IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.20/499/2019

Date of Order: 18.06.2019

Between:

S.K. Fareeda Begum, W/o. late S.K. Shamshuddin,
Aged about 50 years, Occ: House wife,
D. No. 13-3-167/2, Srinivasa Nagar,
Anantapuramu Post & district,
Andhra Pradesh.

… Applicant

And

Union of India, Rep. by

1. The Chief Post Master General,
   A.P. Circle, Vijayawada.

2. The Post Master General,
   Kurnool Region, Kurnool – 518 002,
   Andhra Pradesh.

3. The Superintendent,
   RMS 'AG' Division,
   Guntakal – 515 801, Andhra Pradesh.

… Respondents

Counsel for the Applicant … Mr. M. Nagaraja Bhupathi

Counsel for the Respondents … Mr. D. Laxmi Narayana Rao
Addl. CGSC

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

ORAL ORDER
{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. OA is filed by the applicant challenging the removal from service of her husband and for non-grant of family pension without following

CCS (Pension) Rules, 1972 and the instructions contained in DOP & PW, OM dated 24.6.2013.

3. Brief facts which need to be adumbrated are that the husband of the applicant while working for the respondents organisation as Mail Man was missing since April 2000. On lodging a police complaint, a case was registered under Crime No.161/2005 and a final report was submitted of being "undetectable" to the Hon'ble Addl. Judicial First Class Magistrate, Anantapur on 28.8.2006. Applicant made several representations and got a legal notice issued on 3.10.2017 pointing out that the Hon'ble High Court of A.P. verdict in WP No.34859 of 2016 was in favour of the applicant's request for grant of family pension, yet the same was rejected on 10.1.2018 stating that her husband was removed from service for unauthorised absence vide respondents order dated 24.12.2002. The said order was communicated to the applicant on 11.01.2018. Aggrieved, the present OA.

4. Applicant contends that the action of the respondents is against Rule 54 of CCS (Pension) Rules, 1972 and G.O.I instruction dated 3.3.1989/ 24.6.2013. Rejecting the request for family pension is against the orders of the Hon'ble High Court of A.P in Writ Petition No.34859 of 2016 dated 31.1.2017. The applicant's husband did not commit any fraud or crime. The applicant is illiterate, poor and is in dire straits due to non sanction of family pension. As per Section 108 of the Evidence Act, 1872, applicant has a good case for grant of family pension.

5. Heard both the counsel and perused the documents placed on record.

6. I) The case is fully covered by the judgment of the Hon'ble High Court of A.P in Writ Petition No.34859 of 2016 dated 30.1.2017 involving Govt. of India, Ministry of Finance Vs. Polimetla Mary Sarojini and Anr, wherein the employee went missing and thus was obviously absent from duty. By the time the wife of the missing employee could complete the formalities of reporting to police etc to claim family pension, the employer therein has removed the employee from service for unauthorised absence. On the ground of removal from service, family pension was denied. The present OA is a doppelganger of the case dealt by the Hon'ble High Court in the cited writ petition, as the applicant's husband is missing and before she could approach the respondents, they have removed the ex-employee from service on grounds of unauthorised absence. The Hon'ble High Court of A.P. relying on the Circular bearing the No.4-52/86-Pen., dated 3.3.1989 of the Dept. of Pension and Pensioners' Welfare (DOP & PW) has held 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 other benefits as per the aforesaid decision of the Government of India under the circular letter no 4-52/86-Pen dated 3.3.1989*
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> *42. Hence, the wit petition is disposed of modifying the order of the Tribunal and directing the petitioners to grant all the benefits applicable to the respondent under the circular letter no 4-52/86-pen dated 3.3.1989 within a period of 4 weeks."*

Therefore, at the outset, request of the applicant for family pension being a covered matter, the applicant is eligible for family pension.

II) In addition, it is also seen in the proceedings dated 24.12.2002, imposing the penalty of 'removal from service' by the 3rd respondent on the applicant, the following observations made are relevant to take a view on the issue:

i) That the charge sheet was not served on the charged official at all, is the remark by the disciplinary authority;

ii) All the communications sent by the inquiry officer could not be delivered to the charged official;

iii) Brief of the P.O. sent to the charged official was returned undelivered;

iv) The RL duly containing the I.O. report was returned with the remark "addressee absent" which shows that charged official whereabouts were not known.

The above remarks of the 3rd respondent who is the disciplinary authority, establishes the fact that none of the major elements of the disciplinary proceedings namely I.O. report, P.O. brief and above all, the charge sheet have not been delivered to the applicant. Not serving the charge sheet would vitiate the disciplinary proceedings as an opportunity to the official has been denied to present his case. The observation of the Hon'ble Supreme Court in Union of India v. Dinanath Shantaram Karekar, (1998) 7 SCC 569, comes to the rescue of the cause of the applicant, in circumstances where charge sheet is not delivered to an employee as under:

> ***"10.*** *Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."*

The disciplinary proceedings initiated against the ex-employee are thus vitiated since principles of natural justice having been violated. Concomitantly, the penalty of removal from service imposed in a vitiated disciplinary proceedings cannot have any legal validity. Therefore, the order of removal of the employee being invalid in the eyes of law, coupled with the fact that all the formalities to declare the employee as missing having been fulfilled, the ex-employee has to be treated as 'missing'. The applicant's husband is missing since 2000. The Sub Inspector of Police, Anantapur I Town Police Station has filed the 'undetectable' report in the Hon'ble Court of Addl. Judicial Magistrate of First Class, Anantapur on 29.4.2006. If 29.4.2006 is taken as the date of missing, till date nothing has been heard of the ex-employee. More than 7 years from the date of police report has lapsed, thereby Section 108 of Evidence Act comes into play. Section 108 reads as under:

> ***Section 108 in The Indian Evidence Act, 1872***
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> *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.

Respondents removed the husband of the applicant on grounds of unauthorised absence. The applicant represented on several occasions that her husband is missing and his whereabouts are not known. When the applicant was repeatedly putting forth her grievance about the fact of her husband being missing, it was the responsibility of the respondents to prove that the applicant's husband was alive as per Section 108 of the Evidence Act, to sustain their decision of removal of the ex-employee. As they could not do it, their action of removing a missing employee is untenable. Respondents went on harping that applicant husband was removed on grounds of unauthorised absence and rejecting the request of the applicant as recently as on 11.1.2018, despite the provisions of Section 108 of Evidence Act being brought to their notice and also the Judgment of the Hon'ble High Court of A.P. cited supra. Therefore, the disciplinary action, in hindsight, can be construed to have taken against a person, who is not legally existing. Disciplinary action against the ex-employee thus abates even on this ground too. More so, till date that is even after 19 years, there is no information in regard to the whereabouts of the applicant's husband. In ***Rubabbuddin Sheikh v. State of Gujarat***, (2007) 4 SCC 404, Hon'ble Supreme Court has observed that if the dead body is not found or the person is not found for a period of 7 years, then the said person can be presumed to be dead. The observations of the Hon'ble Supreme Court read as under:

> *"13. Before parting with this order, we may keep it in mind that under the law, there is a presumption that if the dead body is not found or the person concerned is not found for a period of seven years, only then the said person can be presumed to be dead.*

The dead body of the husband was not found and he is missing for more than 7 years. Hence he is presumed to be dead as per the Hon'ble Apex court verdict cited supra. Disciplinary action taken against a person who is dead is null and void as in the case of the husband of the applicant.

III) Moreover, coming to rules, Paras 4,5 & 6 of the memo dated 24.6.2013 of the Dept. of pension and Pensioners Welfare which deals with grant of family pension to the family member of a missing employee, issued in furtherance of the memo dtd. 3.3.1989 referred to by the Hon'ble High Court of A.P in writ petition cited, extracted here under, makes it explicit that the applicant is eligible for family pension provided certain conditions are complied with :

> *"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:-*
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> > *(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*
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> > *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."

The conditions laid down in the cited memo of reporting to police have been complied with. The Sub Inspector of Police has filed a report of the ex-employee being undetectable in the competent court on 29.4.2006. Applicant can be directed to execute an indemnity bond to satisfy the second condition.

IV) Thus, as seen from the aforesaid, charge sheet issued is invalid since it was not delivered to the ex-employee as per the Hon'ble Supreme Court judgment cited supra. The DOP &PW memo dated 24.6.2013 provides for grant of family pension, in no uncertain terms, to the applicant. Hon'ble High court verdict in WP 34859 of 2016 squarely covers the case. Further disciplinary action against a dead person is invalid as was brought out in the paras supra. There was no fraud or crime conducted by the ex-employee. He went missing. Rules and law are in favour of the cause of the applicant.

Concomitantly, applicant has a rightful claim for the relief with all the consequential benefits thereof, which includes interest for retaining the amount due to applicant over the years. Hon'ble Apex Court in a cornucopia of judgments has made it clear that interest has to be paid for delay in releasing payments, which are due to the employee. One such pertinent observation is extracted hereunder:

S.K. Dua v. State of Haryana, (2008) 3 SCC 44, at page 47 :

> *If there are statutory rules occupying the field, the appellant could claim payment of interest relying on such rules. If there are administrative instructions, guidelines or norms prescribed for the purpose, the appellant may claim benefit of interest on that basis. But even in absence of statutory rules, administrative instructions or guidelines, an employee can claim interest under Part III of the Constitution relying on Articles 14, 19 and 21 of the Constitution. The submission of the learned counsel for the appellant, that retiral benefits are not in the nature of "bounty" is, in our opinion, well founded and needs no authority in support thereof.*

V) The examination of the OA will not be complete unless it is adduced that there was delay of 15 years on behalf of the applicant in approaching the Tribunal. Whether such a delay is fatal to the case of the applicant is the question that has to be ruminated. The Apex Court has, in the following decisions held that when reasons are sufficient and there is no malafide, condonation of delay should be a rule:-

(a) N. Balakrishnan v. M. Krishnamurthy, (1998) 7 SCC 123, the Apex Court has held as under:-

> *Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the*

legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae up sit finislitium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. *A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide Shakuntala Devi Jain v. Kuntal Kumari 1 and State of W.B. v. Administrator, Howrah Municipality .*

13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.

(e) The Apex Court in the case of Kameshwar Prasad (2000) 9 SCC 94 has held as under:-

> ***11.*** *Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition v. Katiji held that the expression "sufficient cause" employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice — that being the life-purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:*
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> > *"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.*
> >
> > *2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.*
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> > *3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.*
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> > *4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.*
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> > *5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.*
> >
> > *6. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical*

grounds but because it is capable of removing injustice and is expected to do so."

Keeping in view the above law laid down by the Apex Court, if the case in hand is examined, first of all, the very shock gushed out of the applicant's husband being missing would have derailed her normal life. Added to her woes, applicant is illiterate and poor. She does not know the rules and regulations. Mostly, somebody had to guide her and take up the case. It is not that the applicant initiated her case after hibernating for years. Her attempt to trace her husband through the police commenced within a reasonable time. Her attempt to secure family pension followed suit. The case travelling all the way from the Police Station to the competent courts and to the respondents who have processed it over the years did cause a delay of 15 years for the applicant to approach the Tribunal. The delay is understandable and genuine. If the delay is not condoned grave injury would be caused to the legitimate right of the applicant, as has been brought out in paras supra. Hence in the interest of justice delay of 15 years 3 months is condoned. MA for condonation of the said delay is accordingly allowed. Similarly MA filed for a minor delay of 10 days in resubmission of OA is also condoned and MA allowed.

VI) Hence the action of the respondents is arbitrary, against rules and violative of the legal principles laid down by Hon'ble Supreme Court and the Hon'ble High Court of A.P. The case albeit fully covered by the Hon'ble High Court judgment, it is surprising that the respondents have forced the poor, illiterate and destitute applicant to come over to the

Tribunal to exercise her right for family pension, which the respondents could have granted on their own volition. Respondents have tried to rub their mistake on to the applicant and deny family pension which is impermissible in law in the words of the Hon'ble Supreme Court in the following judgments.

a) *A.K. Lakshmipathy v. Rai Saheb Pannalal H. Lahoti Charitable Trust,(2010) 1 SCC 287*

"they cannot be allowed to take advantage of their own mistake and conveniently pass on the blame to the respondents."

(b) *Rekha Mukherjee v. Ashis Kumar Das,(2005) 3 SCC 427* :

36**.** The respondents herein cannot take advantage of their own mistake.

In view of the violations narrated, the impugned orders dated 24.12.2002, 21.8.2006 & 25.2.2014 are quashed lock, stock and barrel.

VII) The next question is as to the extent of arrears of terminal benefits/family pension payable to the applicant. The Apex Court in almost a similar case in S.K. Mastan Bee v. General Manager, South Central Railway, (2003) 1 SCC 184, has held as under:-

> *"We think on the facts of this case inasmuch as it was an obligation of the Railways to have computed the family pension and offered the same to the widow of its employee as soon as it became due to her and also in view of the fact that her husband was only a Gangman in the Railways who might not have left behind sufficient resources for the appellant to agitate her rights and also in view of the fact that the appellant is an illiterate, the learned Single Judge, in our opinion, was justified in granting the relief to the appellant from the date from which it became due to her, that is the date of the death of her husband. Consequently, we are of the considered opinion that the Division Bench fell in error in restricting that period to a date subsequent to 1-4-1992.."*

Consequently, Respondents are directed to consider as under:

i) To grant family pension to the applicant as per DOP&PW OM dt.24.06.2013 from the date of the police report to the competent court on 29.4.2006. Respondents to work out the normal or enhanced pension as per the rules in vogue and fix it accordingly taking the crucial date for fixing pension as 29.4.2006.

ii) To disburse any balance of salary, GPF and gratuity, which if due to the missing employee, be paid, to the applicant with GPF rate of interest prevailing on the date of payment for the period commencing from 29.4.2006 till the date of payment.

iii) Interest at the GPF rate of interest, prevailing on the date of payment, be paid on the arrears of pension and other terminal benefits due to be paid to the applicant, for the period from 29.4.2006 till the date of payment, since respondents did not release the family pension and terminal benefits within 3 months from the date of application made by the applicant for family pension, as envisaged in the memo and also in view of the Hon'ble Supreme Court observation referred to.

iv) Time permitted is 3 months from the date of receipt of this order.

v) With the above directions the OA is allowed. No order as to costs.

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

Dated, the 18th day of June, 2019

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