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

% Judgement delivered on: 16.05.2016

\+ **W.P.(C) 1577/2016**

TRIPTA RANI ..... Petitioner

Through: Mr.Gautam Bhal, Adv.

Versus

UNION OF INDIA & ANR. ..... Respondents

Through: Mr. Amit Bansal with Ms. Seema Dolo and Mr. Akhil Kulshrestha, Advs. for CBSE.
Mr. Saroj Bidawal, Adv. for UOI

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J (ORAL)

1. Tripta Rani, wife of Om Prakash Arora has filed the present writ petition partly impugning order dated 10th September, 2015 passed by the Principal Bench of the Central Administrative Tribunal in O.A. No. 3507 of 2014.

2. Om Prakash Arora was employed as an Assistant with the Central Board of Secondary Education, a pensionable post. Om Prakash Arora's application for voluntary retirement with effect from 20.01.1999 was accepted by the employer. Om Prakash Arora went missing immediately thereafter and has not been seen

2thereafter. No one had heard and met him for the last 17 years.

3. The petitioner, wife of Om Prakash Arora, had written letters seeking payment of family pension. As required, the petitioner filed an FIR on 07.09.2011.

4. After registration of the FIR, by letter dated 26.11.2013 the respondents' sanctioned family pension to her with effect from 07.09.2011, i.e., the date on which the FIR was registered. For the prior period, family pension was not sanctioned and granted.

5. Aggrieved the petitioner filed the aforesaid O.A. praying for the following reliefs:

> *"In view of the facts mentioned in para 6 above the applicant humbly prays based on the aforesaid facts and grounds that this Hon'ble Tribunal may be pleased(sic) to:*
>
> *(a) direct the respondent No. 2 to grant retirement benefit of her husband including Pension/Enhanced Family Pension from 21.01.1999 to 06.09.2011;*
>
> (b) *Insurance amount under Group Insurance Scheme (GIS);*
>
> *(c) Interest at the rate of 18% on the family pension and, GPF and Gratuity from the date of entitlement till actual payment;*
>
> *(d) Costs of the OA; and*
>
> *(e) Any other relief as would deem fit and proper in the interest of justice."*

6. The impugned order passed by the Tribunal partly grants the reliefs prayed for in the following terms:

> *"6. In the wake, the prayer for family pension/enhanced pension from 20.01.1999 is nixed. Nevertheless, once the government*

employee did not appear to receive his terminal benefits even after expiry of seven years 20.01.1999, at least within a reasonable period after 20.01.2006, the respondents should have paid all admissible terminal benefits to the applicant; Thus she would be entitled to interest @ 8% on the terminal benefits w.e.f. 20.01.2006. Respondents should also verify whether any amount of GIS (sic GPF) was payable to the deceased employee and if found payable should pay the same to the applicant with interest at the above rate and for the above period ordered accordingly."

7. The reason for rejecting the prayer for grant of family pension from 21.1.1999 till 19.1.2006 and terminal benefits to the petitioner in the impugned order is predicated on the OM No.1/17/86-P&PW dated 29.08.1986, which reads as under:

"1. A number of cases are referred to this Department for grant of family pension to the eligible members of employees who have <u>suddenly disappeared and whose whereabouts are not known. At present, all such cases are considered on merit in this department. In the normal course, unless a period of 7 years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family</u>. This principle is based on Section 108 of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is provided 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 shifted to the person who affirms it.
2. The matter has been under consideration of the Government, for some time as withholding of the benefits due to the family has been causing a great deal of hardship. It is has been decided that (i) when an employed disappears leaving his family, the family be can be paid in the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee, (ii) after the elapse of a period of one year other benefits like retirement or death gratuity / family pension may also be granted to the family subject to the fulfilment of conditions prescribed in the succeeding paragraphs.
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 employees has not been traced out after all efforts had been made by the Police.
(ii) An Indemnity Bond shall be taken from the nominee / dependents 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."
(emphasis supplied)

Reference was also made to OM No. F.No.1/17/2011-P&PW(E) dated 25.06.2013, the relevant portion of which reads as under:

"4. In the case of a missing employee/ pensioner / family pensioner, the family can apply for grant of family pension, amount of

salary due, leave encashment due and the amount of GPF and gratuity (whatever not already received) to the Head Office of the organisation where the employee / pensioner had last served, after six months of lodging the 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 Daily Diary/ General Diary Entry.

(ii) An Indemnity Bond shall be taken fi-om the nominee / dependents of the employee/ pensioner/ family pensioner that all payments will be adjusted against the payments due to the employee/ pensioner/ family pensioner in case he appears on the scene and makes any claim."

(Emphasis supplied)

8. During the course of arguments, learned counsel for the respondent has relied upon OM No. 1/28/04-P&PW(E) dated 02.07.2010, the relevant portions of which for the sake of convenience are reproduced:

The undersigned is to invite, a reference to this Department's earlier O.M. No.1/17/86-P&PW dated 29th August, 1986 and the subsequent clarifications issued vide O.M No.1/17/86-P&PW(E) dated 18th Februarv, 1993, O.M, No.1/17/86-P&PW(C) dated 25th

Januarv,1991 and O.M. No.1/28/04-P&PW(E) dated 31st March, 2009, detailing therein instructions concerning grant of family pension to <u>the eligible family members of the Government servants/Pensioners who have suddenly disappeared and whose whereabouts are not known, after a period of one year, or Government servants who have been kidnapped by insurgents/ terrorists, after a period of six months</u>, reckoned from the date of registration of the FIR with the Police Authorities.

2. The staff side of the National Council (JCM] have been raising for quite some time the issue concerning withdrawal of the <u>mandatory condition of one year prescribed in regard to sanction of family pension to the eligible family members of the pensioners who are reported missing while on pilgrimage, tour, etc., and sanction the family pension to the eligible family members within a period of two months from the date of filling of the FIR with the police</u>, This demand of the staff side is based on the premise that this kind of stipulation in the rules has been causing a great deal of hardship to the families of such missing pensioners.

3. The matter has been considered in this Department in consultation with Ministry of Finance (Department of Expenditure). It has been observed from the earlier instructions issued in this regard by this department that the same do not make any distinction between the Government servant and the pensioners but cover both of them for the purpose of grant of family pension. <u>It has accordingly been decided that the family pension/retirement or death gratuity to the</u>

eligible family members of a Government servant/Pensioner reported missing and whose whereabouts are not know, may be sanctioned after a period of six months from the date of registration of an FIR with the Police. This, however, would be subject to the instructions regarding grant/disbursal of retirement or death gratuity,, etc., as contained in this Department's O.M. referred to above.

4. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O. No.367/EV/2010 dated 15.06.2010.

5. These orders, in so far as their applicability relates to the employees of the Indian Audit and Accounts Department, are being issued in consultation with the Comptroller and Audit General of India, vide their U.O.43-Audit(Rules) / 28-2009 dt. 21.06.2010."

(emphasis supplied)

9. A reading of the aforesaid OMs would indicate that they provide for grant of family pension, when the original pensioner is missing and his whereabouts are not known for a period of seven years. In such cases, presumption under Section 108 of the Indian Evidence Act, 1872 (for short Evidence Act) is applied and the employee is treated as dead. Section 108 of the Evidence Act stipulates that when a question whether a man is alive or dead arises 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, then the burden of proving that he is alive is shifted to the person who affirms the said fact. The salary, leave encashment and GPF

dues and the retirement benefits can be paid to the family. It is not disputed that Section 108 of the Evidence Act applies. It is on this precept that the petitioner has been awarded family pension from 20.01.2006 and not from the date Om Prakash Arora had gone missing i.e. 20.1.1999.

10. OM dated 29.08.1986 and subsequent OMs relied upon by the respondent dated 02.07.2010 and 25.06.2013 postulate that for grant of family pension, an FIR with the concerned police station to the effect that said pensioner has not been traced despite all efforts, must be lodged. Indemnity bond is required to be submitted by the nominee/ dependents of the pensioner that payments made could be adjusted against the payments due to the employee in case the pensioner appears on the scene and makes any claim. This documentation etc. is mandated and necessary for grant of family pension.

11. We have read the aforesaid circulars. Pension is payable till the pensioner dies or is presumed to be dead. Family pension is payable after the death of the pensioner and not for the period before his death. The affect thereof is that the respondent would be liable to pay pension and not family pension, till the pensioner had died or is presumed to be dead. If any pension amount remains unpaid to the pensioner for the period when he was alive or is presumed as alive, the said amount would be paid to the legal heirs of the pensioner, who has died or has gone missing and is presumed to be dead. This unpaid pension amount does not get forfeited. The

arrears or unpaid pension would be payable after the death of the pensioner to his legal heirs as per law. The OMs relied do not state that the unpaid pension would not be paid to the legal heirs/ representatives. This is not the purport and objective of the OMs. The first OM dated 29.08.1986, rightly observes that unpaid dues like salary, leave encashment and GPF would be paid. Therefore, we fail to understand the reason or cause as to why the respondents have failed to make payment of the arrears of pension to the petitioner.

12. In the present case, family pension as directed by the Tribunal is payable with effect from 20.01.2006. This direction of the Tribunal has been accepted by the respondents, though earlier it was asserted by them that family pension would be payable only after the date of the registration of the FIR. As a sequitor it follows that the respondents would have to pay unpaid pension from 21.01.1999 to 19.01.2006 to the legal heirs/ representatives of Om Prakash Arora. Once the respondents admit and agree that they would pay family pension from a particular or specified date, they would be liable to pay unpaid pension to the legal heirs/ representatives.

13. It is not the case of the respondents that they are not liable to pay pension with effect from 21.01.1999 to Om Prakash Arora after his request for voluntary retirement was accepted. In fact, the respondents state that a cheque for payment of retirement dues was issued and was returned. The entire unpaid pension and dues of Om Prakash Arora would be payable to his legal/representatives in

accordance with law.

14. The respondent will pay the said arrears within a period of six weeks from the date a copy of this order is received. The petitioner will be entitled to interest from the date of filing of the O.A. i.e. 22.09.2014 till the date of payment of the dues @ 8% per annum. The petitioner will be entitled to costs which is quantified at Rs.25,000/-.

15. The petition stands disposed of.

SANJIV KHANNA, J

NAJMI WAZIRI, J

MAY 16, 2016/acm