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Date of Decision: 17/5/2000

OA 229/99.

Smt. Ram Janki Devi w/o Shri Bhanwar Lal Khinchi r/o Near Temple of Madan Mohanji, Sanganer, Jaipur.

... Applicant

Versus

Employees State Insurance Corporation, Jaipur, through the Regional Director, Panchdeep Bhawan, Bhawani Singh Road, Jaipur.

... Respondent

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI, ADMINISTRATIVE MEMBER

For the Applicant

... Mr.R.P.Pareek

For the Respondent

... Mr.U.D.Sharma

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes a prayer to quash the letter dated 5.11.98 and to direct the respondents to make the payment of pensionary benefits payable to the husband of the applicant since 1972 and family pension to the applicant alongwith interest.

2. The facts of the case, as stated by the applicant, are that husband of the applicant Shri Bhanwar Lal Khinchi was employed as Peon in the Employees State Insurance Corporation, Regional Office, Jaipur, in the year 1966. Thereafter, husband of the applicant suddenly disappeared on 31.7.78 and the applicant lodged FIR and a final report was given on that FIR. It is also stated that the applicant filed a representation dated 1.10.97 and thereafter she filed another representation on 10.6.98. The respondents replied for the first time that husband of the applicant Shri Bhanwar Lal Khinchi was removed from service on 2.5.79, therefore, no pension can be given to the applicant. It is stated that the delinquent was never removed from service and it was incumbent upon the respondents to give charge-sheet and hold regular inquiry but the same was not done. Therefore, the order of removal was bad in law. It is also stated that the order of removal was never served/communicated to the delinquent/husband of the applicant. It is also stated that the applicant filed OA 36/99 but the same was withdrawn and thereafter the applicant has again filed this OA for the relief as mentioned above.

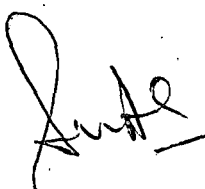
3. Reply was filed. IN the reply it is stated that the delinquent/husband

of the applicant was removed from service vide order dated 2.5.79 and the husband of the applicant never challenged the order of removal dated 2.5.79 in his lifetime. It is stated that the applicant for the first time requested to grant family pension on 10.8.98, which was replied to her vide impugned letter dated 5.11.98. It is also stated that Shri Bhanwar Lal Khinchi absented from duty since 16.8.77, therefore, departmental proceedings were conducted against him. He was issued memorandum of charge-sheet on 3.11.77. Inquiry Officer was appointed and departmental proceedings were held. Shri Bhanwar Lal Khinchi denied the charges and requested for grant of time for engaging defence assistant. Thereafter, proceedings were concluded in accordance with the rules by the inquiry officer, who submitted the report of inquiry on 5.3.79. The delinquent was given show-cause notice, which was returned back unserved. Again, the show-cause notice was sent to the husband of the applicant but nothing was heard for the husband of the applicant. The disciplinary authority thereafter passed the order of punishment dated 2.5.79 imposing the penalty of removal from service w.e.f 2.5.79. It is also stated that the order was sent at the residence of the husband of the applicant, which was received back undelivered with the remark of refusal. It is also stated that since the penalty of removal from service was imposed upon the applicant's husband, the applicant is not entitled to any family pension.

4. Rejoinder was filed reiterating the facts stated in the OA.

5. Heard the learned counsel for the parties for final disposal at the stage of admission and also perused the written submissions filed by the learned counsel for the applicant.

6. The learned counsel for the applicant has vehemently urged that the husband of the applicant was never removed from service as no order of removal was ever served upon the husband of the applicant. On the other hand, the learned counsel for the respondents has argued that after conducting the departmental proceedings against the husband of the applicant, the husband of the applicant Shri Bhanwar Lal Khinchi was removed from service and order of removal was sent to his address, which he refused to receive. He also urged that legal heirs of the delinquent are not competent to challenge the order of removal and since the order of removal is in existence, the applicant is not entitled to the family pension and this application is hopelessly barred by limitation.

 7. We have given anxious consideration to the rival contentions of both the parties and also perused the written submissions filed by the learned counsel for the applicant thoroughly.

8. The applicant has filed this application alleging that the order of removal from service of her husband w.e.f. 2.5.79 was never served upon the delinquent. Undoubtedly, w.e.f. 31.7.78 the husband of the applicant suddenly disappeared and he never attended the office again. From the perusal of the reply filed by the respondents it also appears that a department inquiry was conducted against the husband of the applicant and after conducting the departmental inquiry the order of removal of the husband of the applicant from service dated 2.5.79 was issued. Admittedly, the order of removal was never challenged by the husband of the applicant till date. It is also abundantly clear that for the first time the applicant made a representation before the respondent department for payment of pensionary benefits and family pension on 1.10.97. The husband of the applicant disappeared in the year 1978 but it is very strange that the applicant before 1.10.97 did not approach the departmental authorities for the payment of pensionary benefits payable to her husband or family pension. For the first time she approached on 1.10.97 and thereafter filed another representation on 10.6.98. It was replied by the department that her husband was removed from service w.e.f. 2.5.79 and since the husband of the applicant never challenged the order of removal from service dated 2.5.79 and the applicant also did not come forward to the departmental authorities for redressal of her grievance before 1.10.97 and no reasonable and probable explanation has been given by the applicant why she has not approached the department or Tribunal for redressal of her grievance before 1.10.97, we are of the considered view that this OA filed by the applicant at such a belated stage is hopelessly barred by limitation.

9. On the perusal of the pleadings of the parties it also appears that the husband of the applicant never challenged the order of removal till date. In Vidhata v. Union of India and Others, reported at ATJ 1998 (2) 506, OA 159/93, decided on 30.4.98 by the CAT, Full Bench, Mumbai, it was held that legal heirs of the deceased employee are not competent to file an application u/s 19 of the Administrative Tribunals Act. As the applicant, wife of Shri Bhanwar Lal Khiochi, the delinquent employee, has approached this Tribunal for family pension on the ground that the order of removal from service dated 2.5.79 was never served upon her husband, therefore, the order of removal is not effective and she is entitled to the family pension. In our considered view, the wife of Shri Bhanwar Lal Khinchi, the delinquent employee, cannot challenge the order of removal dated 2.5.79 at such a belated stage. Therefore, on this ground alone, this OA is not maintainable. In sum and substance, the order of removal dated 2.5.79 was never challenged which is in existence so far. Therefore, if the order of removal of the delinquent employee Shri Bhanwar Lal Khinchi is in existence, the applicant Smt. Ram

Janki Devi is not entitled to family pension on the ground that her husband Shri Bhanwar Lal Khinchi was removed from service.

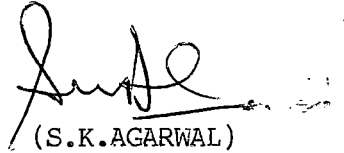
10. On the basis of the above, we are of the considered opinion that this OA fails and liable to be dismissed at the stage of admission.

11. We, therefore, dismiss this OA at the stage of admission with no order as to costs.



(N.P.NAWANI)

MEMBER (A)



(S.K.AGARWAL)

MEMBER (J)