

(2018) 12 CAT CK 0190
In the Central Administrative Tribunal
Case No : Original Application No. 2511 Of 2016

Santosh Devi

APPELLANT

Vs

Commissioner Of Police And Ors

RESPONDENT

Date of Decision : 06-12-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 27(2)

Citation : (2018) 12 CAT CK 0190

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : S.S. Deswal, G.D. Chawla

Final Decision : Dismissed

Judgement

1. The OA has been filed by the applicant seeking the following reliefs :-

"(a) allow this Original Application of the applicant with costs;

(b) issue appropriate direction or directions or orders to:

(i) quash the impugned order dated 08.02.2005 passed by Garima Bhatnagar, Additional Deputy Commissioner of Police, North District by that order the applicant's husband Ex. ASI Ram Phal No.2076/D was wrongly removed from service without any justified reason, whatsoever.

(ii) quash the impugned order dated 4.4.2016 passed by respondent No.4, by that order the respondent authority without applying its mind turned down the request of family pension to the applicant.

(iii) declare the applicant is entitled to grant the family pension in view of the fact that the applicant's husband prior to his removal from service vide order dated 8.2.2005 has 32 years unblemished service in the department;

(iv) directing the respondents to set-aside/re-call the impugned order dated 8.2.2005 and 4.4.2016 by these orders the respondent authorities in arbitrary

and in wilful design removed the applicant's husband from service without granting any pensionary benefits;

(v) directing the respondents to set-aside/re-call the impugned orders dated 8.2.2005 and 4.4.2016 keeping in view of the above mentioned facts and circumstances and in the interest of justice, the absent period of 142 days from service due to unavoidable circumstances may be treated as "extraordinary leave" in terms of the provisions in the Rule 27 (2) of CCS (Pension) Rules 1972 and the applicant may be granted Family/Other pension entitled under the Family Pension Scheme, 1964 and under the amended Family Pension Scheme;

(vi) directing the respondents to grant 18% interest upon the arrears of pension, gratuity, leave encashment and other pensionary benefits;

(c) issue such other order direction or directions, order or orders as this Hon"ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. The facts of the case are not in dispute. The husband of the applicant late ASI Shri Ram Phal in the OA was removed from service by Delhi Police vide the impugned order dated 9. 02.2005. The ground of removal of service is wilful and unauthorised absence from duty of various periods ranging from 11. 06.2001 to 05.07.2001 (24 days), 05.11.2001 to 05.12.2001 (30 days), 07.04.2002 to 18.04.2002 (11 days), 05.06.2002 to 17. 06.2002 (12 days), 27.08.2002 to 01.11.2002 (65 days) and from 20.12.2002 till the date of issue of the order. The applicant did not file any appeal against this order.

2. The applicant in the OA is the widow of the deceased ASI, who has filed the current OA after her claim for appointment was rejected by the respondents.

3. During the course of hearing, the learned counsel for the applicant, Shri S.S. Deswal argued that the applicant's husband was suffering from back injury and fell ill regularly within short intervals. The applicant could not attend his duties on account of his illness and recurring back problems and has been wrongly punished by the respondents. The learned counsel relied upon the judgment of Hon"ble Apex Court in the case of Krushnakant B. Parmar Vs. Union of India and Another, (2012) 3 Supreme Court Cases 178 and argued that the deceased could not report or perform his duty due to compelling circumstances and his absence was not wilful. He also relied upon another judgment in the case of Rajender Kumar Vs. State of Haryana and Another Civil Appeal No.8064 of 2015 (SLP (C) No.10039/2014) wherein the Hon"ble Apex Court held that if the appellant had put in long years of service and charge is against the unauthorised absence of short durations, the matter can be re-considered by the Disciplinary Authority. The learned counsel stated that as per Standing Order no.111, the respondents could have considered the case of the applicant's husband for grant of extraordinary leave rather than removing him from service since he had served the respondents for almost three decades.

5. Per contra, the learned counsel for the respondents, Shri G.D.Chawla argued that no authentic medical certificate was ever produced by the applicant in support of his contention that his absence was on account of his illness or back problem, despite repeated requests from the respondents. The standing order relied upon by the applicant's counsel is not relevant since late Shri Ram Phal never applied for extraordinary leave, either before or after receipt of the impugned order.

6. I have gone through the facts of the case carefully and am not impressed by the arguments advanced by the learned counsel for the applicant to justify the continuous absence of applicant's late husband. The defence of ill health is on a rather weak footing. Even if the applicant's husband was (allegedly) suffering from a backbone injury or any such ailment he could have produced relevant medical papers. If he was unable to come himself he could have sent them through a relative or friend to support his version. No effort whatsoever was made by him to explain his absence except by making bland statements. The late ASI did not even join the enquiry proceedings hence the inquiry officer had to proceed by conducting an ex-parte inquiry. In the detailed order of the disciplinary authority statements of 08 PWs wererecorded. All these testimonies were sent to Shri Ram Phal, giving him an opportunity to defend himself. He did not submit any defence statement nor did anyone appear on his behalf before the Inquiry Officer. The respondents were left with no option except to pass an ex parte order. After following the necessary procedural formalities, as per rules on the subject, the respondents removed late Shri Ramphal (applicant's husband) from service. The applicant did not bother to file an appeal against this order.

7. The fact that the deceased Shri Ram Phal unfortunately expired due to cancer later (in 2015) has no bearing to the claim of the applicant for family pension. The applicant has produced some medical papers pertaining to the illness of late ASI which are from the year 2012 till 2015, which are almost 8 to 10 years after the penalty order of removal of service was issued and hence of no relevant to the case at hand.

8. The facts of the case - prove beyond doubt that applicant's husband remained wilfully and unauthorised absence from duty due to which, the respondents had to remove him from service. An employee removed from service is not entitled to pension hence the claim of his widow (applicant in OA) for family pension cannot be entertained. OA is dismissed. No costs.