

**Central Administrative Tribunal
Principal Bench**

OA No. 3673/2017

Order Reserved on:26.09.2019
Order Pronounced on:27.09.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Om Wati,
W/o Late Sh.Jai Singh,
H.No.813/18E, Om Nagar,
Gurgaon - Applicant

(By Advocate: Shri Gopal Aggarwal)

VERSUS

1. Union of India through
Secretary,
Ministry of Defence, GOI,
New Delhi-01
2. Ministry of Personnel Public Grievances and
Pension, Department of Pension & Pensioners
Welfare, 3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi-110511
3. Director General of EME (Civ.)
Master General of Ordnance Branch,
Army Head Quarters, DHQ,
New Delhi
4. Commanding Officer,
Vehicle Depot Wksp EME,
Delhi Cantt-10
5. Principal Controller of Defence Accounts (Pension)
Office of the PCDA (P)
Draupadi Ghat,
Allahabd (UP) Pin-211014
6. HQ Base Wksp GP EME,
Meerut Cantt. - Respondents

(By Advocate: Mr. GS Virk)

ORDER

The applicant has filed this OA, seeking the following reliefs:-

- “(i) to set aside the impugned orders dated 17.10.2016, 27.02.2017, 05.05.2017 & 31.05.2017, i.e., Annexure A-1 colly.
- (ii) to direct the respondents to reconsider the case of the applicant for grant of Extra Ordinary Family Pension in place of Ordinary Family Pension(Civil) as per rule/law as discussed in the body of the OA from the date of her entitlement.
- (iii) to direct the respondents to pay arrears of ‘Extra Ordinary Pension’ with interest @12% p.a. till the date of payment of amount.
- (iv) to allow any other relief which this Hon’ble Court deems fit under the present circumstances of the case.
- (v) to allow costs.”

2. It is the case of the applicant that when her late husband, who was working in the Vehicle Depot, Workshop, EME, and Delhi Cantt under the Ministry of Defence, was found missing from 15.05.1999, she had filed an FIR on 17.04.1999 in the Police Chowki, Rajinder Park, Gurgaon about the missing of her husband and resultantly, on 27.04.1999, the police authorities, at her request, converted the above FIR as a case of abduction/kidnapping under Section 365 IPC vide FIR No. 254. It is the contention of the applicant that she

had filed a Civil Suit No. 139/26-5-06/5-11-2007 before the Civil Judge (Jr. Div.), Gurgaon for declaring her husband as presumed to be dead under Section 108 of Indian Evidence Act 19872 and the said Civil was allowed in favour of the applicant vide order dated 14.05.2008 declaring her husband as dead. Consequently, the applicant had submitted a detailed representation on 20.02.2015 to the respondents for grant of Extra Ordinary Family Pension (EOFP) on account of death of her husband while on duty on 15.04.1999 as he became victim of terrorists/anti-social elements while on his way to report for duty and in the said representation, the applicant had submitted that her case is also covered under the category of A, B, C, D and E of the OM No.45/22/97-P&PW(C) dated 03.02.2000 placed at Annexure A-4 and further sought to be covered under CCS(Extra Ordinary Pension) Rules and as per Para No.3-A Eligible & Guidelines for Conceding Attributability of Disablement or Death to Government Service. The applicant has also that 'A person subject to the disciplinary code of the Central Armed Police Battalions is 'on duty' when moving from one place of duty to another place of duty irrespective of the method of movement. The applicant thereafter made several

representations to the respondents to claim for EOFP but the respondents had rejected the same on the ground that the missing/death of the individual is not attributable to government service. The applicant in support of his contention have relied upon the following judgments:-

- (a) Shakuntala Bai Pandey (Smt.) Vs. NTPC Ltd. 1995 Supp(3) SCC 680;
- (b) Smt. Shipra Chatterjee Vs. UOI on 11.05.2015;
- (c) Saurashtra Salt Manufacturing Co. Vs. Bai Valu Raja & Ors. AIR 1958 SC 881

Being aggrieved by the action of the respondents in denying her the EOFP, the applicant has filed the present OA.

3. The respondents, while contesting the OA, have filed the CA in which they have contended that the applicant in her deposition before the Court of Civil Judge (Jr.Div.) Gurgaon in Civil Suit No.139/26.5.2006/5.11.2007 has not stated that her husband was kidnapped by some anti-social elements and thus, the death of her husband is not attributable to the Government service and it is only a case of missing and on a lapse of 7 years in view of the decree of court, he is presumed to be dead. They have thus submitted that the applicant is not entitled for extra ordinary family pension. Similarly, the respondents

OM dated 03.02.2000 relied by the applicant is regarding the liberalized family pension and the case under Category B,C,D and E can be accepted in the case when the prime condition under Rule 3 of CCS(EOP) Rules that death/disability is attributable to or aggravated by the Government servant. They have further contended in their CA that the para 4(b) mentioned by the applicant in his aforesaid representation is only for "Armed Police Battalion" and her late husband was only a civilian employee.

The respondents have also contended that the judgments relied upon by the applicant in Para 2 above are not applicable in the present case as they relate to different subjects, such as appointment of a person whose husband had died in road accident, disciplinary proceedings and compensation under Workmen's Compensation Act. The respondents have thus prayed for dismissal of this OA.

4. After hearing both the parties and perusing the record, it is an admitted fact the late husband of the applicant was a civilian employee, who was found missing since 15.04.1999 and subsequently presumed to be dead after a period of 7 years. We have gone through

the decision of the Civil Judge (JR.Div.), Gуроан dt. 14.05.2008 in Civil Suit No.139/26.5.2006/5.11.2007 and find that nowhere was it mentioned that her husband was kidnapped by some anti social elements and later killed by them. As such, it cannot be presumed that the missing/death of husband of the applicant is attributable to the Government service. In fact, it was a case where no whereabouts of the late husband of the applicant are known till date. Hence, in view of the fact that death of husband of the applicant is not attributable to Government service, his case is not at all covered under the provisions of OM dated 03.02.2000, CCS(Extra Ordinary Pension) Rules and Para No.3-A Eligible & Guidelines for Conceding Attributability of Disablement or Death to Government Service. Similarly, Para 4(b) of Armed Police Battalion is not applicable as the deceased employee was a civilian and not a Central Police Force/Defense personnel. We also find that the respondents are able to distinguish the judgments referred to in Para 2 of this order as they relate to different subjects and not to a civilian employee who was declared dead as he was missing for more than 7 years.

5. We have also examined the judgments relied upon the applicant in the case of **Smt. Lhoukie-II vs. The**

State of Nagaland [WP (C) No. 102(K) of 2012 and **Smt.**

Karanjit Kaur Vs. State of Punjab & Ors. in WP(C) No.

12536/2008 and find that these cases are not applicable to the facts of the present case as the husband of the petitioner in the case of Smt. Lkoukie-ii was a constable, whereas in the case of Karantjeet Kaur, her claim was only for the release of retiral benefits. The respondents have been able to distinguish those judgments mentioned above as this OA only relates to a civilian employee who was declared dead after being missing for a period of over 7 years. The applicant had filed the case before the Court of Civil Judge (Jr. Divi.) Gurgaon in Civil Suit No.139/26.5.2006/5.11.2007 in which she had not stated that the death of her husband was attributable to his being in Government service but had declared it to be only a case of missing person who, on the lapse of 7 years, was presumed to be dead. Therefore, no claim of extraordinary family pension has been made out by the applicant.

6. In the result and for the foregoing reasons, there is no merit in the OA and the same is dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

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