

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

19

**ORDERS OF THE BENCH**

**Date of Order: 16.07.2012**

OA No. 360/2011 with MA No. 222/2011

Mr. Vinod Singhal, proxy counsel for  
Mr. Ganesh Chaturvedi, counsel for applicant.  
Mr. V.S. Gurjar, counsel for respondents.

Learned counsels' appearing on behalf of the respective parties want time to exchange their written submissions and to file the same before this Bench of the Tribunal. Time as prayed for is granted. Put up the matter on 26.08.2012 for hearing.

*Anil Kumar*

(ANIL KUMAR)  
MEMBER (A)

*K. S. Rathore*

(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

27/08/2012

OA No. 360/2011 with M.A. No. 222/2011

Mr. Vinod Singhal, proxy counsel for  
Mr. Ganesh Chaturvedi, counsel for applicant.  
Mr. V.S. Gurjar, counsel for respondents.

Heard.

O.A. and M.A. are disposed of  
by a separate order on the separate-  
sheets for the reasons recorded therein.

*Anil Kumar*

[Anil Kumar]  
Member (A)

*K. S. Rathore*  
[Justice K.S. Rathore]  
Member (J)

written arguments  
Filed on 16/7/12  
*Q*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 27th day of August 2012

ORIGINAL APPLICATION No. 360/2011  
with Misc. Application No. 222/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)

Smt. Resham  
Widow of Shri Nahar Singh,  
r/o Randayal, Tehsil Gangapurcity,  
District Sawai Madhopur (Raj.)

... Applicant.

(By Advocate: Shri Vinod Singhal proxy counsel for Shri Ganesh Chaturvedi)

Versus

1. The Union of India through its General Manager, Western Central Railway, Jabalpur
2. Union of India through its Divisional Regional Manager (DRM), Western Central Railway, District Kota (Rajasthan)
3. Senior Divisional Engineer (Head Office), Western Central Railway, District Kota
4. Assistant Engineer (P.V.), Western Central Railway, District Sawaimadhopur (Raj.)

... Respondents

(By Advocate : Shri V.S.Gurjar)

ORDER (ORAL)

In this OA the applicant has filed Misc. Application No. 222/2011 for condonation of delay in filing the present OA. We have



considered the averments made in this Misc. Application and in the facts and circumstances of this case and in view of the averments made in the Misc. Application, the Misc. Application is allowed.

2. Brief facts of the case are that husband of the applicant Shri Nahar Singh was appointed on the post of Gangman in the pay scale of Rs. 750-1025 on 13.12.1970. Suddenly in the year 1987, husband of the applicant disappeared and never returned to home or in service. The applicant who is illiterate also did not know reason behind it. She contacted the posting place of her husband as well as higher officials in the department to trace her husband. The respondent department also inquired into the matter but husband of the applicant could not be traced. Therefore, a complaint of missing of Shri Nahar Singh was submitted on 10.4.1989 in Police Station Bajirpur, Tehsil Gangapur, District Sawai Madhopur.

3. The applicant also requested the respondents department that since her husband has disappeared for last so many years and he has not been heard or seen by anyone, so she should be given the benefit of family pension, amount of gratuity, due salary and G.P.F., Leave Encashment and other benefits like D.C.R.G. etc.

4. Instead of considering request of the applicant, the respondents issued a charge sheet dated 27.3.1995, which was never served upon the applicant and the applicant got copy of the same under RTI from respondent department (Ann.A/1).

5. The applicant applied for Succession Certificate before the court of Additional District Judge, Gangapur City, Sawaimadhopur and the Court vide order dated 26.2.2008 issued Succession Certificate in favour of applicant declaring Shri Nahar Singh as dead person. After getting certified copy of the order dated 26.2.2008, the applicant submitted copy to the respondents with the request that the above mentioned benefits may be given to her alongwith interest from the date the said employee disappeared. The respondents returned back to the applicant saying that nothing be given to her, because the said employee has already been removed from service vide order dated 1.5.1997.

6. Aggrieved by the inaction on the part of the respondents, the applicant sent notice for demand of justice to the respondents stating that since Succession Certificate has been issued in her favour declaring Shri Nahar Singh as dead person, there is no reason exists not to quash and withdraw the order of removal dated 1.5.1997 and to pay retiral benefits to the applicant.

7. Earlier, the applicant also filed OA No.343/2008 before this Tribunal with the relief that the chargesheet dated 27.3.1995 was never served upon the applicant and the same be quashed and set-aside. The said OA was disposed of by this Tribunal on 12.1.2011 granting opportunity to the applicant to agitate the matter regarding pensionary benefits before the authorities by way of filing representation. Pursuant to the order dated 12.1.2011 passed by this Tribunal, the applicant submitted detailed representation before



the respondents. When no action was taken by the respondents, the applicant alongwith her daughter Guddi Bai again filed a joint OA No.271/2011 praying therein to release all retirement benefits as well as benefit of compassionate appointment. The Tribunal vide its order dated 21.7.2011 disposed of the OA with direction that the applicant may file separate OA for separate prayer and, therefore, the present OA has been filed by the applicant claiming following reliefs:-

"It is, therefore, prayed that the entire record of the case concerned of Shri Nahar Singh Gangman may kindly be called for and examined the same and the charge sheet dated 27.3.1995 and order dated 1.5.1997 passed by respondent No.4 may be quashed and set aside and the respondents may kindly be directed to pay the benefit of family pension, Gratuity, amount of salary due, leave encashment, due amount of GPF, Insurance and other benefits like retirement of death cum gratuity, PF CGIS and all other arrears etc to the applicant with effect from 1987 when the said employee Nahar Singh disappeared, along with interest @ 12% p.a.

8. Per contra, the learned counsel appearing for the respondents has submitted that the present OA is not maintainable as per the provisions prescribed under Section 21 of the Administrative Tribunals Act, 1985 as the same has been filed after an inordinate delay. Further submitted that since husband of the applicant Shri Nahar Singh disappeared since 1987, the respondents have issued memorandum of chargesheet and finally removed husband of the applicant from service. It is also submitted that the



applicant had not submitted any Succession Certificate in compliance of the order passed in OA no.43/2006, therefore, claim and statement made has not been considered by the respondents.

9. We have heard the rival submissions of the respective parties and perused the material placed on record as well as the written submissions submitted by the respective parties. Admittedly, this OA has been filed before this Tribunal against the chargesheet dated 27.5.1995 and order dated 1.7.1995 passed by the respondents and also for other reliefs. It is also not disputed that husband of the applicant who was holding the post of Gangman suddenly disappeared in the year 1987 and never returned to home or in service. It is further not disputed that the applicant lodged FIR in the Police Station Bajirpur, Tehsil Gangapur, District Sawaimadhopur and the SHO issued a certificate dated 26.3.2009 in this regard.

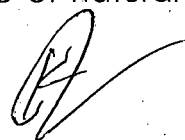
10. It is further admitted fact that it is third round of litigation and in view of the direction issued by this Tribunal, the applicant preferred the present OA and it is contended on behalf of the applicant that she is not aware about any memorandum of chargesheet, but only able to get the same through the application moved under the RTI Act. The memorandum of chargesheet cannot be served since the husband of the applicant was missing since the year 1987 and the applicant is not aware about any chargesheet. We are not impressed with the submissions made on behalf of the respondents that the present OA is not within limitation and we are not inclined to reject the present OA only on this



ground alone as per the settled proposition of law as held by the Hon'ble Supreme Court and Hon'ble High Courts in number of cases. Further as per the settled proposition of law, where the employee has disappeared or is missing for more than seven years and has not been heard by any one or seen is presumed to be dead and all the benefits are payable after his death to the dependents of such employee.

11. In the instant case, the applicant has made best efforts to trace out her husband and approached the respondents and the Police Station and when she failed to know the whereabouts of her husband, she applied for Succession Certificate and the Additional District Judge, Gangapur City declared her husband as dead. Therefore, under such circumstances, the impugned chargesheet dated 27.3.1995, which was admittedly never served upon the applicant or her husband as well as the order dated 1.5.1997 are not sustainable in the eyes of law and are liable to be quashed and set aside.

12. Further, the Division Bench of the Hon'ble Rajasthan High Court in the case of State of Rajasthan and others vs. Phooli Devi and others reported in 2003 (1) WLC (RAJ) 2003 (1) 479 has considered similar set of controversy and observed that initiating inquiry proceedings after seven years of disappearance of the Government servant and further holding such inquiry proceedings in order to culminate into order of punishment of removal, both are against the constitutional mandate and principle of natural justice



and further observed that the widow rightly held to family pension and direction rightly given by Single Judge for considering case of compassionate appointment. The same ratio has been decided by the Hon'ble High Court in the case of Smt. Parmeshwari Devi Saini vs. State of Rajasthan and ors, reported in 2009 (5) WLC (Raj.) 627 and in the case of Smt. Mooli Devi vs. State of Rajasthan reported in 2009 (5) WLC (Raj) 368. The Hon'ble High Court has held that petitioner's husband is missing and pension in such cases has to be sanctioned if the Government servant has not been traced for more than a year. The fact that enquiry was held and petitioner's husband was dismissed for unauthorized absence, can operate as no bar to family pension when no notice of any enquiry was ever given to petitioner and proceedings of enquiry has been vitiated because of presumption of death of petitioner's husband. Petitioner was held entitled for family pension.

13. Having considered the ratio decided by the Hon'ble Supreme Court and the Division Bench and Single Bench of the Hon'ble High Court and the cases referred to hereinabove, we are fully satisfied that the ratio decided in the cases of Phooli Devi, Smt. Parmeshwari Devi Saini and Smt. Mooli Devi (supra) squarely covers the present controversy, as in the present case, admittedly, husband of the applicant is missing since 1987 and the applicant approached to the official respondents, inquired about her missing husband at various levels and ultimately lodged complaint with police station and the police also investigated the matter but the





husband of the applicant was never heard or seen by anyone for seven years. The SHO, Police Station, Bajirpur also issued certificate to this effect. Not only this, the applicant also applied for Succession Certificate before the Additional District Judge and the same has been granted by the Additional District Judge. In view of this fact, the impugned chargesheet and order of removal deserve to be quashed and set-aside. As the husband of the applicant was removed for unauthorized absence, in view of the ratio decided by the Hon'ble High Court, there is no bar to family pension when no notice for any inquiry was served upon the husband of the applicant or the applicant, therefore, enquiry proceedings had been vitiated because of presumption of death of applicant's husband as drawn by the court of law vide order dated 26.2.2008. Therefore, the memorandum of charge sheet dated 27.3.1995 and order of punishment dated 1.5.1997 are hereby quashed and set aside. The respondents are directed to grant family pension to the applicant from the year 1987 i.e. the date from which husband of the applicant is missing, with all terminal benefits admissible as per provisions of law within a period of three months from the date of receipt of a copy of this order.

14. The OA stands disposed of in the above terms with no order as to costs.

*Anil Kumar*

(ANIL KUMAR)  
Admv. Member

*J.S. Rathore*

(JUSTICE K.S.RATHORE)  
Judl. Member

R/