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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

An application under Section 19 of the Administrative Tribunal Act,
1985

Original Application No. 350/662 of 2017

Smt. Jharna Dutta, wife of Adhir
Chandra Dutta, residing at 43,
Feeder Road, Asha Neer B-1,
Belgharia, Kolkata - 700 056.

.....Applicant

-Versus-

1. Union of India, service
through ~~Secretary Ministry of Finance~~
~~The Member (P & V)~~
CBEC, North Block, New Delhi -
110 001;

2. The Chief Commissioner
Central Excise, Kolkata Zone
having office at Custom House,
15/1, Strand Road, Kolkata - 700
001.

3. Commissioner of Central
Excise, Kolkata - I,

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Commissionerate, having office at
Custom House, 15/1, Strand Road,
Kolkata - 700 001.

4. The Assistant Commissioner
Central Excise, Cal (C) Division
Podder Court, Gate No. 3, 5th Floor,
18, Rabindra Sarani, Kolkata
700001.

5. Assistant Commissioner
Central Excise, Taratala -
Division, Kolkata
Commissionerate, 180, Shantipally,
Raj Danga Main Road, Kolkata
700 107;

..... Respondents



Coram : Hon'ble Mr. A.K. Patnaik, Judicial Member

Hon'ble Dr. (Ms.) Nandita Chatterjee, Administrative Member

For the applicant : Mr. G. Chowdhury, counsel
Mr. A. Neogi, counsel
Mr. G. Singh, counsel

For the respondents : Mr. K. Prasad, counsel

ORDER (ORAL)

Mr. A.K. Patnaik, J.M.

The instant O.A. has been filed by the applicant under Section 19 of the Central Administrative Tribunals Act, 1985 seeking the following reliefs:-

- a) "To quash and set aside the order dated 15.05.2005 passed by the Commissioner of Central Excise, Kolkata – II Commissionerate, Customs House, Kolkata – 700001 and further directing the respondents to grant family pension and release all retiral benefits including DCRG from the date of disappearance i.e 22.11.2001 in accordance with prescribed procedure laid down in Presidential Rule."
2. Heard Mr. G. Chowdhury, Id. counsel for the applicant and Mr. K. Prasad, Id. counsel for the respondents.
3. Brief facts of the case as stated by Mr. G. Chowdhury, Id. counsel for the applicant is that the husband of the applicant, Sri Adhir Chandra Dutta is missing from his residential premises since 22.11.2001. The son of the applicant lodged a missing diary before the Belgharia P.S and DCDD, Lalbazar as well as in the office of Sri Adhir Chandra Dutta. Thereafter, the applicant made a representation to the concerned authority requesting for disbursement of the retiral benefit of Sri Adhir Chandra Dutta as well as family pension annexing a decree dated

Vd

26.09.2016 passed by the Competent Civil Court declaring the Civil Death of Sri Adhir Chandra Dutta under Section 108 of Indian Evidence Act, 1872. The respondents by their letter dated 11/12.06.2015 informed the applicant that the applicant is not entitled to get any gratuity as well as family pension as the authority passed an order of removal from service against Sri Adhir Chandra Dutta on 16.05.2015 for unauthorized absence since 22.11.2001.

4. Mr. K. Prasad, Id. Counsel for the respondents vehemently opposed the maintainability of the O.A. stating that the applicant cannot be given the retrial benefits of Sri Adhir Chandra Dutta as per the Service Rules as he was removed from service due to unauthorised absence, therefore, the respondents have not done anything per se illegal in this matter and the O.A. should be dismissed.

5. We have considered the submissions made by Id. counsel for both sides and perused the records. We are very much conscious about the law laid down by the Hon'ble Supreme Court and different High Courts. In this case the applicant is having a decree of the Civil Court declaring the Civil death of her husband under Section 108 of Indian Evidence Act, 1872. Therefore, the period from the date when the husband of the applicant was found missing to the date of the decree cannot be termed as unauthorised absence as per the rules governing the field.

As the Respondent No.5 has already intimated the applicant vide letter dated 11/12.06.2015 that the applicant is entitled to get only the GPF and not the family pension/gratuity as per rules, we may remand the matter to the respondents to reconsider the entire issue as per the rules and regulations in force keeping in mind the decree passed by the Civil Court.



6. We find that the applicant made a representation on 03.01.2017(Annexure A/5) to the Chief Commissioner, Central Excise, Kolkata Zone(Respondent No.2) requesting for release of the service benefits of the employee annexing a photocopy of the decree of the Civil Court. Therefore, the Respondent No.2. i.e. the Chief Commissioner,Central Excise, Kolkata is directed to reconsider the entire matter in view of the decree passed by the Civil Court and the rules and regulations governing the field within a period of six weeks from the date of receipt of a copy of this order and communicate the decision to the applicant forthwith. After such consideration, if the applicant's claim is found to be genuine, then we hope and trust that expeditious steps will be taken by the respondents to extend the consequential benefits to the applicant within a period of six weeks from the date of taking decision in the matter.

6. It is made clear that we have not gone into the merits of the case and all the points are kept open for consideration by the respondent authorities as per rules and guidelines governing the field.

7. A copy of this order along with the paper book may be transmitted to the Respondent No.2 for which Id. counsel for the applicant shall deposit the cost within one week.

8. With the above observations the O.A. is disposed of. No order as to cost.

(Dr. N. Chatterjee)
Administrative Member

sb

(A.K. Patnaik)
Judicial Member