

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH
JAIPUR.

O.A.No.67/1995

Date of order: 14.9.1995

Smt. Pushpa Lata Sharma : Applicant

Versus

1. Union of India through Chairman,
Indian Post & Telegraph Department,
Sanchar Bhawan, New Delhi.
2. The Chief General Manager,
Telecommunication, Rajasthan Circle,
Jaipur.
3. Telecommunication District Engineer,
Sri Ganganagar, Rajasthan.
4. Account Officer, Telecommunication
District Sri Ganganagar (Raj.).

: Respondents.

None for the applicant

Mr. M. Rafiq

: Counsel for the respondents

CORAM:

HON'BLE MR. RATTAN PRAFASH, MEMBER (JUDICIAL)

ORDER

(PER HON'BLE MR. RATTAN PRAFASH, MEMBER (JUDICIAL))

Smt. Pushpa Lata Sharma applicant herein has filed an application under Section 19 of the Administrative Tribunal's Act, 1985 for directing the respondents to pay all service benefits to the applicant with interest of the deceased Government Servant her husband Shri H.C.Sharma who died while in service on 14.4.1988.

2. Consequent to the filing of the application notices were issued to the respondents who have filed their reply to the OA on 10.7.1995. OA is

to the respondents to consider and decide the representation of the applicant as per rules within a period of two months from the date of its receipt by them if the same is made by the applicant within a period of fifteen days from today. The applicant was further given a liberty to file fresh OA if she feels aggrieved by the decision taken on her representation. The applicant did make a representation in pursuance of the directions to the respondents on 5.7.1994 (Annexure-7). The representation was decided by the respondents vide their letter dated 20.7.1994 (Annexure-8) indicating therein that since her husband Shri H.C.Sharma, Former Lineman had remained absent for a considerable length of time without information, hence, the family pension has been fixed accordingly ~~as per~~ the departmental rules of pension as applicable to the deceased applicant's husband. She was further directed to contact the District Manager Telecommunication, Sri Ganganagar as the deceased's service record was available with them. Consequently the applicant feeling aggrieved with the aforesaid letter dated 20.7.94 ^{has} filed the present OA to claim the aforesaid relief.

4. Respondents have contested this OA by filing a written reply to which the applicant has not filed any rejoinder. The stand of the respondents has been that the applicant has already received all his legal dues as far back as in 1988 and all the service

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benefits of the deceased husband payable to the applicant have been made to her as ~~has been~~ admitted by the applicant in para 3 of her representation dated 5.7.1994 (Annexure-7). It has further been averred that the OA is barred by ~~3~~ limitation and after her first representation dated 12.5.1988 subsequent representations referred to by her in the OA would not extend the period of limitation. It has further been claimed by the respondents that the applicant's husband had remained absent from service for pretty long periods and has been habitual of absenting from duties. On one occasion Shri H.C.Sharma absented from duties from 12.12.1969 to 4.9.1981 and all this period of 11 years, 9 months and 22 days was treated as 'dies-non'. He also remained absent subsequently from 18.1.1984 to 13.4.1988 i.e. for a period of 4 years, 3 months and 27 days. Had her husband regularly attended the duties, he would have served the Government for almost 38 years but as against this on account of his repeated absence from duties, the deceased husband of the applicant Shri H.C.Sharma actually served the Government for a total period of 21 years, 3 months and 21 days and therefore a total period of his absence was 16 years, 5 months and 20 days which is given in the statement as at Annexure R-1. It has also been averred by the respondents that they had no knowledge of the disposal of the earlier OA by this Tribunal as no notices were issued to the answering respondents. It has accordingly been urged

fixed today for hearing on admission. Neither the applicant, nor her learned counsel has appeared despite repeated calls. On behalf of respondents Shri M. Rafiq learned counsel has appeared. Hence arguments have been heard at the stage of admission and this CA is being disposed of under Rule 15 ~~of the~~ of the Central Administrative Tribunal (Procedure) Rules, 1987 on merits.

3. Facts leading to this application and as alleged by the applicant are that applicant's husband Shri H.C.Sharma was working under the respondents as LMF at Talwara Jeel, District Sri Ganganagar. It is the case of the applicant that her husband Shri H.C. Sharma died on 14.4.1988 during service period. The deceased's son Shri Hari Shankar Sharma was appointed on the post of Group D test category. It is the grievance of the applicant that except the appointment of her son Shri Hari Shankar Sharma, no other service benefits of the applicant's husband was paid to her. She made representations on 12.5.1988, 21.6.1988, 20.7.1988 (Annexure-3), 19.8.1988, 25.8.1988 and 13.9.1989 (Annexure A-4). A notice of demand of justice dated 5.4.1994 (Annexure-5) was also issued to the respondents which was served on the respondents by registered post on 15.4.1994. Having received no response from the respondents, she filed an earlier CA No.246/94 which was disposed of vide order dated 22.6.1994 wherein the application was disposed of with the directions

on behalf of the respondents that the applicant having been paid all the due retiral benefits of her deceased husband Shri H.C.Sharma as given in Annexure P-1, this OA is without any substance and should be dismissed.

5. I have given due thought and consideration to the arguments addressed on behalf of the respondents and have carefully examined the record in great detail.

6. At the outset it may be stated that the applicant does not appear to have approached the Tribunal with clean hands; firstly because in the directions given in the earlier OA No.246/94 Smt. Pushpalata Vs. Union of India and others, there is no indication that the applicant had been paid any service benefits of her deceased husband Shri H.C. Sharma and secondly because in this OA also she has not filed the first representation dated 12.5.1988 to referred by her in the OA. She has filed only death certificate dated 12.5.1988 (Annexure-1) of her deceased husband Shri H.C.Sharma. However as the facts stand disclosed on the pleadings of the parties the only point for determination is whether this OA is hit by the bar of limitation as also is not maintainable in view of the payment of retiral benefits to her as early as in the year 1988.

7. Although it has been alleged on behalf of the applicant that she should be given all service benefits of her deceased husband Shri H.C.Sharma

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yet the applicant has failed to disclose in her OA as to what exact retiral benefits and payments have been received by her before filing of the earlier OA or this OA. On the contrary, she maintains that except the appointment of one of her son Hari Shankar Sharma all her other grievances relating to the payment of dues still remain to be redressed by the respondents alongwith Pension, Gratuity, P.F., G.P.F., Commutation, Insurance etc. This stand of the applicant is belied by the details furnished on behalf of the respondents in the Pension calculation Sheet of her deceased husband Shri H.C.Sharma (Annexure R-1) which gives the details of all payments made to her including the amount of endowment, Death Gratuity, Family Pension, Leave Encashment etc. This Calculation-sheet gives the details of the payment for the gross service period calculated by the respondents w.e.f. the date of appointment i.e. 4.8.1950 till 13.4.1988 calculated on account of the death of her deceased husband on 14.4.1988. Therefore it cannot be believed that the respondents did not pay any retiral benefits of her deceased husband Shri H.C.Sharma to the applicant. Her own admission in para 3 of her representation dated 5.7.94 made to the respondents affirm, the stand of the respondents of having made the payments disclosed in Annexure R-1.

8. ~~There~~ There is some variation in the amounts disclosed in Para 3 of Annexure-7 filed on behalf

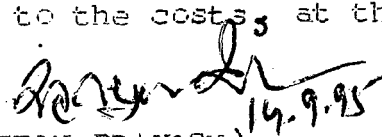
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of the applicant and the details given by the respondents in Annexure R-1 as pointed out by the learned counsel for the respondents. This may be due to that final calculations have been made by the respondents subsequent to the preparation of Annexure R-1 and that is why some of the amounts received by the applicant and disclosed in Para 3 of Annexure-7 do not find place in Annexure R-1. Be that as it may, as evident from the facts available in this QA it cannot be inferred that the respondents have not paid the due retiral benefits of her deceased husband to the applicant. It is in consonance with this stand of the respondents that the respondents have specifically written to the applicant in Annexure-8 that how less family pension has been paid to her. ~~Moreover~~ she has been specifically directed to contact and to be in correspondence with the District Manager Telecommunications Sri Ganganagar as the service record of the deceased Government employee were available with them. ~~The~~ The failure on part of the applicant to come with clean hands and also not disclosing the specific amounts which have been received by her and relating to the retiral benefits of her deceased husband goes to show that the applicant herself is not sure as to what exact amount or retiral benefits are still due to her from the respondents. In any view of the matter, since even according to her admission in Para 3 of Annexure-7 a major portion of the retiral benefits have been

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accepted by her as having been paid by the respondents and the respondents are coming with the stand that it has been paid to her as early as in 1988, the cause of action for any remaining retiral benefits (if any) has ceased to exist after one year of the receipt of retiral benefits by her. Besides, the respondents have also taken a specific plea of limitation in their reply in the present OA. The fact that a direction was given by this Tribunal in the earlier OA filed by the applicant or for that matter the letter issued by the respondents dated 5.7.1994 (Annexure-8) could not be construed to extend the period of limitation which has already come to an end within one year from the receipt of retiral benefits of her deceased husband by the applicant. It is well known that once the period of limitation starts to run it never stops unless a valid acknowledgment, that too, within the period of limitation, is made by the party against whom an action is subsequently brought before an appropriate forum.

9. For all the aforesaid reasons while holding the OA as non-maintainable and barred by limitation, this OA is dismissed with no order as to the costs, at the admission stage itself.


(RATTAN PRAKASH)
MEMBER (J)

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