

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ WP (C) No.5496 of 2005

% Date of decision: 11.11.2008

SMT. GEETA DEVI ...PETITIONER  
*Through:* Mr. C.M. Khanna, Advocate.

*Versus*

THE UNION OF INDIA ...RESPONDENTS  
*Through:* Mr. Jaswinder Singh, Advocate.

CORAM:  
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL  
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether the Reporters of local papers  
may be allowed to see the judgment? No
2. To be referred to Reporter or not? No
3. Whether the judgment should be  
reported in the Digest? No

SANJAY KISHAN KAUL, J. (Oral)

1. Rule DB.
2. At the request of the learned counsels for the parties, the  
petition is taken up for final disposal.
3. The son of the petitioner, Rajendra Kumar, was recruited  
for service in the Navy on 31.1.1996 and sent to INS  
Chilka for basic training. Rajendra Kumar on completion  
of his basic training is stated to have been given twenty-  
eight (28) days leave in August 1996 and he again  
reported back in September 1996 to join the INS Shivaji  
at Lonavala. Rajendra Kumar is reported to have

disappeared on 1.1.1997 and it is the case of the petitioner (mother of Rajendra Kumar) that Rajendra Kumar has neither come back home nor heard of thereafter.

4. The respondents presumed that Rajendra Kumar is a deserter even though he has not been arrested or located. The respondents state that they issued warrants for apprehension but Rajendra Kumar could not be apprehended.
5. A submission was advanced before us by learned counsel for the petitioner that Rajendra Kumar must be presumed to be dead and not a deserter in which case she would be entitled to Dependant Family Pension with even only one (1) year service rendered by Rajendra Kumar. Learned counsel sought to rely upon the provisions of Section 108 of the Indian Evidence Act, 1872 (hereinafter referred to as the said Act), which reads as under:

**“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.”

6. At the stage when learned counsel for the petitioner advanced the said plea on 16.5.2008, learned counsel for the respondents relied upon the judgement of the Supreme Court in LIC of India Vs. Anuradha AIR 2004 SC 2070 to contend that the occasion for raising the presumption would arise only when the question is raised

in a Court, Tribunal or before an authority who is called upon to decide as to whether a person is alive or dead. Learned counsel for the respondents, thus, expressed his willingness to hold an inquiry in that behalf and submit a report in this Court.

7. The report of the inquiry held has been produced before us today. The report shows that the petitioner and the family members have co-operated in the inquiry and statements of other persons serving along with Rajendra Kumar have been recorded. It emerges from the proceedings filed before us of the inquiry that the persons who were the colleagues of Rajendra Kumar and whose statements were recorded have only stated that they came to know that Rajender Kumar had run away from the establishment. Nobody affirmed to any personal knowledge of the same. There appears to be no attempt to determine the activities first before Rajendra Kumar was found missing or from any person who had last seen him. Interestingly a reference has been made to a letter alleged to have been received by INS Vendhuruthy to the effect that Rajendra Kumar had informed him that he was not interested in service and wanted to be relieved. A copy of this letter is, however, not available and is stated to be mentioned in an inter-departmental communication dated 10.4.1997.
8. We must express our displeasure in respect of the manner in which endeavour was made to trace out the

missing sailor. There appears to have been no serious attempt and it was presumed that he had run away. Not only that if such a letter came to be received, prudence would have required that from the postal stamps or the address on the envelope of the letter endeavour should have been made to locate the sailor. Admittedly, no such endeavour was made and care was not even taken to preserve the letter.

9. The conclusions drawn by the inquiry, which is held are as under:

**“Conclusion**

12. Based on the analysis of findings, available records, interview of 09 sailors of DEME Course No.60.672 and interview of parents of Rajendra Kumar, Ex-DEME, No.118692-F, the conclusions drawn are appended below:-

- (a) The individual went missing on 01 Jan 1997.
- (b) At INS Shivaji, he was in a comfortable state and he had no problems associated with his training. In his last communication, with his parents vide letters on 23 and 26 Dec 1996, the individual has mentioned that he was all right and his training was going on well.
- (c) After the individual went missing, all efforts were made to search the sailor, in and around the establishment as per standard procedure. Local Police Station (Lonavla City Police Station), was also approached to locate the individual, but he was not found, nor was there any abnormal incident reported.
- (d) From the available records, there is a mention in INS Shivaji letter No.2039/2 dated 10 Apr 97, addressed to INS Vendhuruthy, that a letter had been received from the individual, stating that he is not interested in service and he wants to be relieved. However, a copy of the same is not held with the establishment, view the long passage of time.

- (e) Shri Hariram, in his letter to INS Shivaji dated 10 Jan 1997, has mentioned about his son joining Navy, despite his opposition. Upon asking him the reason, he replied that he had opposed because age of his son was less at the time of joining Navy.
  - (f) The parents of the individual, did not visit INS Shivaji, Lonavla, even once in the past 12 years to enquire about their son, after Rajendra Kumar was reported missing on 01 Jan 1997.
  - (g) The whereabouts of the individual, as also whether he is dead or alive could not be established after interviewing some of his batchmates and his parents.
  - (h) The parents of the individual, are in satisfactory financial condition.”
10. The conclusions show that the sailor was comfortable and had no problems associated with his training. In fact, he had communicated so to his parents. A reference has been made to the missing letter addressed to INS Vendhuruthy. The mere fact that the parents of the sailor did not visit Lonavala cannot result in drawing of adverse inference when it was found that the parents of the sailor had co-operated with the local police in the inquiry. In fact the conclusion in sub-para (g) is that no firm conclusion could be arrived at whether the sailor is dead or alive.
11. A period of seven (7) years has elapsed and we, thus, see no reason why a presumption should not be drawn in favour of the sailor being dead in terms of Section 108 of the said Act.
12. We may note at this stage that a Division Bench of the Orissa High Court in Smt. Puspa Gurang Vs. Joint Assistant Director (Welfare), CRPF, Lodhi Road, New Delhi

& Ors. 86 (1998) CLT 379 had occasion to adversely comment upon such procedure where a jawan is presumed as a deserter by taking disciplinary steps in his absence and the same is brandished against his relatives while considering the grant of pensionary benefits.

13. We fail to appreciate as to how the respondents could have declared the sailor a deserter without taking adequate steps in this behalf as noticed above. If the sailor was missing and could not be located and there was sufficient material in that behalf, the respondents were required to wait for the requisite period of seven (7) years before they could draw any conclusion.
14. Insofar as the grant of pensionary benefits to the petitioner are concerned, the same are naturally dependent on the norms applicable for grant of such pension including the dependency. The respondents would have to look into that aspect and come to a conclusion to determine the entitlement of the petitioner but of course on the presumption that the sailor is dead.
15. The respondents to take necessary steps within a period of three (3) months from today and in case the petitioner is found eligible for such dependent pension, the amount be paid to the petitioner including the arrears {for the period starting from the completion of seven (7) years from the date the sailor was found missing} within a period of two (2) months thereafter.

16. The petitioner would also furnish appropriate indemnity for restitution of the amounts paid in case at any subsequent stage of time it is found that the sailor (son of the petitioner) was or is alive after he went missing. An affidavit/undertaking should also be furnished to the effect that the sailor has never contacted the petitioner or any family member nor are they in the know of his existence.
17. In case of any adverse finding on the issue of dependency, a reasoned order should be communicated to the petitioner within a period of three (3) months.
18. The petition accordingly stands disposed of.
19. Dasti to learned counsels for the parties.

SANJAY KISHAN KAUL, J.

NOVEMBER 11, 2008  
*b'nesh*

SUDERSHAN KUMAR MISRA, J.