

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 20th day of October, 2010

ORIGINAL APPLICATION NO. 19/2008

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Smt. Kamla @ Kamlesh Devi aged about 35 years, wife of Shri Duli Chand, Ex-Lab, T.No. 976 in C.V.D. Kendriya Vahan Bhandar, Delhi Cant, resident of Village Kaysa, Tehsil Behror, District Alwar (Rajasthan).

.....Applicant

(By Advocate: Mr. Nand Kishore)

VERSUS

1. Union of India through Defence Secretary, Government of India, Army H.Q., New Delhi.
2. Brig. Commandant, Kendriya Vahan Bhandar, Central Vehicle Depot, Delhi Cant.

.....Respondents

(By Advocate: Mr. D.C. Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) It is, therefore, prayed that by an appropriate order or direction, the Hon'ble Tribunal may kindly call for the entire records, pertaining to the case and after examination, the respondents be directed to arrange payment of family pension and retrial dues etc. with arrears and interest @ 12% on the delayed payment.
- (ii) Removal order dated 29.11.1999 (A/2) may be declared nonest, null and void and quashed.
- (iii) Any other direction and orders, which are deem proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2. Briefly stated, facts of the case, as stated by the applicant are that the husband of the applicant while working as labour with effect from 1989 (T. NO. 976) in C.V.D. Kendriya Vahan Bhandar, Delhi Cant. proceeded on leave during the month of April, 1998. Even after expiry of the leave, the husband of the applicant did not report for duty.

3. However, it is the case of the respondents that the husband of the applicant remained absent from duty w.e.f. 23.05.1997 to 29.09.1997 without permission/intimation/sanction of leave. It is further stated that that on joining his duty, the husband of the applicant submitted his leave application along with medical certificate of a Private Medical Practitioner. However, he was directed to report for Dr. Ram Manohar Lohia Hospital for second medical examination whereas he did not report to the hospital for second medical examination. It is further stated by the respondents in the reply that the husband of the applicant, Shri Duli Chand, was also caught red handed while stealing a sum of Rs.5000/- from the Personal Box of No. W 196695, Hav. Harish Singh and one bottle of Rum from No. W-180066 L/Nk Pratap Singh of 89, Inf Bde Camp, who had come for depositing CI V vehicle in Central Vehicle Depot, Delhi Cantt. Thereafter the husband of the applicant again remained absent from duty with effect from 20.12.1997 without prior permission/intimation/sanction of leave. Thus a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965 on the aforesaid allegations was issued on 09.01.1999. Ultimately, the applicant was removed from service vide order dated 29.11.1999 (Annexure A/2).



4. It is not in dispute that the said inquiry proceeding was conducted ex-parte. Neither the copy of the charge sheet nor the order of removal was ever served upon the husband of the applicant.

5. The applicant in her representation had submitted that her husband came from leave in April, 1998. He remained in the village for a week and returned back for joining. Thereafter, communication was received from the place of duty of her husband that her husband has not been attending his duties since long. Subsequently, an FIR was lodged by her father in law and elders of the husband of the applicant at Police Station Madhan District Alwar on 19.12.1998 (Annexure A/5).


6. From the facts, as stated above, it is evident that an FIR was lodged on 19.12.1998 whereas the disciplinary proceeding was initiated thereafter i.e. on 09.01.1999 and the order of removal was passed on 29.11.1999. The applicant has placed on record her representation dated 20.05.2006 (Annexure A/6) whereby she had made grievance for payment of family pension on the grounds mentioned therein. However, the case of the applicant was being considered by the Department sympathetically as can be seen from the letter dated 05.10.2005 (Annexure A/8) followed by reminders dated 27.10.2005 and 24.12.2005 whereby the authority concerned had asked the applicant to forward the original copy of FIR which was lodged at Police Station on 19.12.1998 about disappearance/missing of her husband alongwith the non traceable report of police to take further action in the matter. The applicant has also placed on record a letter dated 10.10.2006 (Annexure A/9) thereby stating that the requisite documents, as called for by the respondents have already



been submitted on 14.02.2006. The aforesaid letter was written to the Commandant, CPD, Delhi Cantt. Ultimately, the case of the applicant for pensionary benefits had been rejected by the respondents vide impugned order dated 05.06.2006 (Annexure A/1) on the ground that since her husband had been imposed penalty of removal from service consequent upon ex-parte inquiry, she is not entitled for family pension as per existing orders. Further the respondents in the reply have also stated that no intimation regarding lodging of FIR about missing of the husband of the applicant was ever received by the department. It is only for the first time in the year 2005 when the representation dated 20.05.2006 was made by the applicant, the Department became aware of lodging of FIR and missing of husband of the applicant.

7. The applicant has filed rejoinder thereby reiterating the submission made in the OA.

8. We have heard the learned counsel for the parties and have gone through the material placed on record. Learned counsel for the applicant has drawn our attention to the judgment of the Hon'ble Rajasthan High Court in the case of **Shakuntala Kanwar vs. Union of India & Others** [2003 (1) SCT 496] whereby service of husband of the applicant was dismissed and he was declared deserter. In that case, pensionary benefits were denied on the ground that the husband of the applicant was dismissed from service. Hon'ble High Court held the order of dismissal as non est having been passed in breach of principles of natural justice and direction was given to consider the case of the applicant in the light of GO's and grant all benefits.



9. Learned counsel for the applicant has also placed reliance on another judgment of the learned single judge of the Rajasthan High Court in the case of **Phooli Devi vs. State of Rajasthan** [2003(1) SCT 217 wherein the learned single judge has held that legal presumption of death is to be drawn for employee who is missing for more than 7 years relying upon Section 108 of Evidence Act. It was also held that family will be entitled to benefits which may be otherwise available if employee had actually died.

10. We have given due consideration to the submission made by the learned counsel for the parties. We are of the view that this case is covered by the judgment rendered by the Division Bench of the Rajasthan High Court in the case of **Shakuntala Kanwar** (supra). At this stage, it will be useful to quote Para 6 of the judgment, which thus reads as under:-

"6. Learned counsel for the appellant-petitioner has submitted that the Government of India's Decision vide O.M. No. 1/17/86-P&PW dated 29th August, 1986 is very clear and it deals with the payment of retirement gratuity and family pension etc. to the family in case an official's whereabouts are not known. He has also submitted that in the present matter FIR was lodged about missing of Constable Sayar Singh by Commandant of 17th Battalion BSF himself so there is no dispute about lodging of report. He has submitted that this fact is an admitted fact and it is also clear from the reply filed by respondents in special appeal on 31.1.2001. This fact is also fully established that employee constable Sayar Singh has not been traced even after all efforts have been made by the police. This fact is also established by the letters written by the police of Jammu to Officers of BSF which have been reproduced by the petitioner with the writ petition. It is further submitted that husband of the appellant-petitioner was constable in BSF he is missing since 1983, a report has been lodged in police and every effort has been made to trace him but he could not be traced. Under these circumstances, the case of the appellant-petitioner is fully covered by the above


Government Decision and she should be given all the benefits to which she is entitled according to above Government decision. It is also submitted that appellant-petitioner has not been given copy of any order of dismissal of Sayar Singh and even with the reply given in special appeal; no copy of such dismissal order has been placed on record. Even, if any such dismissal order is passed by any authority, it has to be set aside and treated as non est having been passed in breach of minimum requirements of natural justice and the same cannot come in the petitioner's way for the purpose of pension and other retrial benefits."

11. Thus in view of the judgment rendered by the Rajasthan High Court, relevant portion of which has been reproduced above, we are of the view that the factum of removal of the husband of the applicant from service vide impugned order dated 29.11.1999 (Annexure A/2) will not come in the way of the applicant for claiming pensionary benefits in terms of Government of India's decision OM NO. 1/17/86-P&PW dated 29.08.1986 and impugned order dated 29.11.1999 (Annexure A/2) is quashed and set aside. Accordingly, the present OA is allowed. The respondents are directed to consider the case of the applicant for the grant of pensionary benefits in the terms of the aforesaid instructions dated 29.08.1986 ignoring the order of removal from service which has been quashed, and pass appropriate order in accordance with law within a period of four months from today.

12. With these observations, the OA is disposed of with no order as to costs.



(ANIL KUMAR)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)

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