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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

J A I P U R.

O.A. No. 615/93

Date of decision: 18.7.94

MRS. ANGELINA MASSEY

: Applicant.

VERSUS

UNION OF INDIA & ORS

: Respondents.

Mr. K.L. Thawani

: Counsel for the applicant.

Mr. U.D. Sharma

: Counsel for the respondents.

CORAM:

HON'BLE Mr. Justice D.L. Mehta, Vice-Chairman

HON'BLE Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. JUSTICE D.L. MEHTA, VICE-CHAIRMAN:

The prayer of the applicant is that she may be granted family pension from the date from which her husband was missing viz. 4.7.70.

2. Laws are enacted for the welfare of the society in a democratic form of Government like ours. Mr. Sharma appearing for the respondents in this case submits that family pension has been granted to the applicant w.e.f. 2-4-92. His submission is that the lady lodged the F.I.R. for the first time on 2.4.92. FIR is lodged in a criminal case and the disappearance of a person is not a criminal act. He may be missing on account of abduction, kidnapping or on account of unforeseen circumstances. No First Information Report is lodged in a case of missing person; it is only a report about the missing person. Mr. Sharma submits that under decision No. 12 below Rule 54 (page 113 of Swamy's Pension Compilation, 13th Edition, 1993), a clarification has been given by the Ministry as under:-

"The above benefits may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts had been made by the police.

(ii) An Indemnity Bond should be taken from the nominee/dependents of the employee that all payments will be adjusted against the payments due to the employee in case he appears on the scene and makes any claim."

These provisions are not obligatory, but only directory in nature. The word "may" has been used in the very beginning and this shows that such action may be taken as far as practicable. Apart from that one should also take into account decision No. 13 below Rule 54 ibid. It provides that the date of disappearance of the employee/pensioner will be reckoned from the date the First Information Report is lodged with the Police, and the period of one year after which the benefits of family pension and gratuity are to be sanctioned will also be reckoned from this date. However, the benefits to be sanctioned to the family, etc., of the missing employee will be based on and regulated by the emoluments drawn by him and the rules/orders applicable to him as on the last date he/she was on duty including authorised periods of leave.

3. Admittedly, in this case, the applicant is missing since 7.4.70. His family members are not aware of his whereabouts and on 7.4.70, the Post Master, Ajmer informed the Station House Officer, Sader Kotwali, Ajmer that the employee is missing and immediate search of the Postman may be made and further necessary action as required under the law may be taken.

4. Vide Annexure A-3, the applicant also submitted an application to the Superintendent of Police, Ajmer that her husband is missing since 7.4.70. There was a criminal case against the missing person, so proceedings were initiated u/s 80 & 83 IPC and he was declared absconder after 7.4.70.

5. The Head of the Office had informed the Police that the employee has been missing since 7.4.70, the wife was making a search, but nothing had been heard about him since 7.4.70. U/S 108 of the Evidence Act, a person may be presumed to be dead after 7 years if nothing has been heard by the persons who must know about his whereabouts. In the instant case, Section 108 of the Evidence Act can be applied and the presumption of death may be drawn after the expiry of the seven years. The applicant is missing since 7.4.70.

The period of 7 years expired on 7.4.77 and a presumption can be drawn U/s 108 of the Evidence Act that the applicant is dead. The applicant has four children and the mother of the missing person is also dependent on her.

6. In such circumstances, we are of the view that the applicant is entitled to get the family pension after the expiry of 7 years, i.e. from 7.4.77.

7. Although the applicant would ordinarily be entitled to family pension from 4.7.77, the law of limitation restrains us from granting relief to the applicant from that date. We leave it to the respondents to take a decision about the date from which family pension is to be granted to the applicant, having regard to her family circumstances.

8. The O.A. is disposed of accordingly, with no order as to costs.

(O.P. SHARMA)
Administrative Member

(D.L. MEHTA)
Vice-Chairman