

(2023) 04 CAT CK 0022
In the Central Administrative Tribunal
Case No : Original Application No. 298 Of 2015

Sunil	Vs	APPELLANT
Union Of India & Ors		RESPONDENT

Date of Decision : 12-04-2023

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Evidence Act, 1872 — Section 108
Code Of Criminal Procedure, 1973 — Section 154(1)
Central Civil Services (Pension) Rules, 1972 — Rule 18, 50, 51, 52, 53, 54, 71

Citation : (2023) 04 CAT CK 0022

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : S.M. Iqbal Hasan, Raghvendra Pratap Singh

Final Decision : Dismissed

Judgement

Om Prakash-VII, Member (J)

1. The present O.A has been filed by the applicant under section 19 of Administrative Tribunals Act, 1985 with the prayer for directing the respondents to grant the family pension to the mother of the applicant for the past seven years along with consequential benefits from the pension.

2. The facts in brief are that the applicant's father Sri Banke Lal was employed at 508, Army base WRSP, Allahabad on the post of Senior Store Superintendent. He died on 13.8.2002. Mother of the applicant who was getting family pension, went missing from outside her resident w.e.f. 2.9.2005. An information was lodged to this effect on 18.1.2006. Family pension was stopped from 10.2.2005 onwards. Applicant has submitted several letters to the Accounts Officer for resuming the family pension but no avail. It is further submitted that perusal of Section 108 of the Evidence Act shows that if a person is missing for the statutory period, he is presumed to be dead and only if someone is still claiming otherwise, i.e. he is alive even after lapse of seven years, will require to be proved. Applicant has no

idea of the whereabouts of his mother since seven years. She is presumed to be dead.

3. Per contra, learned counsel for the respondents filed counter reply stating therein that it is not clear that mother of the applicant is missing or not, as neither any FIR and final report of the police station concerned nor copy thereof were found enclosed with the O.A. It is further stated that mother of the applicant was missing since 2.9.2005. An application dated 18.1.2006 was given to Thana Kotwali, Colonel Gang, Allahabad for lodging FIR, whereas the FIR lodged by Thana is not enclosed with the O.A. It is further stated that as per provision of CCS (Pension) Rules, 1972, Clause 12-A, there is no such provision in the case of missing family pensioner that the next eligible member of the family of the employee may be granted family pension.

4. Heard the learned counsel for the parties.

5. Submission of the learned counsel for the applicant is that mother of the applicant who was getting family pension was missing since 2.9.2005. An information was lodged in the police station. Even after lapse of more than 7 years, whereabouts of her is not known. Hence it can be presumed that she is dead and applicant is entitled for family pension of his father. Learned counsel for the applicant has also produced O.M. dated 24th June, 2013 issued by Ministry of Personnel, PG and Pension, Department of Pension and Pensioner's Welfare regarding grant of family pension and gratuity to the eligible member of the family of an employee/pensioner/ family pensioner reported missing-consolidated instructions regarding. He has further filed Bahri's Handbook 2016 Rule 18 regarding Grant of Family Pension and Gratuity to the eligible member of the family of an employee /pensioner/family pensioner reported missing.

6. Learned counsel for the respondents submitted that it is not clear that mother of the applicant is missing or not, as neither any FIR and final report of the police station concerned nor copy thereof were enclosed with the O.A. It is further argued that mother of the applicant was missing since 2.9.2005, report is said to have been lodged on 18.1.2006 in Police Station, Colonel Gang, Allahabad, but the FIR lodged by Thana is not enclosed with the O.A. It is further stated that as per provision of CCS (Pension) Rules, 1972, Clause 12-A, there is no such provision in the case of missing family pensioner that the next eligible member of the family of the employee may be granted family pension.

7. I have considered the rival submissions of the learned counsel for the parties and have gone through the entire record.

8. From perusal of records, it is clear that mother of the applicant, who was receiving family pension got missing since 2.9.2005 and missing information report was lodged on 18.1.2006 but the same is not enclosed along with the Original Application. Respondents have clearly stated in the Counter reply that applicant has not furnished the FIR lodged by the applicant. Applicant has also failed to enclose the copy of FIR along with the O.A. O.M. of DOP&T dated 24th

June 2013 clearly provides that 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 all efforts made by then. O.M. dated 24th June, 2013 reproduced below:-

"Sub: Grant of family pension and gratuity to the eligible member of the family of an employee/pensioner/family pensioner reported missing - consolidated instructions - regarding.

The provisions regarding grant of gratuity and family pension to the members of families of the deceased Government servants/pensioners who were appointed on or before 31st December, 2003 and who are/were born on pensionable establishments are contained in Rules 50-54 of the Central Civil Services (Pension) Rules, 1972. The instructions regarding grant of family pension and gratuity under these rules to the eligible member of the family of an employee reported missing had been issued vide this Department's earlier office memorandum No. I/17/86-P&PW, dated 29th August, 1986. Clarifications/ amendments in this regard were issued vide OM No. 1/17/86-P&PW, dated 25th January, 1991 and 18th February, 1993 and OM No. 1I28/04-P&PW(E) dated 31st March, 2009 and 2 nd July, 2010, O.M. of even number, dated 14th September, 2011 and OM No. I/17/2010-P&PW(E), dated 2 nd January, 2012.

2. A reference has been received in this Department to clarify whether in a situation where SHO states that FIR is not required to be lodged in the case of person gone missing, the eligible member of the family can be granted family pension. The matter has been examined in consultation with the Ministry of Home Affairs. Section 154(1) of the Criminal Procedure Code mandates filing of an FIR by the Police authorities on a report. received of the commission of a cognizable offence. A missing person per se does not point to commission of a cognizable offence. In view of this, cognizance of a person's disappearance can be taken by the Head of Office on the basis of an authenticated Daily Diary (DD)/ General Diary Entry (GDE), filed by the Police authorities concerned, as per the practice prevalent in that State/UT.

3. It has now been decided to issue consolidated instructions in supersession of previous instructions regarding grant of family pension to the eligible members of family of the employee/pensioner/family pensioner reported missing and whose whereabouts are not known. It includes those kidnapped by insurgents/terrorists but does not include those who disappear after committing frauds/crime etc.

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 organization 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 all 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.

7. Before sanctioning the payment of gratuity, the Head of Office will assess all Government dues outstanding against the employee/pensioner and effect their recovery in accordance with Rule 71 of the CCS (Pension) Rules, 1972 and other instructions in force for effecting such recoveries.

8. The amount of salary due, leave encashment due and the amount of GPF will be paid to the family in the first instance as per the nominations made by the employee/pensioner on filing of a police report and submission of an indemnity bond as indicated above. 9. The benefits to be sanctioned to the family/nominee of the missing employee/pensioner will be based on and regulated by the emoluments drawn by him/her and the rules/orders applicable to him/her as on the last date he/she was on duty including authorised periods of leave."

9. In this matter, it is evident from record that first relief claimed by the applicant if death of the mother of the applicant is presumed, then also cannot be allowed. Under provision of Section 108 of the Indian Evidence Act, presumption will run from the date of missing of the person, thus first relief claimed by the applicant is misconceived. As regards second relief, since the first relief cannot be allowed to the applicant, therefore, second relief can also not be allowed to him despite this fact that applicant has produced the copy of the G.D. entry and Police report before the respondents concerned. Applicant is also not entitled for any of the relief claimed in the O.A., merely on this ground that he is the son of the missing pensioner. He will not to be automatically entitled for

family pension.

10. Accordingly, O.A. is dismissed.

11. There shall be no order as to costs.