

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.260/296 of 2017

Cuttack this the 4th day of December, 2017

CORAM:

THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Chanchala Mohanta, aged about 57 years, W/o. late Bisham Mohanta, At-Vill-Chhoitrapur, PO-N.C.Pur, PS-Moranda, Dist-Mayurbhanja

...Applicant

By the Advocate(s)-M/s.D.P.Dhalasamant
N.M.Rout
S.Dhal

-VERSUS-

Union of India represented through:

1. The General Manager, South Eastern Railway, Garden Reach, Kolkata
2. Divisional Railway Manager, Kharagpur, Dist-Medinapur, West Bengal
3. Senior Divisional Personal Officer, O/o. Divisional Railway manager, South Eastern Railway Kharagpur, Dist-Medinapur, West Bengal
4. Senior Section Engineer/Works (South/West), S.E.Railway, At/PO/PS-Kharagpur, Dist-Medinapur, West Bengal
5. F.A. and C.A.O. (Pension), South Eastern Railway, Garden Reach, Kolkata, West Bengal-43

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant's husband was working in the Railways as a Khalasi whose services were regularized with effect from 8.2.1972. Since he was suffering from T.B. and leprosy on both hands, he was under treatment at the Railway main Hospital,

Kharagpur. On 8.6.1998, he left the hospital without informing any one and has been missing since that date. The applicant lodged an F.I.R. in Town Thana, Kharagpur on 25.7.1998. On 20.2.2004 she requested by Officer In charge, Kharagpur P.S. to give information regarding the detection of her husband and whether he was alive or not. On 10.3.2009, the Officer In charge of the Kharagpur Town P.S. informed Respondent No.3, i.e., Senior Divisional Personnel Officer, S.E. Railway, Medinapur that the husband of the applicant was still missing and had not returned to his house till that date. The applicant thereupon submitted an application for sanction of retirement dues of her missing husband. After obtaining vigilance clearance, the applicant was granted family pension with effect from 26.7.1998 by the F.A. & C.A.A. (Pension), S.E.Railway, Garden Reach vide Memo dated 5.10.2010. She was also paid an amount of Rs.53,449/- being half of the DCRG amount towards DCRG out of Rs.1,60,896/- due to the missing of her husband. Since the half of the DCRG was withheld and other retirement dues were not paid, the applicant approached this Tribunal in O.A.No.926 of 2013 which was disposed of on 5.5.2015 with a direction to dispose of the pending representation. Respondent No.3 in compliance of the orders of this Tribunal informed the applicant that all settlement dues have been arranged. However, no payment has been made so far. The applicant has, therefore, filed this O.A. praying for the following reliefs:

- i) That the direction be issued to the respondents to grant and disburse all the retiral benefit of her husband within a stipulated period of with 12% per annum.
- ii) Any other orders/direction as may be deemed fit and proper to give complete relief to the applicant.

2. The applicant has based her prayer on the ground that since her husband is missing for more than seven years, she should be paid the full amount of DCRG and other retirement dues presuming her husband to be dead.

3. Respondents in their counter-reply filed on 27.9.2017 have contested the claim of the applicant. They have submitted that they had written a letter to the applicant on 15.2.2016 asking her to obtain an undisputable proof of death or a decree of the court whether the employee concerned is presumed to be dead as laid down in Section 108 of the Indian Evidence Act and as stipulated in the Estt.Srl.No.262/89 issued by the Railway Board. The applicant however did not respond to this letter and therefore, although the retirement benefits for the applicant have been earmarked, the respondents are not able to disburse the amount to her.

4. The matter was argued on 8.11.2017. The learned counsel for the applicant undertook to file a copy of the relevant Section of the Indian Evidence Act for considering the case. During the argument, learned counsel for the applicant

relied upon the judgment of the Hon'ble Supreme Court in LIC of India vs. Anuradha (AIR 2004 SC 2070) in which it was held that where the presumption of death after seven years' absence applies the person will be presumed to be dead by the end of that period.

5. I have heard the arguments of the learned counsels for both the sides and perused the documents submitted by them. The issue to be decided in the present O.A. is whether the applicant is eligible to receive the retirement benefits arising out of the presumed death of her husband who is missing for more than seven years. The fact that the railway employee, viz. Sri Bisham Mohanta is missing since 8.6.1998 (for more than 19 years) is undisputed. However, the specific legal question is whether his death can be presumed on the fact of his missing for more than 19 years and whether as a consequence of that full retirement benefits can be disbursed to the applicant.

6. The applicant had also filed a W.P. (C) No.18616 of 2016 in the Hon'ble High Court of Orissa challenging the earlier order passed by this Tribunal in diary No.2987 of 2016 rejecting her application regarding disbursement of the retirement benefits of her husband on a technical ground that the Original Application was verified by her son and not by the applicant. The Hon'ble High Court vide order dated 28.2.2017 remitted the matter back for disposal of the O.A. on merit after giving opportunity of hearing to the petitioner and observed

that in case the petitioner-widow is entitled to the benefit, the same shall be remitted to her personal account by the concerned authority. The present O.A. is being considered on merit as directed by the Hon'ble High Court of Orissa

7. The Respondents had directed the applicant to file undisputable proof of death or decree of the court that the employee concerned should be presumed to be dead as per the Estt.Srl.No.262/89. However, it is found that the Office Memorandum dated 15.5.1989 of the Ministry of Finance, Government of India refers to the Central Government Employees Group Insurance Scheme, 1980 – Updaging of the Scheme. On the other hand, the respondents have attached the Estt. Circular No.111/91 dated 12.6.1991 which deals with grant of settlement dues to eligible family members of the Railway employees who have suddenly disappeared and whose whereabouts are not known. The relevant extract of the above mentioned circular is as follows:

“Attention is invited to this Ministry’s letter of even number dated 19.9.86 on the above subject as per which the families of disappeared employees are eligible for the family pension and other benefits after expiry of one year from the date of disappearance of the Railway servant. As certain doubts are expressed in the application of the said orders dated 19.9.86, the matter has been further considered by the Government and it has been decided that the following clarifications/further instructions regarding the formalities to be observed, regulation of payment of the benefits etc. be followed.

2. Board’s letter of even number dated 19.9.86, as well as this letter, will also be applicable in

the case of missing pensioners *mutatis mutandis*.

3. The date of disappearance of the employee/pensioner will be reckoned from the date the First Information Report is lodged with the Police, and the period of one year after which the benefits of family pension and gratuity are to be sanctioned will also be reckoned from this date. However, the benefits to be sanctioned to the family, etc. of the missing employee will be based on the regulated by the emoluments drawn by him and the rules/orders applicable to him as on the last date he/she was on duty including authorized periods of leave. "Family pension at normal/enhanced rates, as may be applicable in individual cases, will be payable to the families of missing employees" w.e.f. 1.1.186 in terms of this Ministry's letter No.PC-IV/87/PN1 dated 20.4.87 as amended from time to time.
4. In the case of missing pensioners the family pension at the rates indicated in the PPO will be payable and may be authorized by the Head of the Office concerned. Where the PPO does not contain this information, the Head of Office will take necessary action to sanction the family pension as due as provided in Para 3 above.
5. Death gratuity will also be payable to the families, but not exceeding the amount which would have been payable as retirement gratuity if the person had retired. The difference between retirement gratuity and death gratuity shall be subsequently payable after the death is conclusively established or on the expiry of seven years from the date of missing.
6. The indemnity Bond to be obtained for the purpose from the family members, etc. will be in the formats enclosed with this letter. Separate formats for use in the case of missing employees & missing pensioners have been prescribed. These formats have been finalized in consultation with the Deptt. Of Legal Affairs.
7. Cases already settled otherwise than in accordance with this letter need not be opened, unless such a re-opening will be to the advantage of the beneficiaries".

8. Sections 107 & 108 of the Indian Evidence Act, 1872 read as follows:

“107-Burden of proving death of person known to have been alive within thirty years – When the question of is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108-Burden of proving that person is alive who has not been heard of for seven years -[Provided that when] the question is whether a man is alive or dead, and it is provided that he has not been heard of for seven 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”.

9. A similar matter has been adjudicated by the Hon’ble Apex Court in LIC of India vs. Anuradha (supra) in which Their Lordships have observed as follows:

“If the persons, who would have naturally and in the ordinary course of human affairs heard of the person in question, have not so heard of him for seven years, the presumption raised under Section 107 ceases to operate. Section 107 has the effect of shifting the burden of proving that the person is dead on him who affirms the fact. Section 108, subject to its applicability being attracted, has the effect of shifting the burden of proof back on the one who asserts the fact of that person being alive. The presumption raised under Section 108 is a limited presumption confined only to presuming the factum of death of the person whose life or death is in issue. Though it will be presumed that the person is dead but there is no presumption as to the date or time of death. There is no presumption as to the facts and circumstances under which the person may have died. The presumption as to death by reference to Section 108 would arise only on lapse of seven years and would not by applying any logic or reasoning be permitted

to be raised on expiry of 6 years and 364 days or at any time short of it. An occasion for raising the presumption would arise only when the question is raised in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. So long as the dispute is not raised before any Forum and in any legal proceedings the occasion for raising the presumption does not arise”.

10. The Respondents do not dispute the fact that the applicant's husband has not been heard of for more than 19 years. In view of the judicial pronouncement in the LIC of India vs. Anuradha (supra) and in view of the provision of Section 108 of the Indian Evidence Act, it will be logical to hold that the husband of the applicant is presumed to be dead and the applicant will be entitled to full retirement benefits as per her entitlement. RRE No.63/91 has provided for the same on furnishing of indemnity bonds by recipients of the retirement benefits. In the present case, the balance of law gravitates towards the applicant receiving the full retirement benefits as per her entitlement according to rules prescribed therefor.

11. In view of the above, the O.A. is allowed. The Respondent No.3 is directed to disburse the retirement benefits of the husband to the applicant as per her entitlement and according to rules. They are directed to pass the necessary orders within a period of eight weeks from the date of receipt of this order. There shall be however no payment of interest. No costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

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