
(2019) 02 CAT CK 0061

In the Central Administrative Tribunal

Case No : Original Application No. 330, 859 Of 2012

Vidyawati Rai

APPELLANT

Vs

Union of India And Ors

RESPONDENT

Date of Decision : 27-02-2019

Acts Referred:

Evidence Act, 1872 — Section 108

Citation : (2019) 02 CAT CK 0061

Hon'ble Judges : Ajanta Dayalan, J

Bench : Single Bench

Advocate : Ashish Srivastava, Anil Kant Tripathi

Final Decision : Allowed

Judgement

1. The present OA has been filed by the applicant Vidyawati Rai seeking quashing of order dated 15.03.2011 (Annexure A-1) rejecting her claim for retiral dues of her husband. The applicant has also sought directions to the respondents to pay her special family pension alongwith arrears w.e.f. 10.05.1990 with 18% interest. Further, she has sought payment of other monetary dues including GPF and leave encashment.

2. The facts of the case, as narrated by the applicant, are that the husband of the applicant Vijay Bahadur Rai was working as Labour in Ordnance Factory, Kanpur. On 10.05.1990, after his visit to his home in Gorakhpur, he started journey for Kanpur but he did not reach there to resume his duties. On receiving this information and after rigorous search of her husband, the applicant lodged a complaint at Police Station, Barhalganj, Gorakhpur on 27.06.1990 (Annexure A-2). The applicant also sent an intimation on 26.07.1990 (Annexure A-3) about the fact of her husband's missing from 10.05.1990 to the office of the respondent no. 3. Vide this letter, she also informed the office about the police complaint lodged on 27.06.1990. Postal receipt in support of acknowledgment of this letter being served upon the respondent no.3 is annexed as Annexure A-4. On 02.07.2007, the applicant requested for settlement of dues payable to her on

account of missing of her husband who was untraceable for 16 long years. Office of the respondent no. 3 vide letter dated 21.01.2009 made an inquiry about her missing husband from Police Station, Barhalganj. On 08.11.2009 (Annexure A-5), the Police Station, Barhalganj submitted its final report intimating that Shri Vijay Bahadur Rai, the husband of the applicant was missing from 10.05.2009 during his journey from Gorakhpur to Kanpur, and that he was untraceable till then. On 15.04.2010 (Annexure A-6), the applicant made another application to the respondent no. 3 stating that the applicant has learnt from Police Station, Barahalganj regarding their query dated 21.01.2009 as well as the fact that final report regarding missing of her husband has been sent to that office. In view of the final report which states that her husband was not traceable, the applicant sought further necessary action by the respondents department. Later, vide letter dated 15.03.2011, the claim of the applicant was rejected on the ground that the family has not lodged the report with the concerned Police Station and has not obtained a report that the employee has not been traced after all efforts have been made. It is stated in the said letter that as this exercise was not done in her case, it was not possible to proceed further in view of the provisions of DP & PW OA dated 29.08.1986. Thereafter, on 23.08.2011 (Annexure A-7), the applicant intimated that her husband was missing since 10.05.1990 and she has been pursuing her case since then with the department. The learned counsel for the applicant pleaded that she reported to the local police station about missing of her husband; and if the police did not submit report in time, that cannot be attributed upon her and cannot be made the basis for denial of her legitimate claim.

3. The case of the applicant is that her husband went missing on his return journey from his hometown Gorakhpur to his office at Kanpur on 10.05.1990. After searching her husband for some time, the applicant lodged a complaint on 27.06.1990 in the local police station in Gorakhpur. She also informed about missing of her husband and lodging of FIR at Gorakhpur to the respondents department on 26.07.1990. It was only in 2009 that she became aware of the final report submitted by the local police station to the respondent department confirming that her husband has not been traced. Thereafter, she has been pursuing the matter of her family pension and other retiral dues of her husband with the respondent department. These have been denied to her vide impugned order dated 15.03.2011 on the ground that as per the DP & PW OA dated 29.08.1986, the family has to lodge a report with the concerned police station and obtain a report that the employee has not been traced after all efforts made by the police. In the said letter, it has been stated that in absence of this, further action in the matter is not possible. The applicant has stated that she being a poor and illiterate lady is not aware of the rules and that family pension and retiral dues of her husband have been denied to her on the ground that she has not taken action as per the departmental rules and as such she is not entitled for any benefit. On the other hand, department has not taken any action about the missing of her husband or to settle his retiral dues.

4. The respondents department in its counter affidavit has stated that the husband of the applicant, Vijay Bahadur was issued a memorandum of charge dated 29.06.1996 for absenting himself from duty with effect from 01.05.1990 without prior sanction of leave. The chargesheet was sent to his local and permanent addresses by registered post but was returned undelivered. Thereafter, the disciplinary authority appointed a Court of Enquiry vide order dated 09.01.1997 but the husband of the applicant did not appear before the Inquiry Officer and hence, proceedings were held ex-parte and on the basis of oral and documentary evidence, he was held guilty of charge. The inquiry report was forwarded at his local and permanent addresses vide memorandum dated 11.08.1997. This was also returned from both the addresses. Accordingly, penalty of removal from service was imposed on him on 24.12.1997. According to the respondents, the applicant sent representation dated 02.07.2007 stating about her missing husband and about her lodging a complaint in the Police Station, Barhalganj on 27.06.1990, a copy of which was enclosed alongwith this letter. Thereafter, the respondents made a query from Police Station, Barhalganj, Gorakhpur vide letter dated 17.10.2007 requesting them to forward copy of FIR as well as final report, if available. After pursuing the matter with the Barhalganj Police Station, the Police Station vide letter dated 29.12.2008 gave information regarding missing person stating that the missing report was registered on 15.05.1990. Due to discrepancy in date of lodging of complaint, the respondent department sought clarification from Barhalganj Police Station on 21.01.2009. Later the applicant sent representation dated 15.04.2010 alongwith copy of report of local police station dated 18.11.2009 but this report was not received in the Ordinance Factory. As such, FIR and final report were sought from the Barhalganj Police Station. Reminders were also sent but no copy of FIR was sent by the Thana. The applicant's husband was already imposed penalty of removal from service and as such he or his family was not entitled to any pension or gratuity. The respondents department have also stated that they made several correspondence at the permanent address of the applicant's husband as well as on residential address but all letters were returned undelivered. This was despite the fact that as per the applicant, she was residing at permanent address of her husband. The department has, thereafter, quoted the OM dated 29.08.1986 justifying their action based on provisions contained in this OM. The respondents have also pleaded that despite the fact that the applicant's husband was residing at Kanpur but the FIR was not lodged there. FIR was also not lodged by the applicant at village Tiha Mohammadpur, Post Barhalganj, District Gorakhpur. The applicant has kept mum over 17 years and only now she woke up about her claims. This act of the applicant has created confusion in their mind whether the applicant is wife of the deceased husband or not. They also find the claim of the applicant time barred and as such, her claim was rejected by the impugned order.

5. Heard Shri Ashish Srivastava, learned counsel for the applicant and Shri Anil Kant Tripathi, learned counsel for the respondents and have also gone through the pleadings of the case. I have given thoughtful consideration to the entire

matter.

6. It is observed that husband of the applicant Shri Vijay Bahadur Rai has been missing since 10.05.1990 on his journey back from his home town Gorakhpur to his place of duty at Kanpur. The fact that the applicant lodged a complaint in local police station at Gorakhpur on 27.06.1990 is admitted by Police Station, Barhalganj on 08.11.2009 in Annexure A-5. Further, the fact that she informed the respondent department on 26.07.1990 about her missing husband and lodging of a complaint in Barhalganj Police Station is not effectively contested by the respondents. Even otherwise, acknowledgement due receipt showing date of delivery to the General Manager, Ordinance Factory has been appended by the applicant as Annexure A-4 and we see no reason to doubt authenticity of this document. Action taken by the respondents on this crucial information relating to the case has not ever been brought out by the department in their pleadings. Action taken by the respondents on the repeated representations of the applicant, especially after 2007, has also not been indicated. In fact, instead of taking action on the representation dated 26.07.1990, the department has only proceeded with the disciplinary action and appointed Inquiry Officer on 09.01.1997. Ex-parte proceedings were held in absence of the government official. The correspondence made to him was returned undelivered. Finally, the government servant was removed from service on 24.12.1997.

7. It is further observed that as per the pleadings of the applicant, she had already informed the department about missing of her husband from 10.05.1990 and her lodging of police complaint on 27.06.1990 and as such removal of her husband was after seven years of his missing. In ordinary circumstances, such persons are presumed dead. It is noted that the department did not take cognizance of this fact and removed a person from service after his deemed death. This is obviously not appropriate and is not even legally tenable. In fact, it is noted from the counter affidavit that the action of the department is completely insensitive to the fate of missing of their own employee as well as to the fate of the wife left behind. Instead of making inquiry from the concerned Police Station suo moto, they are now raising objection with the wife for having lodged report in police station at Gorakhpur rather than at police station in Kanpur. As the husband of the applicant was missing during journey from Gorakhpur to Kanpur and the wife was residing at Gorakhpur at his permanent address, we find it natural and acceptable that she should be reporting the matter in the local police station rather than coming all the way to Kanpur and thereafter filing the case at Kanpur. In any case, she did not know exactly from where the husband was missing. Even the OM of 1986 relied upon by the respondents only requires - 'lodge a report with the concerned police station'. As such, we find the action of the wife was covered under the provisions of OM cited by the respondents.

8. Regarding delay, it is observed that it is not easy for individuals especially a wife whose husband is missing, to obtain a final report from the police station. In

fact, the respondents department should have facilitated the matter. They should have pursued the matter with the police station after receipt of information from the wife just a month after the husband was missing and should have made efforts to obtain final report from the police station. The respondents have not indicated even a single word in the counter affidavit about this basic requirement on their part to try and locate the department's own employee. Instead, they have taken a callous stand and removed the applicant's husband from service after ex-parte disciplinary proceedings. Even now, the wife is being denied the benefits on perfunctory grounds that her lodging of FIR in the local police station was not as per the departmental instructions contained in OM of 1986. This matter has already been discussed in the preceding paragraphs and this court has arrived at the finding that lodging of report by the applicant in the local police station should be taken as covered under the said OM.

9. In view of unusual circumstances of the case as already brought out above, it is felt that delay in pursuing her case should not deny the applicant her claim for retiral dues, if she is otherwise entitled. We, therefore, find the ground of delay as justified.

10. The department has also brought out vague allegation of whether the applicant is in fact wife of the deceased government official or not - especially as she kept mum for such a long period. This should be a matter of fact and the department should verify the facts about the identity from the service record of the deceased government servant as well as other enquiries in this regard. Vague allegation of this nature and denial of benefit on mere suspicion are not at all considered justified.

11. Finally and at the cost of some repetition, it is noted that the removal order has been issued on 24.12.1997 whereas the person was undisputedly already missing with effect from 10.05.1990. Hence, the removal was after seven years of the government servant being found missing. In such circumstances where the persons are found missing for over seven years, they are to be presumed dead and as such, the order of removal is not sustainable in law. It is also noted that the impugned order dated 15.03.2011 reiterates only the same facts and grounds including the OM of 1986, which have been discussed above. It is, inter alia, stated in this order that photocopy of FIR has never been received by the respondents from Police Station, Barhalganj, Gorakhpur. But this issue would not be the responsibility of the applicant alone. Police Station, Barhalganj vide its letter dated 08.11.2009 (Annexure A-5) has already accepted that a report of missing was lodged at the Police Station on 27.06.1990. The request of the applicant for family pension and retiral dues of her husband has been rejected only on the ground of filing of FIR in a wrong police station, non receipt of FIR from police station and OM of 1986. These grounds are not considered justified in view of the above discussions.

12. Even otherwise, we note that as per Section 108 of Indian Evidence Act, when the question is whether the man is alive or dead and it is proved that he

has not been heard of for 7 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. Further, regarding grant of family pension to the family, in case an official's whereabouts are not known, DOPT OM No. 1/17/86-P&P.W dated 29.08.1986 provides as follows: -

'3. The above benefits 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 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/dependants 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.

4. The Head of Office will assess all Government dues outstanding against the government servant and effect their recovery in accordance with Rule 71 of CCS (Pension) Rules, 1972 and other instructions in force for effecting recovery of Government dues.

5. The family can apply to the Head of the Office of the Government servant for grant of family pension and death/retirement gratuity, after one year from the date of disappearance of the Government servant in accordance with the prescribed procedure for sanction of family pension and death/retirement gratuity. In case the disbursement of death/retirement gratuity is not effected within three months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.'

13. It is thus seen that CCS (Pension) Rules, 1972 not only provide for grant of family pension in cases of missing government servants, these do so after expiry of only one year from the date of disappearance and the family does not to have wait for seven long years before getting family pension.

14. In view of the above position, the OA is allowed and the order dated 15.03.2011 is quashed. No disciplinary proceedings can now be initiated as the government servant is already to be presumed dead. Hence, the competent authority amongst the respondents is directed to grant the applicant family pension and other retiral dues of the government servant that is GPF, leave encashment etc. Payment of all retiral dues including arrears shall be made to the applicant. The order so passed may be communicated to the applicant. This exercise shall be completed within three months from the date of receipt of certified copy of this order. No costs.