

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 263/2013

Order reserved on 03.08.2016

Date of Order: 17.08.2016

CORAM

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Abhishek Sharad S/O Shri K.C.Sharad, aged about 11 years, r/o 107, Brij Vatika, Goner Road, Jagatpura, Jaipur through his Legal Guardian Shri N.N.Sharad.

.....Applicant

(By Advocate Ms. Kavita Bhati)

VERSUS

1.Union of India, through the Secretary to the Government of India, Ministry of Mines, Shastri Bhawan, New Delhi.

2.The Director General, Geological Survey of India, 27, J.L.N. Road, Kolkata (WB).

3.The Dy. Director General, Geological Survey of India, Western Region, 15-16, Jhalana Doongri, Jaipur-302004.

.....Respondents

(By Advocate Mr. Sumer Singh)

ORDER

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant, (being a minor himself through his legal guardian) aggrieved with the rejection of his representation pertaining to family pension and other terminal benefits vide order dated 24.12.2012 (Ann.A/1) and therefore, seeking the following reliefs:-

8. (i) By an appropriate order the present Original Application of the applicant may kindly be accepted and the order dated 24.12.2012 along with the penalty order dated 08.07.2005 removing Shri K.C.Sharad with immediate effect may kindly be quashed and set aside.

(ii) By an appropriate order or direction the respondents may kindly be directed to pay the terminal benefits to the applicant along with family pension in the larger interest of justice along with interest.

(iii) Cost of the application may also be awarded to the applicant.

(iv) Any other order or direction which the Hon'ble Tribunal deems just and proper may also be passed in favour of the applicant.

When the matter came up for hearing and consideration on 03.08.2016, Ld. Counsel for the applicant Ms. Kavita Bhati, with reference to the averments made in the OA submitted that this matter relates to seeking family pension and other terminal benefits for the applicant. Counsel for applicant submitted that Shri K.C.Sharad father of the applicant, who was working as Lab. Assistant in the respondent department Geological Survey Of India at Jaipur, went missing from 31.05.2003. Thereafter, Shri N.N.Sharad, father of Shri K.C.Sharad and grand father of the applicant, moved an FIR in Moti Doongri Police Station on 02.06.2003(Ann.A/3) about Mr. K.C.Sharad having gone missing from S.M.S. Hospital where he was admitted. He also pursued the matter with the Police and vide letter dated 29.11.2006 (Ann.A/4) he was informed that efforts are still being made but till date Shri K.C.Sharad has not been found. Meanwhile, counsel for applicant submitted that on 26.07.2004 respondent No.3 i.e. Deputy Director General, Geological Survey of India issued a charge sheet for the unauthorized absence till date of Shri K.C.Sharad. Thereafter, the penalty was imposed vide order dated 08.07.2005, of removal from service and the same was published in the newspapers on 16.07.2005. Counsel for the applicant further submitted that Shri K.C.Sharad continued to remain missing even

after 7 years and as per Section 108 of the Indian Evidence Act such a person can be presumed to be dead and the disciplinary proceedings against a dead person have no meaning, purpose or relevance and are void in the eyes of law. Counsel for the applicant submitted that applicant (being a minor and living with his guardian Shri N.N.Sharad his grand father) also sent a legal notice on 07.07.2010 on the respondents as at Ann.A/6 for retirement benefits and family pension, but no action was taken on it despite there being provision in Government decision in OM No.1/17/86-P&PW dated 29th August, 1986. As per said OM, family pension has to be given one year after filing of the FIR regarding the missing person and vide subsequent OMs this period has even been reduced to 6 months.

2. Counsel for the applicant submitted that after no action was taken on the legal notice, applicant approached the Tribunal by filing OA which was registered as OA No.457/2010 and was disposed vide order of this Tribunal dated 14.10.2010 (Ann.A/7) with the following directions:-

"2. I am of the view that the instructions issued by the Government from time to time and the Government Decision O.M. No.1/17/86-P&PW dated 29.08.1986, though not annexed by the applicant, family pension/retirement or death gratuity in respect of missing person has to be granted after a period of one year from the date of lodging of the FIR. As per the submissions made by the applicant, FIR in the instant case was lodged on 02.06.2003. Thus as per the contention raised by the learned counsel for the applicant, family was entitled to family pension w.e.f. 02.06.2004 in terms of the aforesaid instructions. Admittedly in the instant case, inquiry proceedings were initiated after the expiry of period of one year and even the final order of removal from service was also passed on 08.07.2005 (Ann.A/1) after the expiry of aforesaid period of one year. Thus according to the learned counsel for the applicant, removal order is of no consequence.

3. From the material placed on record, it is evident that applicant has not made any representation qua this aspect. Thus I am of the

view that the matter can be disposed of at admission stage with the direction to the applicant to make appropriate representation in terms of the contention, as noticed above, within a period of 15 days from today, the respondents shall consider the same in accordance with law and pass appropriate order within a period of three months from the date of receipt of copy of the representation. It is made clear that in case the applicant is still aggrieved by the order to be passed by the appropriate authority, it will be open for him to file substantive OA."

However, representation filed by the applicant in pursuance of the directions of the Tribunal was rejected vide order dated 24th December, 2012 (Ann.A/1) which has now been challenged in the present OA along with the penalty order of removal from service dated 08.07.2005 (Ann.A/2). Counsel for the applicant further submitted that the mother of the applicant has re-married and is no longer looking after her son, the applicant, who is now under the guardianship of his grand father (reference report of Sarpanch as at Ann.A/10) and as per Rule 81 of the CCS (Pension Rules), 1972, she is not entitled to any family pension and only the applicant is entitled for the same.

3. In the above context of claim of the applicant counsel for the applicant empathetically contended that though the respondents initiated a Departmental Enquiry against Shri K.C.Sharad and even penalty of removal from service was imposed vide penalty order dated 08.07.2005 but in a similar matter in the case of Marriamma Samuel Vs. State of Kerala decided by the Kerala High Court in W.P.(C) No.8107 of 2010 on 22.05.2012 {2013(2) SLJ Page 87} it has been clearly held that " if an employee went missing, and has not heard of for seven years notwithstanding the disciplinary proceedings, the consequences of presumption under Section 108 of Indian Evidence Act would follow, meaning thereby that the

legal heirs of the missing person should be given all benefits presuming that the person is dead and that the disciplinary proceedings were against a dead person." She reiterated that Shri K.C.Sharad went missing from 31.05.2003 and FIR was filed on 02.06.2003 and much more than 7 years have lapsed and though the disciplinary proceedings were initiated in 2004 and finalized vide order dated 08.07.2005 with a penalty of removal from service but keeping in view the above legal position these proceedings are now to be treated as proceedings against a dead person and are of no consequence as no disciplinary action is permissible under law against a dead person and, therefore, the applicant is entitled to all retiral benefits and family pension and prayed that the applicant be granted the reliefs sought for, and the OA be allowed.

4. Per contra, Ld. counsel for respondents submitted that Shri K.C.Sharad, father of the applicant was appointed in Geological Survey of India on 20.06.1997 as Lab. Assistant and had a habit of remaining absent and was absent from 28.01.2003 to 24.01.2003, 03.04.2003 to 10.04.2003 and later from 09.05.2003 continuously onward and, therefore, in view of his unauthorized absence he was charge-sheeted on 26.04.2004. Further, despite giving several opportunities including publication of notice and charge sheet in Dainik Bhaskar and Rajasthan Patrika, the leading dailies, on 17.05.2005 and 14.05.2005 respectively, and no response coming forth from the applicant and charges being found proved by the Inquiry Officer, a penalty of removal from service was imposed on him vide order dated



08.07.2005 and this order was published in the newspaper on 16.07.2005 as may be seen from Ann.A/2. Counsel for respondents submitted that no family pension and terminal benefits are payable in case of penalty of removal of service as per Rule 24 of the CCS (Pension Rules), 1974 as removal from service entails forfeiture of past service. He further contended that the claim of the applicant is not valid especially as the FIR is pending in Moti Doongri Thana and no Final Report (FR) has been filed so far. Accordingly no case is made out for grant of terminal benefits and family pension to the applicant and the order Ann.A/1 dated 24.12.2012 is legal and valid and the penalty order dated 08.07.2005 (Ann.A/2) also has been passed in accordance with the rules and therefore, prayed for the dismissal of the OA.

5. Considered the aforesaid contentions and perused the record. It is noticed from the available record that Shri K.C.Sharad was initially appointed as Lab. Assistant Grade III in GSI, WR, Jaipur on 20.06.1997. It is also seen that as per Ann.A/3 dated 02.06.2003, Shri N.N.Sharad, father of Shri K.C.Sharad lodged an FIR with the Moti Doongri Thana, Jaipur that Shri K.C.Sharad who was admitted in Nasha Mukti Ward of the SMS Hospital on 23.05.2003 is missing from 31.05.2003 from his bed in the Hospital and is not traceable. It is further noted that Shri K.C.Sharad was found unauthorizedly absent from office, from 28.01.2003 to 24.02.2003, 03.04.2003 to 10.04.2003 and continuously from 09.05.2003 onwards, the respondents initiated disciplinary proceedings by issuing notice dated 26.07.2004 for unauthorised absence and when Shri K.C.Sharad did not respond,

the charges were found proved during the Inquiry by the I.O. and the copy of the Inquiry Report was also sent to his local as well as native place address of Shri K.C.Sharad as available on record, but was received back as addressee was not available. Thereafter to afford a last opportunity a public notice was issued in Dainik Bhaskar and Rajasthan Patrika on 17.05.2005 and 14.05.2005 and again as nothing was heard within the stipulated time of 15 days of the issue of the notice, order dated 08.07.2005 was passed by the disciplinary authority with the penalty of removing Shri K.C.Sharad from service. This order was also published in Dainik Bhaskar dated 16.07.2005 (Ann.A/2). Though it has been averred in the OA that the respondent department was well aware of Shri K.C.Sharad having gone missing from 31.05.2003, and yet disciplinary proceedings were initiated against him but the applicant has not submitted anything on record to show that after filing of the FIR, the father of Shri K.C.Sharad also informed the Department about his son having gone missing. Even when notices were sent regarding the disciplinary proceedings by the respondents at the local address of Shri K.C.Sharad, no report seems to have been given by the family that Shri K.C.Sharad has gone missing and is not traceable. In fact from the record, it is noted that the respondent Department was informed about the continuous missing of Shri K.C.Sharad only through the endorsement to them of the letter dated 29.11.2006 (Ann.A/4) which is a communication from the Police authorities addressed to Shri N.N.sharad. This information is also more than a year after

the penalty order was passed on 08.07.2005 and published in the newspaper on 16.07.2005 (Ann.A/2).

6. It is further noted that in the OA it has been mentioned in Para 9 that Shri N.N.Sharad continued to represent the matter of his son Shri K.C.Sharad before the authorities for grant of family pension but no such application and representations have been filed with the OA. Only a legal notice sent on 07.07.2010 (Ann.A/6) has been filed with the OA and thereafter an OA was filed which was registered as OA No.457/2010. This OA was decided vide order dated 14.10.2010 (Ann.A/7) and the applicant was directed to file a representation before the respondents with reference to OM No.1/17/86-P and PW dated 29.08.1986 as he had not filed any such representation earlier in this regard. Thereafter, the respondents decided the representation (filed in pursuance of the orders of the Tribunal) vide order dated 24.12.2012 (Ann.A/1) in which the family pension has been rejected on the ground that Shri K.C.Sharad was removed from service vide order dated 08.07.2005 which is prior to the order of the Hon'ble Tribunal (i.e. 14.10.2010) and the Police has not submitted any Final Report (FR). It has also been stated that as per Rule 24. of the CCS (Pension Rules),1972, in case of removal from service, the terminal benefits and family pension are not payable.

7. It has been the main contention of the counsel for applicant that much more than 7 years have passed after Shri K.C.Sharad has gone missing and despite the best efforts of the police, as may be seen from the letter dated 29.11.2006, Ann.A/4, Shri K.C.Sharad has not been found till now and therefore, on the basis

of Section 108 of the Evidence Act it can be presumed that he is no longer alive from 31.05.2003 i.e. when the missing person FIR was lodged with the police and the applicant, who is still a minor and under the guardianship of Shri N.N.Sharad (his grand father) is fully entitled to the terminal benefits and family pension. The disciplinary proceedings and order of removal from service are not valid in the eyes of law because the disciplinary proceedings cannot be held against the person who is not alive and this has categorically been upheld by the Kerala High Court in the case of Mariamma Samuel Vs. State of Kerala (Supra). It has also been the contention of the counsel for applicant that the applicant being the son of Shri K.C.Sharad is entitled to retiral benefits and family pension because the wife of Shri K.C.Sharad, Smt. Manju has remarried and she is not looking after the son who is under the guardianship of the grand father, therefore, in terms of OM 1/17/86-P&PW dated 29.08.1986 and subsequent amendments therein, he is fully entitled to the same.

8. In this connection it is noted that the disciplinary proceedings against Shri K.C.Sharad were initiated on 26.07.2004 and finalized on 08.07.2005, which is much prior to 7 years after missing person report was filed with the Police on 02.06.2003(Ann.A/3) about Shri K.C.Sharad by his father, of which there is no record in the pleadings that it was also sent to the respondent department, and therefore, it is clear that there was no ground before the respondents to presume that Shri K.C.Sharad is not alive either when the disciplinary proceedings were initiated or when the final order of penalty of removal from

service was passed on 08.07.2005. Even the continued missing report was endorsed to the respondents only vide letter of the Police authorities on 29.11.2006 as seen from Ann.A/4. However, as of now, much more than 7 years have elapsed after filing of the FIR and as per the provision 108 of the Evidence Act it is for the person who claims that Shri K.C.Sharad is alive to prove he is alive and the respondents have not raised such a contention. Therefore, order of the Hon'ble Kerala High Court in the case of Marriama Samuel Vs. State of Kerala in WP(C) No.8107 of 2010 is relevant in this case in which it has been held as under:

“.....So the disciplinary proceedings against the petitioner's husband would hold good only for seven years prescribed in Section 106 of the Indian Evidence Act and thereafter what would be applicable to the circumstances is Section 108 of the Indian Evidence Act. That means if an employee went missing he has not heard of for seven years notwithstanding the disciplinary proceedings the consequences of presumption under Section 108 of the Indian Evidence Act would follow, meaning thereby that the legal heirs of the missing person should be given all benefits presuming that person is dead and that the disciplinary proceedings were against a dead persons.”

9. In view of the above position, it would appear that Shri K.C.Sharad has been continuously missing from 31.05.2003 about which the FIR was filed on 02.06.2003 (Ann.A/3) and as such a long time, even much more than seven years have elapsed; and after this the penalty order of 08.07.2005 (Ann.A/2) of removing him from service (though passed in a bonafide manner and as per rules by the respondents) would have no consequence and bearing as far as giving terminal benefits and family pension to the legal heirs are concerned, and it would now be presumed to have been passed against a dead person.

10. At the same time it is also seen from perusal of OM No. 1/17/86-P & PW dated 29.08.1986 that for claiming retiral benefits the applicant must submit a copy of the Police Report along with indemnity bond as mentioned in para 3 of the order which reads as under:-

"3. Conditions: The Administrative Ministries/Departments may sanction the dues to the families of the employee subject to the following conditions:-

- (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."

Though the applicant did file a representation with reference to the aforesaid OM (as per direction of this Tribunal dated 14.10.2010 in OA No.457/2010) and the same was rejected vide order dated 24.12.2012 (Ann.A/1) on certain grounds, but the ground of penalty order and F.R. requires reconsideration in view of the above analysis.

11. It has also been mentioned in the OA that the wife of Shri K.C.Sharad, Smt. Manju has remarried and therefore, she is not entitled to any retiral benefits or family pension and the applicant has annexed Ann.A/10 as a certified copy of the report dated 30.12.2012 of the Sarpanch from Gram Pradhan Pärli, Teh. Anupshahar, Distt. Bulandshahar, UP to support the averment. In this regard it is seen that this certified copy dated 30.12.2012 only states that Smt. Manju is living with somebody else and that the son is living with the grand father who is his legal guardian.

12. In view of the above position and keeping in view the principles upheld in the order dated 22.05.2012 of the Kerala High Court in the case of Marriamma Samuel Vs. State of Kerala W.P. (C) No.8107 of 2010 [SLJ V.2013(2) Page 87], the provisions of O.M. No.1/17/86-P & PW dated 29.08.1986 and the status of the applicant (i.e. minor son of Shri K.C.Sharad missing person, living with his grand father and legal guardian Shri N.N.Sharad) it is deemed appropriate to dispose of this OA with certain directions.

Accordingly it is directed that:

- (a) In the first place the applicant may file a fresh and detailed representation before the concerned authorities, in the respondent department, after obtaining the latest report about Shri K.C.Sharad from the concerned Police station (where the missing report of Shri K.C.Sharad was filed) to satisfy the conditions laid down in Para 3(i) of the O.M. No.1/17/86-P & PW dated 29.08.1986. The representation may be filed at the earliest, but within a period of two months from the date of receipt of this order.
- (b) Thereafter respondents would consider the representation taking into account the principles upheld in the order of Kerala High Court dated 22.05.2012 in the case of Marriamma Samuel Vs. State of Kerala in WP(C) No.8107 of 2010 (Supra), subject to the latest report obtained from the Police station and the penalty order dated 08.07.2005 of removal from service of Shri K.C.Sharad would not be a legal bar to the sanction of terminal benefits and family pension to the legal heir of Shri K.C.Sharad. Accordingly on

receipt of such a representation from the applicant the respondent are directed to decide the matter regarding due retiral benefits and family pension due to the applicant by a reasoned and speaking order within 4 months from the date of receipt of the representation. It is further directed that while deciding the matter, the status and claim, if any, of Smt. Manju who, as averred in the OA, is said to have remarried and no longer takes care of the son i.e. applicant may also be kept in mind.

The OA is disposed of with the aforesaid directions with no order as to costs.



(Ms. Meenakshi Hooja)
Administrative Member

Adm/