

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.823/2014

Order reserved on 16.11.2016
Order pronounced on 23.12.2016

Hon'ble Shri K.N. Shrivastava, Member(A)

Smt. Suman Lata
W/o Shri Ashok Kumar
R/o 687, Block-S
Mangolpuri, Delhi.

....Applicant

(Through Advocate: Shri Prem B. Kshetri)

Versus

1. Union of India, through, Ministry of Communications
And Information Technology
(Department of Telecommunication)
Sanchar Bhavan, 20, Ashoka Road, New Delhi.
2. Mahanagar Telephone Nigam Limited
Office of D.G.M. (A&EM)
Telephone Exchange Building
Rajouri Garden, New Delhi-110027
Through its General Manager
3. Mahanagar Telephone Nigam Limited
Office of Executive Director
K.L. Bhavan, New Delhi-110050.
Through its Assistant General ManagerRespondents

(Through Advocate: Dr. Ch. Shamsuddin Khan)

Order

Through the medium of this OA filed under Section
19 of the Administrative Tribunals Act, 1985, the
applicant has prayed for the following specific reliefs:-

“(A) direct the respondents to grant the
family pension, entire gratuity amount,

provident funds, all dues, arrears of family pension with interest to the applicant; and

(B) direct the respondents to give job on compensatory grounds to the applicant; and

(C) direct the respondents to compensate the applicant for causing harassment, torture which caused immense loss and injury to the applicant since last several years.

2. The brief facts of this case are as under:-

The applicant is the wife of Shri Ashok Kumar Swami who had joined Department of Telecommunication (DoT) on 01.04.1995 as a temporary Labour (Annexure A-4). He was made permanent on 09.07.2001 as a Telephone Mechanic (Annexure A-3 Colly). After creation of MTNL, he came to be allocated to MTNL. Shri Swami had been missing since 28.01.2004. The family members had reported the matter to Mangol Puri, Police Station, who vide Annexure A-9 report dated 21.03.2008 declared that Shri Swami was **untraceable**. As her husband could not be traced for a very long period, the applicant filed Suit No.32778/2011 in the court of Senior Civil Judge, Delhi seeking a declaration that her husband is not alive. The Civil Court finally issued a decree in favour of the applicant vide Order dated 27.02.2013 (Annexure A-16). In the meanwhile, the respondents had already started

Disciplinary Enquiry (DE) proceedings against Shri Ashok Kumar swami for his unauthorised absence. They had sent several memoranda to him for his unauthorised absence but all the memoranda had come back "undelivered". Finally, the respondents issued a charge sheet to him on 02.11.2005. The Articles of charge read as under:-

“(Statement of Articles of charge framed
against Sh. Ashok Kumar swami Phone
Mechanic(PM-3192)

Shri Ashok Kumar Swami Phone
Mechanic (PM-3192) while working under
SDE (CSC) Nangloi New Delhi has been
unauthorisedly absented from duty since
27.01.2004 to till date.

Shri Ashok Kumar Swami (PM-3192) did
not join his duty till late despite repeated
letters to him on his known addresses and
thus absented himself unauthorisedly
w.e.f. 27.1.2004 to till date and thus
attracts action against him as per provision
of Rule 5(7) of MTNL Conduct Discipline &
Appeal Rule 1998.

By his aforesaid act Sh. Ashok Kumar
Swami, Phone Mechanic (PM-3192)
exhibited lack of devotion to duty and
acted in manner of highly unbecoming of a
Govt. Servant, thereby violating Rule
4(i)(ii)(iii) of MTNL Conduct Discipline &
Appeal Rule 1998.”

3. An inquiry was conducted setting Shri Ashok Kumar Swami *ex parte*. Finally, the Disciplinary Authority (DA) acting on the inquiry officer's report, vide order dated

12.12.2007 (Page 114 of paper book) removed Shri Ashok Kumar Swami from service.

4. The applicant had been requesting the respondents to grant her family pension and all the retiral benefits of her husband Shri Ashok Kumar Swami but no action was taken on her request by the respondents. She also petitioned to Hon'ble President and Hon'ble Prime Minister. Finally, she approached this Tribunal in the instant OA praying for the reliefs as indicated in para 1 (supra).

5. Pursuant to the notice issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. In the reply the respondents have broadly averred as under:-

“(i) Shri Ashok Kumar Swami (husband of the applicant) had been subjected to DE proceedings for his unauthorised absence and finally an *ex parte* order had been passed against him removing him from service.

(ii) Shri Ashok Kumar Swami had taken a lot of loans from various banks and had been declared as defaulters by these banks (details are at page 76 of the paper book).

iii. Since Shri Ashok Kumar Swami had been removed from service vide order dated 05.10.2007, he was not entitled to get any retiral benefits, viz, pension, gratuity, leave encashment etc.

6. With the completion of pleadings, the case was taken up for hearing arguments on 16.11.2016. Shri Prem B. Kshetri for the applicant and Dr. Ch. Shamsuddin Khan along with Ms. Leena, learned counsel for the respondents argued the case.

7. The main contention of learned counsel for the applicant was that the applicant's husband has been declared as not alive by the competent Civil Court vide judgment dated 27.02.2013. He had been missing since 28.01.2004 against which the applicant had lodged a report at Mangol Puri, Police Station. The said Police Station vide its report dated 21.03.2008 had declared him **untraceable**. He also stated that the MTNL vide its letter dated 17.05.2008 addressed to Accounts Officer (Pension), had sought his advice with regard to payment of pension/terminal benefits to the applicant in regard to her missing husband, Shri Ashok Kumar Swami. Concluding his arguments, the learned counsel prayed

that the OA may be allowed and the prayers made therein may be granted.

8. *Per contra*, learned counsel for the respondents submitted that Shri Ashok Kumar Swami, missing husband of the applicant, had been subjected to DE proceedings and finally removed from service vide order dated 05.10.2007 and, therefore, in terms of Rule 54 of CCS (Pension) Rules, 1972 read together with Rule 11 of CCS (CCA) Rules, 1965, a Govt. Servant removed or dismissed from service shall not be entitled to pension/gratuity. It is also submitted that an intimation to this effect was sent by MTNL to Department of Telecommunication, Govt. of India, vide Annexure A-13 letter dated 27.05.2008.

9. In reply to the submissions made by the learned counsel for the respondents, Shri Prem B. Kshetri, learned counsel for the applicant drew our attention to the clarification issued by the Govt. to Rule 54 of CCS Pension Rules, 1972 which reads as under:-

"Payment of retirement gratuity and family pension to the family, in case an official's whereabouts are not known-

A number of cases are referred to this Department for grant of family pension to the eligible family members of employees who have suddenly disappeared and whose

whereabout are not known. At present all such cases are considered on merits in this department. In the normal course unless a period of 7 years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

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10.3 (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/dependants 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."

10. He further stated that the Competent Court had already declared missing husband of the applicant as not alive and as such, in terms of the aforesaid clarification of the Govt., the applicant is entitled to family pension and all the retiral dues of her late husband.

11. I have given my thoughtful consideration to the arguments put forth by learned counsel for the parties and also perused the pleadings. Admittedly, Shri Ashok

Kumar Swami (husband of the applicant), had been missing since 28.01.2004. The Competent Court has already declared him dead in terms of the legal provisions. No doubt the respondents have proceeded against Shri Swami departmentally and concluded the inquiry proceedings *ex parte* against him and finally vide order dated 05.10.2007, removed him from service. But in view of the fact that the Special Court has declared Shri Swami as dead, the order of removal, passed by the respondents, is *de facto* against a person who is not alive. Hence, the order of removal passed by the respondents has no legal validity.

12. The argument of learned counsel for the applicant that in the light of order of the special Court, declaring the missing husband of the applicant as not alive, the request of the applicant for grant of family pension and retiral benefits for her husband are to be dealt with in terms of Govt. of India clarification to Rule 54 of CCS (Pension) Rules as expounded at para 10 (*supra*) has considerable force. Under these circumstances, I am of the view that the applicant is entitled for family pension and also to the retiral dues of her husband.

13. In the conspectus of the discussion in the foregoing paras, I direct the respondents to sanction admissible

family pension to the applicant and also release to her all the retiral benefits of her husband. This shall be done by the respondents within a period of three months from the date of receipt of a certified copy of this order.

14. The O.A. stands disposed of accordingly. No order as to costs.

(K.N. Shrivastava)
Member (A)

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