

Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.3507/2014

Thursday, this the 10th day of September, 2015

Hon'ble Mr. A.K. Bhardwaj, Member (J)

Tripta Rani, aged about 57 years
w/o of Mr. Om Prakash Arora (Ex. Asst)
r/o A-1-B-25-C
Krishna Apartment
Paschim Vihar, New Delhi-63

..Applicant

(Mr. Goutam Bhol, Advocate)

Versus

1. Union of India represented by its Secretary
Ministry of HRD,
Shastry Bhawan, New Delhi-1
2. Central Board of Secondary Education
"Shiksha Kendra"
2 Community Centre
Preet Vihar, Delhi-92

..Respondents

(Acharya Santosh Prasad Chaurasiya, Advocate for respondent No.1 –
Ms. Seema Dolo for Mr. Amit Bansal, Advocate for respondent No.2)

O R D E R (ORAL)

The indubitable facts of the case are that the husband of the applicant, namely, Om Prakash, who was employed as Assistant in the Office of respondent No.2, got voluntary retirement from service w.e.f. 20.1.1999. Nevertheless, before his terminal benefits including pension could be sanctioned, he went missing. The controversy arise to be determined is "whether the applicant should get pension w.e.f. 20.1.1999, i.e., the date when the application for voluntary retirement from service made by her husband was accepted or from the date of registration of missing report with the Police.

2. As far as the issue of entitlement of eligible members of the family for family pension and terminal benefits is concerned, the procedure has been laid down in O.M. No.1/17/86-P&PW dated 29.8.1986 (Annexure-15), which reads thus:-

“Office Memorandum

1. A number of cases are referred to this Department for grant of family pension to the eligible members of employees who have suddenly disappeared and whose whereabouts are not known. At present, all such cases are considered on merit in this department. In the normal course, unless a period of 7 years has elapse 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.

2. The matter has been under consideration of the Government for some time as withholding of the benefits due to the family has been causing a great deal of hardship. It has been decided that (i) when an employee disappears leaving his family, the family be can be paid in the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee, (ii) after the elapse of a period of one year other benefits like retirement or death gratuity / family pension may also be granted to the family subject to the fulfillment of conditions prescribed in the succeeding paragraphs.

3. The above benefits maybe sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report that the employees has not been traced out after all efforts had been made by the Police,

(ii) An Idemnity Bond shall 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.”

4. The Head of Office will assess all Government dues outstanding against the Government servant and effect their recovery in accordance with Rule 71 of CCS (Pension) Rules, 1972, and other instructions in force for effecting recovery of Government dues.

5. That family can apply to the head of the Government servant for grant of family pension and death / retirement gratuity, after one year from the date of disappearance of the Government servant in accordance with the prescribed procedure for sanction of family pension and death / retirement gratuity. In case the disbursement of death / retirement gratuity is not effected within three months of the date of application, the interest shall be paid at the rates applicable and responsible for the delay fixed.”

3. In terms of the O.M., the family was required to lodge a report with the concerned Police Station regarding disappearance of the employee and to stake the claim for grant of family pension after one year from the date of disappearance. In the year 2013, Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare issued O.M. F.No.1/17/2011-P&PW (E) dated 25.6.2013 providing that in case of a missing employee/ pensioner/ family pensioner, the family may apply for grant of family pension, the amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever not already received) to the Head of Office of the organization where the employee/ pensioner had last served, after six months of lodging the Police report and the family pension may be sanctioned by the Administrative Ministry/Department after observing the formalities mentioned in the O.M. viz.:-

“4. In the case of a missing employee/ pensioner/ family pensioner, the family can apply for the grant of family pension, amount of salary due, leave encashment due and the amount of GPF and gratuity (whatever not already received) to the Head of Office of the organization where the employee/ pensioner had last served, six months after lodging of Police report. The family pension and/or retirement gratuity may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

- (i) The family must lodge a report with the concerned Police Station and obtain a report from the Police, that the employee/ pensioner/ family pensioner has not been traced despite all efforts made by them. The report may be a First Information

Report or any other report such as a Daily Diary / General Diary Entry.

(ii) An Idemnity Bond should be taken from the nominee/ dependants of the employee/pensioner/ family pensioner that all payments will be adjusted against the payments due to the employee/pensioner/ family pensioners in case she/he appears on the scene and makes any claim.”

4. In terms of paragraph 5 of the O.M. in case of a missing pensioner, the family pension, at the ordinary or enhanced rate, as applicable, would accrue from the expiry of leave or the date up to which pay and allowances have been paid or the date of the police report, whichever is later.

5. In the present case, when the date of disappearance of the government employee is not clear, it is admitted that the FIR was lodged only on 7.9.2011 and the family pension has been sanctioned from the date of lodging of the FIR. Neither in O.M. dated 25.6.2013 nor in the O.M. dated 29.8.1986 relied upon by the learned counsel for applicant, there is any provision in terms of which the family pension could be sanctioned either from the date of disappearance or before the date of completion of formalities indicated in the O.Ms.

6. In the wake, the prayer for family pension / enhanced pension from 20.1.1999 is nixed. Nevertheless, once the government employee did not appear to receive his terminal benefits even after expiry of seven years 20.1.1999, at least within a reasonable period after 20.1.2006, the respondents should have paid all admissible terminal benefits to the applicant. Thus she would be entitled to interest (@ 8%) on the terminal benefits w.e.f. 20.1.2006. Respondents should also verify whether any amount of GIS was payable to the deceased employee and if found payable

should pay the same to the applicant with interest at the above rate and for the above period. Ordered accordingly

7. Original Application stands disposed of. No costs.

(A.K. Bhardwaj)
Member (J)

September 10, 2015
/sunil/