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

+ W.P.(C) 9070/2018 & CM Nos.34921/2018, 34924-25/2018

UNION OF INDIA AND ANR.

..... Petitioners

Through: Mr.Ruchir Mishra, Mr.Mukesh Kumar
Tiwari and Mr.Abhishek Rana, Advocates

versus

SMT ASHA DEVI

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **16.11.2018**

1. The petitioner has preferred the present writ petition to assail the order dated 8th September, 2017 passed by the Central Administrative Tribunal in OA No.1490/2015. The Tribunal has allowed the said original application of the respondent granting her liberty to exercise fresh option on behalf of her deceased husband and directed the petitioners to take action on that option as per the rules.

2. The background in which the aforesaid direction came to be issued is that the respondent's late husband had joined the Department of Telecommunication (DoT) on regular basis on 1st January, 1992 as a regular mazdoor. After he had rendered service of about 7 years with the DoT, he was deemed to have retired on 31st October, 1998 and was brought on the rolls of Mahanagar Telephone Nigam Ltd. (MTNL) on 1st November, 1998.

The respondent's husband died in harness on 5th July, 2012 while serving with the MTNL. He left behind six dependant family members. The respondent was not granted any pension on the premise that he had not rendered qualifying service either in the DoT or in the MTNL. For this purpose, the petitioner sought to place reliance on an option taken from the respondent's husband at the time of his absorption in the MTNL. Purportedly two options were given to the respondent's husband namely: (i) Pro-rata pensionary benefits; and (ii) Pensionary benefits as per Government Rules on the basis of combined services rendered in Government and MTNL.

3. The petitioner claimed that the respondent's husband had opted for pro-rata pensionary benefits and consequently his service with the DoT was not counted at the time of determination of his pensionary benefits in the MTNL. However, the respondent's husband was denied pro-rata pensionary benefits on the premise that he had not rendered qualifying service of 10 years. The Tribunal has found the action of the petitioner in calling for the option from the respondent's husband to be farcical.

4. In our view, rightly so. When the respondent's husband had not even rendered 10 years' service with the Government, there was no purpose in asking him to make an option. Really speaking, he had no option and his services with the Government (DoT) had to be counted for purpose of determination of his pensionary benefits with the MTNL. The stand taken by the petitioner is most iniquitous and deserves condemnation.

5. The Tribunal has required the petitioner to go through the formality of again asking for a fresh option from the respondent. In our view, there is no

need for the same. For that procedure to be adopted, the same exercise of any option is futile. The only option available is that the service rendered by the respondent's husband with the Government (DoT) has to be counted for determination of pensionary benefits that are admissible from the MTNL.

6. While dismissing this petition, we therefore direct that without awaiting for any further option, the petitioner should count the service rendered by the respondent's husband with the DoT for computing his other benefits with the MTNL.

7. Petition and the applications are disposed of in abovesaid terms.

VIPIN SANGHI, J.

A. K. CHAWLA, J.

NOVEMBER 16, 2018

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