above said letter of the applicant's husband dated 15.9.56, discloses that he had been asking the respondents to sanction medical leave due to his ill-health. Anyhow, if the respondents were of the opinion that the applicant's husband was staying away willfully without reporting to duty in the office of the respondents, the respondents should have initiated disciplinary action against the applicant's husband. But, admittedly, such a disciplinary action has not been initiated against the applicant's husband. In this context, it will be worthy to note a decision reported in AIR 1966 SC 492 Jai Shanker, Appellant Vs State of Rajasthan, Respondent, wherein it is laid down as follows:

"....A discharge from service of an incumbent by way of punishment amounts to removal from service, and the constitutional protection of Art.311 cannot be taken away from him by contending that under the Service Regulations, the incumbent himself gives up the employment and all that the Government does is not to allow the person to be reinstated. It is true that there is no compulsion on the part

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of the Government to retain a person in service if he is unfit and deserves dismissal or removal and one circumstance deserving removal may be overstaying one's leave. But a person is entitled to continue in service if he wants until his service is terminated in accordance with law. It is true that the Regulation speaks of reinstatement, but what it ^{really} amounts to is that a person would not be reinstated if he is ordered to be discharged or removed from service. The question of reinstatement can only be considered if it is first considered whether the person should be removed or discharged from service. Whichever way one looks at the matter, the order of the Government involves a termination of the service when the incumbent is willing to serve. The regulation involves a punishment for overstaying one's leave and the burden is thrown ~~on~~ ^{on} the incumbent to secure reinstatement by showing cause. No doubt, the Government may visit the punishment of discharge or removal from service on a person who has absented himself by overstaying his leave, but it cannot order a person to be discharged from service without at least telling him that they propose to remove him and giving him an opportunity of ~~w~~ showing cause why he should not be removed. If this is done, the incumbent will be entitled to move against the punishment for, if his plea succeeds he will not be removed and no question of re-instatement will arise. It may be convenient to describe him as seeking re-instatement but this is not ^{will} tantamount to saying that because the person only be reinstated by an appropriate authority, that the removal is automatic and ~~xxxx~~ outside the protection of Article 311. A removal is removal and it is a punishment for overstaying one's leave an opportunity must be given to the person against whom such an order is proposed no matter how the Regulation describes it. (emphasis is ours)

11. The above said decision of the Supreme Court negatives the contention of the learned counsel appearing advanced relying on for the respondents, that is / FR 18 and CCS Pension

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Rule 26 ~~that the said~~ Rules operate automatically and no question of removal from service would arise, ~~xxxxx~~ because the Government servant must be considered to have given up his appointment.

12. ~~The~~ The Supreme Court of India, ~~relied on~~ the decision reported in AIR 1966 in the case of State of Assam and others Vs Akshyakumar Deb reported in page 430 1975(2) SLR wherein it is laid down as follows:

"Even^{it} it is assumed that termination under FR 18 does not cause forfeiture of benefits already earned such as pension, etc., then also that will not by itself take it out of the category of removal' as envisaged by Art.311(2). The respondent was a permanent Government servant. He had a right to his substantive rank. According to the test laid down by this Court in Purushottam Lal Dhingra's case(4) the mere termination of service, without more, of such an employee would constitute his 'removal' or 'dismissal' from service attracting Article 311(2). From the Constitutional Stand point therefore, the impugned termination of service will not cease to be 'removal' from service merely because, it is described or declared in the phraseology of FR 18 as a cessation' of service. The constitutional protection guaranteed by Art.311(2) cannot be taken away in this manner by a side wind."

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said
In the reported decision 1975(2) SLR Page 430
there is a reference to FR 18 Assam Fundamental Rule
which reads as follows:

"Unless the Provincial Government in view of the
Special circumstances of the case shall otherwise
determine, after five years' continuous absence
from duty elsewhere than on foreign service in
India whether with or without leave, a Government
servant ceases to be in Government employee".

There is also a reference to Jodhpur Service
Regulation 13 in the said judgement which reads as
follows:

"An individual who absents himself without permission
or who remains absent without permission for one
month or longer after the end of his leave should
be considered to have sacrificed his appointment
and may only be reinstated with the sanction of
the competent authority.

Note: The submission of application for extension
of leave already granted does not entitle an
individual to absent himself without permission."

Dealing with the FR 18 of State of Assam Fundamental
Rules and Rule 13 of Jodhpur Service
Regulations, the Supreme Court in the said decision
has held as follows:

"Expecting the length of the period of absence, the
basic features of Regulation 13 in Jai Shankar's
case were very similar to those of FR 18 of State of Assam
now
under consideration. The words "should be
considered to have sacrificed his appointment" in
Regulation 13 substantially correspondent to the
words "servant ceases to be in Government employ"
in FR 18. Further the import and effect to the

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phrase may only be reinstated with the sanction of the competent authority" in the regulation is largely the same as that of the opening clause "Unless the Provincial Government in view of the special circumstances of the case shall otherwise determined" in FR 18. The difference between the Regulation and FR 18 as to the length of absence from duty prescribed as condition precedent for the attraction, the respective provision is a distinction without difference in principle. The consequence of absence, though for different periods envisaged by both the provisions is the same

'sacrifice' or 'cessation' of the absentee's service

So, in the light of the two Supreme Court decisions, the conclusion that has got to be drawn is that the applicant's husband should be deemed to have continued in service till he reached the age of superannuation as it was imperative necessary to give the said Nooruddin (Applicant's husband) an opportunity to show cause for his over-stayal of leave and as necessary orders of termination of services of the applicant's husband were not passed by the respondent. As the said Nooruddin should be deemed to have continued in service till he retired, he was entitled to draw pension after covering the period of absence from 10.7.56 to 31.7.76 with leave due to him. For what reasons the applicant's husband did not apply for pension is not made known to this Tribunal. But, whatever it is, the applicant's husband Nooruddin had a right to draw pension. So the fact that the applicant, who admittedly is the widow of the said Nooruddin has also a right to draw family pension in accordance with the rules and regulations cannot be doubted. So, a direction is liable to be given to the respondents to pay pension to the applicant in accordance with the rules and regulations.

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13. The records placed before us do not go to show ~~that-actua~~ what was the actual qualifying service for the applicant's husband for the purpose of drawing pension. So, in view of this situation, we are not in a position to fix up the pension that ~~was~~ ~~we~~ actually payable to the applicant's husband, and after the death of the said Nooruddin, to the applicant herein. So, it will be appropriate to give a direction to the respondents to decide the qualifying service of the applicant's husband for the purpose of pension ~~and then~~ to decide the amount of family pension that is payable to the applicant.

14 The representation of the applicant to pay her pension, as the record discloses is made on 31.12.1987. The reply rejecting the representation of the applicant by the respondent is dated 11.4.1988. This application is filed by the applicant on 26.3.1990 i.e. nearly after two years after the rejection of the said representation. ^{as already indicated} Admittedly, ~~the~~ applicant's husband for the reasons not known to us had not ^{claimed} ~~(/)~~ pension. Even though he died in the year 1980, the applicant herein has not taken any steps with the respondents for payment of pension to her. In the matter of payment of pension, now it is well settled ~~that there cannot be any question of limitation. Only~~ ^{payment of} the ~~arrears~~ of pension has ~~got to be restricted.~~ ^{as per the provisions of Section 21 of the Administrative Tribunals Act. So bearing in mind the} ^{Sec.21} that deals with limitation provisions of ~~the Administrative Tribunals Act,~~ ^{it will be} just and proper to direct the respondents to pay the arrears of pension from one year prior to 26.3.90 which is the date of filing this OA.

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15. In the result, we direct the respondents to calculate the qualifying service of the said Mohd.Nooruddin the husband of the applicant herein, for the purpose of deciding pensionary benefits by sanctioning leave due to him for the period of absence from 10.7.56 to 31.7.76 and fix up pension payable to the said Mohd.Nooruddin and then calculate the family pension and other pensionary benefits payable to the applicant in accordance with law. We further direct the respondents to pay the arrears of pension and other benefits that are payable to the applicant from 26.3.1989 which, as already pointed out, is the date of one year prior to the filing of this OA. Three months time is granted to the respondents from the date of communication of this order for implementing the said directions. The OA is allowed with the above said directions. In the circumstances of the case, we direct the parties to bear their own costs.

R. Balasubramanian
(R. BALASUBRAMANIAN)
MEMBER (ADMN)

T. Chandrasekhar Reddy
(T. CHANDRASEKHAR REDDY)
MEMBER (JUDL.)

Dated: 18 June, 1992
Dy. Registrar (J)

- To
1. The Accountant General,
O/o the Accountant General A.P. Hyderabad.
 2. One copy to Mr. K. Radhakrishna Murthy, Advocate
11-6-868, Red Hills, Hyderabad.
 3. One copy to Mr. G. Parameswar Rao, SC for A.G. CAT. Hyd.
 4. One copy to Hon'ble Mr. T. Chandrasekhar Reddy, Member (J) CAT. Hyd.
 5. One copy to Deputy Registrar (J) CAT. Hyd.
 6. Copy to All Benches and Reporters as per standard list of CAT. Hyd.
 7. One spare copy.

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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BUNAL : HYDERABAD BENCH.

THE HON'BLE MR.

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY :
MEMBER (J)

AND

THE HON'BLE MR. C. J. ROY : MEMBER (J)

18.6.92
Dated: 30-6-1992

ORDER/JUDGMENT

P.A./C.A./M.A. No.

O.A. No.

in

387/90

T.A. No.

(W.P. No.)

Admitted and interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

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