

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

**OA No. 4210/2017**

**New Delhi this the 24<sup>th</sup>day of January, 2019**

**Hon'ble Sh. Pradeep Kumar, Member (A)**

1. Mr. Gulbir Singh  
Aged about 45 years  
S/o Smt. Prakash Kaur,  
S/o Late Sh. Krishan Lal Josh @ Krishan Kumar Josh  
R/o 37, Priyadarshni Vihar,  
Part-II, Delhi-110092
  
2. Mr. Balbir Singh  
Aged about 44 years  
S/o Smt. Prakash Kaur,  
S/o Late Sh. Krishan Lal Josh @ Krishan Kumar Josh  
R/o 37, Priyadarshni Vihar,  
Part-II, Delhi-110092
  
3. Manjit Kaur  
Aged about years  
D/o Smt. Prakash Kaur,  
D/o Late Sh. Krishan Lal Josh @ Krishan Kumar Josh  
R/o 38, Hakikat Nagar,  
Part-II, Delhi-110009.

...Applicants

(By Advocate : Sh. Anuj Aggarwal with Sh. Tenzing  
Thinlay Lepcha)

Versus

1. India Trade Promotion Organization  
Through its Manager (Admn.)  
Pragati Bhawan, Pragati Maidan,  
New Delhi – 110001
  
2. Life Insurance Corporation of India (LIC)  
Through its Manager,  
Pension and Group Scheme Department,  
Jeevan Prakash, 7<sup>th</sup> Floor,  
25, K.G. Marg, New Delhi -110001

..Respondents

(By Advocate : Sh. Abhishek Nanda –R-2  
Sh. Rajendra Wali-R-1 )

**ORDER (ORAL)**

The present application has been filed by one Smt. Prakash Kaur, who is the mother of one Sh. Gulshan Singh, who had served India Trade Promotion Organization (ITPO), the then Trade Fair Authority of India, as LDC having joined them on 25.6.1985. As per records his date of birth is 3.6.1963.

While he was in service, he went missing w.e.f. 3<sup>rd</sup> April, 1993. The father of the said Sh. Gulshan Singh filed a Habeas Corpus Petition in Hon'ble High Court of Delhi vide CWP No. 226/1993 (Crl. W.226/95) wherein order was passed on 6<sup>th</sup> May, 1998 which reads as under :-

"C.B.I. has filed a report to the effect that inspite of their Efforts they are unable to trace the person concerned, namely Sh. Gulshan Singh. Counsel for the petitioner concedes that in view of the final report of the C.B.I. the said agency cannot be required to do anything more. So far as the Punjab Police is concerned, affidavits have already been filed to the effect that they are unable to trace the said Sh. Gulshan Singh. Same is the stand taken by the Delhi Police.

In view of this, no further orders are called for. This petition stands disposed of."

2.0. The respondents organization, ITPO, had initiated a Group Saving Linked Insurance Scheme for their employees with M/s Life Insurance Corporation of India (Respondent No.2 in the instant O.A.). Sh. Gulshan Singh became a member of this Insurance Scheme w.e.f. 16.04.1989. Once Shri Gulshan Singh was reported missing, ITPO had continued to make monthly premium payments on his behalf. Such payments were continued up to 15.4.2014.

3.0. During the pendency of the instant OA, the applicant Smt. Prakash Kaur unfortunately died and application to represent by legal heirs was filed with the Tribunal which has since been allowed on 27.08.2018.

4.0. The applicant pleads that once Sh. Gulshan Kumar went missing w.e.f. 03.04.1993, the Hon'ble Delhi High Court had taken cognizance of the same in Habeas Corpus order referred in para 1.0. above. Further, on expiry of seven years of a person being reported missing, he is required to be treated as dead in accordance with Section 108 of Indian Evidence Act, 1872 which reads as under :-

“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 proved 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.”

It is pleaded that on this basis, Shri Gulshan Singh ought to have been treated as a dead person.

5.0. However, the respondents have treated the person as missing only and settled his dues as an employee retired from service and not as a death case. These settlement dues including payments for Group Insurance Scheme, would have been much higher amount had he been treated as a death case. Since, he has been treated as normal retirement, these settlement payments have been much

less and insurance premium paid by ITPO has also been recovered. This is the grievance in this O.A.

Feeling aggrieved, the OA has been filed seeking the relief that Sh. Gulshan Singh should be treated as a dead employee and all retiral dues including Group Insurance, be settled accordingly. The respondents had opposed the same.

6.0. The respondents pleaded that as per their records, Sh. Gulshan Singh was married to one Smt. Surjit Kaur and he had taken LTC claims also along with his wife at that time and as against this the instant OA is totally silent about whether Sh. Gulshan Singh was a married person or otherwise. This amounts to hiding of relevant information by Applicants.

The respondents had also submitted certain additional documents on 11.4.2018, wherein it was brought out that a first information report was filed under FIR No. 140 dated 17.05.1991 wherein one Head Constable Sh. Om Prakash of Delhi Police, had filed a report and in follow up thereafter, one criminal case was also lodged titled as State vs. Gulshan Singh s/o Sh. K K Josh under Section 302/307/120-B IPC, 3/4/5 TADA Act & 3/4/5 Ex Act 1908, in the Court of Judge, Designated Court II, Delhi, wherein following order was passed by Court on 30.5.1992.

“9. In view of above, I find it a case where the accused ought to be admitted to bail. Accordingly, the accd. is

ordered to be enlarged on bail on executing personal bond for Rs. 25,000/- with one surety of the like amount."

Further, news paper clippings of certain reports, pertaining to said Sh. Gulshan Singh are also filed which also indicate reference to a Habeas Corpus Petition referred in para 1.0 above.

The respondents brought out that as far as they are concerned, there is no declaration by any Civil Court or any other relevant court to the effect that the said Sh. Gulshan Singh is treated as dead whereas such a declaration is mandatory and the prime movers, to obtain such a pronouncement, are the applicants only.

7.0. The respondents also brought out that the first ever application, to the respondents –Corporation, was filed by Smt. Prakash Kaur in the year 2016 only seeking the settlement dues/retiral dues or any other dues pertaining to the said Sh. Gulshan Singh. Since the missing of the employee came to light in April, 1993 and the Hon'ble Delhi High Court's order in Habeas Corpus Petition was declared on 6<sup>th</sup> May, 1996, the present application is heavily time barred and not maintainable.

8.0. The applicant drew attention to a decree passed by District Court at Delhi wherein a divorce petition was filed under HMA case 241 dated 06.04.1991 titled as **Gulshan Singh s/o Sh. K K Josh vs. Smt. Surjit Kaur**, wife of Sh. Gulshan Singh (estranged wife of the said Shri

Gulshan Singh). The divorce decree was passed on 24<sup>th</sup> March, 1992.

The applicant pleaded that since divorce decree happened prior to when Sh. Gulshan Singh was found missing, the factum of marriage becomes irrelevant at the time of filing of instant OA.

9.0. The respondents' counsel for respondent No.2 namely LIC, brought out that Group Insurance Policy Scheme was signed with the respondents organization in which as per terms and conditions, LIC was to settle all claims as per the pleadings of the respondents corporation. In the instant case, the said Group insurance policy has since been settled by LIC on 07.11.2016 treating the applicant as retired from service as was advised by the respondents corporation.

10. Respondents drew attention to as to who are the correct persons to whom settlement dues are to be paid. In this connection attention was drawn to the decree of divorce.

Even though the applicants mentioned that said Shri Gulshan Singh did not have any children, it is however seen from this divorce decree, that out of this wed lock, one son named master Sahib Singh was born and at that time this child was with the respondents' wife.

11. The matter has been heard at length. Sh. Anuj Aggarwal, the learned counsel represented the applicant and Sh. Rajendra Wali, the learned counsel represented respondent No. 1 and Sh. Abhishek Nanda, learned counsel represented on behalf of respondent No.2.

12. The facts of the case are not disputed. Sh. Gulshan Singh was reported missing w.e.f 3.4.1993. There were certain allegations against him as were noted in the FIR and the follow up criminal case thereafter (para 6 .0 supra).

The family of Sh. Gulshan Singh was under the impression that he has been arrested by some authority namely CBI or Delhi Police or Punjab Police. However, since the family was unaware about the same, they had filed a Habeus Corpus Petition in the Hon'ble High Court of Delhi wherein orders were passed on 6.5.1998 as mentioned above (para 1.0 supra).

It is true that the Indian Evidence Act, 1872, Section 108 prescribes certain parameters for declaring a missing person dead. However, petition for the same is primarily required to be filed by family members. It appears that in the instant case no such action has so far been taken by the family members.

13. In view of absence of such a declaration of death from the relevant Court of law, the respondents' corporation assumed him to be a missing employee and continued to make premium payments to LIC to keep the policy alive as a staff welfare measure. Thereafter, once they received the representation from the family of said Shri Gulshan Singh in the year 2016, as per the rules in force, they had

treated the said Shri Gulshan Singh as retired and settled the dues accordingly. This cannot be faulted.

14. The applicant relied upon a case decided by Hon'ble High Court of Delhi in the context of a missing employee of Indian Navy Services (INS) vide WP (C) No. 5496 of 2005 wherein decision was pronounced on 11.11.2008. In this case Navy authorities had conducted an internal inquiry based upon the fact that they found a person missing and it was subsequent to this enquiry that the petitioner therein had approached the Hon'ble High Court wherein the Court came to the conclusion that pensionary benefits are required to be decided assuming the said missing person to be dead.

The circumstances of this relied upon case, are not similar to those of the instant OA. Here, the missing person is out on bail w.e.f. 30.05.1992 (para 6.0 supra) and is reported missing thereafter w.e.f. 03.04.1993. As such, possibility of his being still under hiding cannot be ruled out and especially so in view of Habeas Corpus orders by Hon'ble High Court dated 06.05.1998 (para 1.0 supra).

In view of foregoing, contention of the petitioner, to treat Shri Gulshan Singh as dead and settle his dues accordingly, is not finding acceptability. The same is dismissed being devoid of merits.

15. The applicant had also sought certain reliefs in respect of refund of premium paid to LIC after Shri Gulshan Singh was reported missing,

and for payments of interest on the payments made but which were delayed. They relied upon a judgment by Hon'ble Apex Court in Rafiq Masih (White Washer) where recoveries from retired person of Group 'C' & 'D' status, have been prohibited.

It is the view of this Tribunal, that ratio of this case is not attracted in this case, in view of circumstances of this case (FIR, criminal case, his being out on bail and thereafter being reported missing judgment in Habeas Corpus petition and family approaching respondents after long delay in 2016).

16. As per records, the date of birth of Sh. Gulshan Singh is 03.06.1963 and as per the rules in force, he would have retired on attaining the age of 58 years, i.e., in the year 2021. In the instant case, the settlement dues have since been settled already in 2016 itself when applicant's family approached ITPO. There was no occasion for respondents earlier to settle the payments. Hence there is no delay.

Accordingly, the applicant's request in respect of interest etc., is not tenable and hence rejected.

17. The applicants, however, shall have liberty to approach a relevant court of law for seeking appropriate pronouncement in the wake of missing of Shri Gulshan Singh since 03.04.1993 and seek their remedies as per law.

18. Nothing survives in the instant OA. The same is dismissed being devoid of merit. No order as to cost.

**(Pradeep Kumar)**  
**Member (A)**

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