

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/210/2018

Date of Order: 19.07.2019

Between:

1. Nallabilli Satyavathi, W/o Hari Surya Prakash Rao
House wife, aged about 63 years, Door No.39-33-1,
VUDA Colony, Madhavadhara, Visakhapatnam Urban,
Visakhapatnam, Andhra Pradesh – 530 018.
2. Nallabilli Venkata Narasingarao, s/o Hari Surya Prakash Rao
Unemployee, aged about 37 years, Door No. 39-33-1,
VUDA Colony, Madhavadhara, Visakhapatnam Urban,
Visakhapatnam, Andhra Pradesh – 530 018. ... Applicants

AND

1. Union of India, rep. by its Secretary
Ministry of Railways, Government of India
Rail Nilayam, New Delhi.
2. Railway Board represented by the Chairman
Government of India, Rail Nilayam, New Delhi.
3. The General Manager, South Eastern Central Railway Zone,
Bilaspur, Chattisghar.
4. Divisional Railway Manager, Bilaspur Division,
Bilaspur, State of Chattisghar.
5. Chief Personnel Officer (C.P.O.) (South Eastern Central Railway Zone)
Bilaspur, State of Chattisghar.
6. Senior Divisional Personnel Officer
Divisional Office, Personnel Department
Bilaspur, State of Chattirghar.
7. Senior Electrical Engineer, (Sr. Dy. Electrical Engineer)
Railway Loco Operations, Bhilaspur Division.
8. Divisional Railway Manager
Raipur Division, Raipur, State of Chattisghar.
9. Senior Divisional Personnel Officer, Divisional Office
Personnel Department, Raipur Division, Raipur
State of Chattisghar.
10. Senior Electrical and Mechanical Engineer
(Sr. Dy. Electrical Engineer, Railway Loco Operations,

Raipur Division, Raipur, State of Chattisgarh. ... Respondents

Counsel for the Applicant ... Mr. G. U. R. C. Prasad.

Counsel for the Respondents ... Mr. S.M.Patnaik, SC for Railways.

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

2. The OA is filed for non-granting of family pension to Applicant No.1 and compassionate appointment to Applicant No.2.

3. Brief facts of the case are that Applicant No.1 is an illiterate woman, whose husband, while working for the respondents organization as Electrical Assistant Driver, was found missing from the year 1984. Applicant's husband was allotted Railway Quarter No.603/D. As her husband was found missing from 1984, Applicant No.1 has been residing in the aforesaid Quarter along with four children for some-time, and, thereafter, joined her parents. The applicant went over to the office of the respondents several times at Bilaspur requesting for family pension claiming that her children were minor. A complaint about her husband gone missing was filed on 15.01.2006, vide case No.2/2006, in local Police Station, Charoda. The Station In-charge, Charoda also issued a Certificate dated 28.04.2007 stating the fact that Husband of Applicant No.1 was not traced. Respondents on 11.05.2006 have addressed the applicant to produce a copy of missing FIR and report of the Police. Applicant, accordingly, submitted a copy of the FIR No.2/2006, registered on 15.01.2006 at Charoda Railway Police Station and also requested that she be granted family pension as per Establishment Serial No.197/1986 and 111/1. Even respondents have addressed a letter to the Superintendent of Police on 13.12.2008 stating that the applicant is bitterly complaining for

settlement of pension and compassionate appointment and requested to expedite the progress of the case. Applicant enclosing the report of the Police dated 28.04.2007 applied to the respondents on 16.06.2007 to release the pension and retirement benefits. As the pension and pensionary benefits were not released, the second son (Applicant No.2 here) of the missing employee made representation dated 3.4.2012 to provide compassionate appointment to eke out a living. In response to this request, respondents informed that the relevant records were not available in the Raipur Office and it could be available in Bilaspur. The same response was put-forth, vide letter dated 17.04.2012, by the Sr. DPO & PIO (Coordination) of Bilaspur Office of the respondents.

4. (I) Applicant after making best efforts to trace her Husband and having failed to trace him sought family pension. On 15.12.2005, she also approached pension Adalat at Raipur for family pension, by submitting a copy of the Railway Pass, issued by the respondents, wherein details of the family have been mentioned. Incidentally, State of Madhya Pradesh was bifurcated into two States, namely, Madhya Pradesh and Chattisgarh on 1.11.2000, and prior to the said bifurcation, Divisional Headquarters of South East Central Railway was at Bilaspur. Consequent to this bifurcation, the Bilaspur Division was divided into two Divisions, namely, Bilaspur and Raipur on 01.11.2003. Irrespective of the bifurcation, husband of Applicant No.1, being an employee of the Railway Department and missing since 34 years, respondents are liable to issue family pension to the applicant. Despite representations, not granting the same has led to filing of the present OA.

The contentions of the applicants are that as per the provisions of Section 108 of the Evidence Act, 1872, since the husband of Applicant No.1 is missing since 34 years, he is deemed to be treated as dead. Therefore, family pension has to be granted to the applicant(s), as is being given to an employee who dies in harness. As per the Hon'ble Supreme Court Judgement when an employee is killed either by Extremist(s) or Terrorist(s), pension to the bereaved family, has to be released immediately. Respondents having considered the Husband of Applicant No.1, as an employee, they ought to have released the family pension.

Applicants have also cited the judicial pronouncements, in support of their case, namely, a decision of the Armed Forces Tribunal (Regional Bench, Lucknow) in T.A.No.1000 of 2010 (**Kalawati Devi v. Union of India**), decided on 09.02.2017, and Judgement of the Hon'ble High Court of Judicature at Hyderabad for the States of Telangana and Andhra Pradesh, in **Union of India v. Polimetla Mary Sarojini**, (Writ Petition No.34859 of 2016, decided on 31.01.2017) in support of their contentions. Applicants also contend that it is not fair on behalf of the respondents to force the applicants run from one pillar to post, i.e., Raipur to Bilaspur, in search of records to get the family pension/compassionate appointment. It is the bounden duty of the respondents to preserve records and release the family pension and provide compassionate appointment to the applicant(s). Respondents have not acted on the request of the applicants for 23 long years, which is too serious to be ignored.

5. (I) Respondents, in their reply statement, while denying the contentions of the applicants, have stated that the OA is hopelessly barred

by limitation. The cause of action took place in 1984 when the Husband of Applicant No.1 went missing. The applicant filed a representation in the Pension Lok Adalat at Raipur in the year 2005, i.e., after 21 years of missing of the ex-employee. The delay of 34years has not been explained. No application has been filed for condonation of delay. Respondents state that the case is regarding a stale claim and, therefore, should not be entertained by this Tribunal. Besides, applicant is claiming Compassionate Appointment for her 2nd Son. The very fact that the family of the deceased employee could manage for the last 34 years is an indication that the family does not require any support in the form of Compassionate Appointment. The purpose of Compassionate Appointment is to enable the family to tide over the sudden financial crisis that arises due to death of the bread winner. The request for Compassionate Appointment is to be reasonably proximate to the time of death of the bread earner of the deceased family.

(II) Respondents, in their reply, do admit that deceased employee, i.e., Husband of Applicant No.1, was working under the Zonal Administration of South Eastern Railway and South East Central Railway. Respondents contend that the applicants have not specified the actual date of missing of the Husband of Applicant No.1. Applicant No.1 has only stated that her Husband was appointed on 16.7.1962 without appending any record or documentary evidence. Records of the missing employee are not available. Hence, the status of Husband of Applicant No.1 is not known. Besides, respondents are not aware of the occupation of the Railway Quarter No.603/D in the year 1984. At this distinct date, it would be difficult to cross verify this fact. Respondents have also stated that they are not aware that Applicant No.1 has filed a case No.02/2006 before the Railway Police Station, Charoda. Certificate was issued by the Charoda

Police Station on 28.04.2008, when the Husband of Applicant No.1 has disappeared in the year 1984.

(III) Applicant No.1 approached the Pension Adalat Raipur which was not in existence at the time of missing of her late Husband, though, being aware that there are no records available to press for her claim for family pension. She had approached the Pension Adalat Raipur instead of Bilaspur. The Establishment Serial Circular No.197/86 is applicable to eligible family members, who have suddenly disappeared and whose whereabouts are not known.

(IV) The difficulty in the present case is that there is no record to process for granting family pension and compassionate appointment. The same was also informed to the applicants, in reply to the representation made under the RTI Act. The application for compassionate appointment can be considered only when the service record of the Husband of Applicant No.1 could be traced. Family Pension can be granted only if it is established that Husband of Applicant No.1 is a Railway Employee. In the absence of any documents being submitted by the applicant(s) establishing that husband of Applicant No.1 was a Railway servant, it would be extremely difficult to grant family pension.

6. Heard both the learned counsel and perused the pleadings on record.

7. (I) Applicant No.1 is an illiterate woman. Husband of Applicant No.1 has worked, as per the applicants' version, as Electrical Assistant Driver. Applicant No.1 has four children. When her Husband went missing, Applicant No.1 has given details about a Railway Quarter that was occupied by her. The Railway Police Station, Incharge Charoda, District

Durg, issued a Certificate on 28.04.2007, wherein it was mentioned as under:

“It is certified that Mr. N.H.S.P.Rao s/o M.S.Murthy, aged about 58 years Railway Qr No.603 Zone I B.M.Y.Charoda, Durg District is missing since 1987 from his house to another place-reported-Complaint of missing dated 15.1.2006 reported on 2.2.2006. The enquiry is still under process. Still, he is not traced.”

The Railway Police Station Certificate indicates that she was in occupation of the Railway Quarter. Therefore respondents claiming that they are not aware that the applicant was an occupant of the Railway Quarter may not stand to reason. Further, Respondent No.9, Senior Divisional Personnel Officer, SEC Railway, Raipur, vide his letter dated 13.12.2008, has written to the Superintendent of Police, stating as under:

“It is represented by Smt. N. Satyawati W/o Shri N.H.S.P.Rao, Assistant Elect. Driver/CCA/BIA, that her husband is missing from 1987 and she reported the matter to Thana Incharge-GRP-Charoda on 28.04.2007 vide case No.2/2/06 dt-15.01.06 but till date no progress of the case is intimated.”

From the above, one can presume that if the Husband of Applicant No.1 is not a Railway employee, the Senior Divisional Personnel Officer, SEC Railway, Raipur at the first instance would not have entertained the request of the applicant. Hence, once again the claim of the respondents stating that the applicant is not a Railway employee does not appear to be logical. Besides, Divisional Personnel Officer, Raipur has addressed Chief Personnel Officer, SEC Rly., Bilaspur, requesting to trace the records of the missing employee (i.e., Sh.N.H.S.P.Rao), wherein Provident Fund No.B/26923(N/C) was also cited. The Provident Fund number is a unique number by which an identity of an employee could be traced. This is one another piece evidence affirming that the applicant did work for the

respondents organization. The Senior DPO and PIO (Coordination) vide letter dated 17.04.2012 have informed that Father of the 2nd Applicant worked as a Loco Pilot BMY, as such the records could be available only at Sr. DPO, Raipur. In other words, respondents themselves are stating that Husband of Applicant No.1 has worked for the respondents. Hence, the husband of Applicant No.1 working for respondents organization is not in doubt.

(II) The learned counsel for the applicants has produced copies of two Affidavits, submitted by the Colleagues of Husband of Applicant No.1, namely Shri M. Jagannadha Rao and Shri R. Narsingh Rao, who are retired employees of the respondents organization. The relevant portion of Affidavit of Mr. M. Jagannadha Rao (PF No.B28214) reads as under:

“2. While I was working as Loco Asst Driver in shahdol at Bilaspur Division, Sri. N. Hari Surya Prakash Rao also worked as Diesel Asst. Driver in Mahendragarh SE Railway (SEC Railway) Bilaspur division and he was one year Senior to me and I know him at that time as an employee in Mahendragarh, SE Railway (SEC Railway) Bilaspur Division as Diesel Asst. Driver.”

Similarly, another Affidavit dated 1.7.2019, filed by Mr. R. Narsingh Rao also indicates that the missing employee was the best friend and that he worked as Assistant Driver at Bhilai in the same Railway Division.

(III) Thus, from the Certificate issued by the Police Station, reference made by the respondents, Sr. DPO, and other departmental correspondence as well as the Affidavits filed by the then colleagues of the missing employee, reaffirm that the missing employee worked for the respondents. Respondents state that records are not available and they could have been misplaced due to the erstwhile Raipur Division of the respondents getting bifurcated into Raipur and Bilaspur. The learned counsel for the applicants has submitted that there was some fire accident

in Bilaspur and possibly records could have got destroyed. Therefore, the question that arises is that because of the non-availability of records, can the respondents deny family pension? There are two answers to this question. Either to reconstruct the record by perusing the records of the employees who filed the Affidavits as they claim that they were colleagues of the missing employee and also seeking further information from them to reconstruct the record or taking the date of missing, as the date of Certificate issued by the Police authorities, dated 28.04.2007 for allowing family pension. As the husband of Applicant No.1, who worked for the respondents organization, is missing since last 34 years, Section 108 of the Evidence Act, 1872, places the onus of responsibility on the respondents to disprove that missing employee is not dead. If they cannot, then relief sought has to be granted. Further, the Hon'ble Supreme Court's Judgement in **Rubabbuddin sheikh v. State of Gujarat**, (2007) 4 SCC 404, has observed that, if the dead body is not found or the missing person is not found for a period of 7 years, then the missing person can be presumed to be dead. Further, DoP&PW's Circular dated 29.08.1986 has clearly stated that in case of a missing employee, if there is an FIR filed, then the family pension has to be granted to the eligible family member(s) of the deceased, subject to fulfilling of the following conditions:

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

(ii) An Indemnity Bond should 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."

The above OM was reiterated vide OM No.F.No.1/17/2011-P&PW(E), dated 24/25.06.2013, of the Department of Pension and Pensioners

Welfare, which deals with grant of family pension to the member of a missing employee, provided certain conditions are complied with, which are extracted as under:

“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 has not already been received) to the Head of office of the organisation 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 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 Indemnity 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 pensioner in case she/he appears on the scene and makes any claim.

5. In the case of a missing employee, the family pension, at the ordinary or enhanced rate, as applicable, will 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. In the case of a missing pensioner/family pensioner, it will accrue from the date of the police report or from the date immediately succeeding the date till which pension/family pension had been paid, whichever is later.

6. The retirement gratuity will be paid to the family within three months of the date of application. In case of any delay, the interest shall be paid at the applicable rates and responsibility for delay shall be fixed. The difference between the death gratuity and retirement gratuity shall be payable after the death of the employee is conclusively established or on the expiry of the period of seven years from the date of the police report.”

Railways, though independent, but yet they follow DoP&PW instructions, in regulating the service matters of their employees. Hence, as per DoP&PW instruction, first applicant is eligible for family pension.

(IV) Therefore, as can be seen from the above facts, Husband of Applicant No.1 was an employee of the respondents organizations. He

went missing and as per the judicial verdicts and as per the aforesaid Circular dated 29.08.1986 and 24/25.06.2013, first applicant is eligible for family pension. Respondents claiming that they did not have service records and shirking the responsibility to grant family pension, would go against the tenets of a model employer. The respondents, therefore, have the responsibility to grant family pension, when family members of the missing employee approached them in distress seeking legitimate relief of family pension. Applicant No.1 is an illiterate woman and she may not be in a position to defraud respondents organization by making a bogus claim. Despite her efforts in approaching the Police Station and submitting available evidence with her, yet not granting family pension, is doing injustice to her.

It is for the respondents to reconstruct the record by a thorough evaluation of records once again or grant family pension from the date of issue of Police Certificate. The learned counsel for the respondents pointed out that the Police report states that they are still trying to trace the missing husband of Applicant No.1. The incident occurred about 34 years back, which is too long a period to continue the search of a missing person. The Police report is more in the way of placing things in a bureaucratic way rather than being practical. The law is clear that in case a person is not heard after a period of 7 years, then it has to be construed that the person is dead. When law is so clearly stated, respondents submission that the Police are still searching for the Husband of Applicant No.1 is not in the realm of reason.

(V) The cause of the applicant is further reinforced by the following judicial pronouncements of the **Kalawati Devi** (supra) and **Polimetla Mary**

Sarojini (supra). In **Kalawati Devi's** case, the Hon'ble Supreme Court observed as under:

“25. It is unfortunate that an army personnel, who has been missing while on active service in a foreign country (Srilanka) his wife, a lady has been running from pillar to post for service benefits available to her on account of missing of her husband since 1989. Respondents did not form a sympathetic opinion with the plight of petitioner, whose husband has been missing since 17th August, 1989 on account of loyalty to Nation and Indian Army while obeying the command order serving as member of Indian Armed Force in Srilanka. It is the Army, which is responsible to find out whereabouts of her husband and in case it was not possible then to provide service benefits to the petitioner to serve the family as the source of livelihood. It shall be appropriate to issue appropriate order by the Indian Army to deal such situation while a person is missing during active service and had not turned up and joined the duty as well as native place. The burden lies on the Nation as well as the Army to formulate some scheme and think that how the family of a missing army personnel could survive for 7 years, awaiting presumptive death under Section 108 of the Indian Evidence Act. In this regard as a temporary measure some rules must be framed to look after the family of such army personnel.”

In **Polimetla Mary Sarojini's** case, the High Court of Judicature at Hyderabad for the State of Telengana and Andhra Pradesh, observed as under:

“41. The above circular clinches the issue with respect to the claim of the respondent. Therefore, irrespective of our decision on the purport of Section 108 of the Evidence Act, 1872, the respondent is entitled to all the benefits as per the aforesaid decision of the Government of India under the Circular Letter No.4-52/86-Pen, dated 3.3.1989.”

The Circular referred to by the Hon'ble High Court is based on the DoP&PW's OM dated 29.08.1986. Respondents, therefore, have the

responsibility of granting family pension from the date of filing the police report, after taking and indemnity bond from the applicant.

(VI) The other averment made by the respondents is that claim made by Applicants is barred by limitation. This assertion of the respondents does not stand to reason because family pension is a continuing cause of action.

(VII) It should also be appreciated that generally, even employees who have been working in Government organizations are not fully conversant with the rules framed. That being so, expecting an illiterate woman, whose husband worked in the lower rung of the organization, to be aware of the Rules of the organizations would be a difficult proposition. At best, she can seek help of others to approach respondents humongous organization, and this does consume considerable amount of time. Applicants are being made to run from pillar to post, trying to present their case in the way they can. The entire case has to be looked from this perspective rather than stating that the claim of the applicants is barred by limitation.

(VIII) It is also not known as to whether respondents have initiated any action suo motu when the employee has gone missing and that too when he occupied the Railway Quarter.

(IX) Respondents having bifurcated Raipur Division into two Divisions, namely, Raipur and Bilaspur and thereafter made the applicant run around two Divisions, which is disheartening to note. Applicant No.2 has been trying to get as much information as he can, through RTI but all his efforts have become in vain. The matter requires attention of the senior management of the respondents organization. There could have been

cases of similar nature, which could have been resolved by the respondents in the past. Taking a cue from them, an attempt could have been made in the present case too. Leaving the applicants to their fate, by stating that the records are not available and taking the stand nothing can be done at this stage, is not proper. More so, in the context of judicial pronouncements referred to, call for grant of family pension to first applicant.

(X) Therefore, keeping the above in view and in the peculiar facts and circumstances of this case, respondents are directed to consider grant of family pension to first applicant, based on the Police Certificate issued by the concerned Police Station in accordance with the OMs dated 29.08.1986 and/or 24/25.06.2013 cited above, or by making a detailed investigation with reference to the Affidavits filed by the colleagues of the erstwhile missing employee and by going into the relevant correspondences exchanged internally within the organization, and thereafter, consider granting of family pension to Applicant No.1 from the date of FIR. It is left open to the respondents to choose the option which is practicable. Once family pension is granted, question of compassionate appointment may be considered based on the relevant rules of the respondents organization. While doing so, it is advisable to depute a responsible officer to visit the family of the deceased to assess the indigent circumstances and, thereafter, decide as to whether the compassionate appointment can be provided.

With the above directions, the OA is disposed of. The time allowed is 6 months from the date of receipt of a certified copy of this order. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 19th day of July, 2019

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