

ORDER SHEET**WEST BENGAL ADMINISTRATIVE TRIBUNAL****Present-**

The Hon'ble Smt. Urmita Datta (Sen), Member (J)

& The Hon'ble Dr. Subesh Kumar Das, Member (A)

Case No OA - 1003 of 2012**Rita Majumder –Vs- The State of West Bengal & Others.**

Serial No. and Date of order. 1	Order of the Tribunal with signature 2	Office action with date and dated signature of parties when necessary 3
<p style="text-align: center;">20 04.09.2020</p>	<p>For the Applicant : Mr. M.N. Roy, Advocate.</p> <p>For the Respondents : Mr. S. Bhattacharjee, Advocate.</p> <p>The matter was heard on 05.03.2020 by the Bench comprising of Mrs. Urmita Datta (Sen), Member (J) and Mr. P. Ramesh Kumar, Member (A) and the matter was disposed of in the open court by dictating order. Though the order was signed by the Member (J), however, as in the meantime, Mr. P. Ramesh Kumar has resigned from service and the pandemic situation had started therefore, the said order could not be signed by the Administrative Member. Since the matter was dictated in the open court, this Bench now pass the same order in presence of both the parties. The same order which is enclosed here: “The instant application has been filed praying for the following reliefs :-</p> <p>a) Quashing the entire departmental proceeding No. 10 of 2002 subsequently renumbered as 68/2004 dated 10-08-2004 marked as Annexure ‘D’ to this application</p>	

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	<p>issued by the then Commandant S.A.P. 5th Battalion Durgapur which was subsequently dissolved.</p> <p>b) Quashing of the order of dismissal dated 30-11-2002 passed by the Superintendent of Police, North 24-Parganas marked as Annexure 'G' in connection with North 24-Parganas Proceeding No. 68/2004 of the husband of the applicant, admittedly a missing Constable C/3149 under North 24-Parganas since 14-05-1998 along with enquiry report dated 26-11-2004 marked as Annexure 'E' of the then Deputy Superintendent of Police North 24-Parganas.</p> <p>c) Direction for disbursement of all service benefits as consequential relief including family pension to the applicant the wife of Pradip Majumder missing Constable C/167 attached to S.A.P. 5th Battalion Durgapur since dissolved he became C/3149 under Superintendent of</p>	

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	<p>Police North 24-Parganas, who was missing since 14-05-1998 and subsequently declared dead by the competent Civil Court on 20-09-2011 in T.S. 3886 of 2008, from 15-05-1998 the date immediate the date of missing on and from 14-05-1998, as per case of Rabindra Nath Choudhury missing Constable No. C/2788 of North 24-Parganas referred to Annexure 'K' to this application.</p> <p>As per the applicant, on completion of training, her husband was posted in the S.A.P. 5th Battalion Durgapur. Subsequently, after taking leave and expiry of that, her husband joined his duty on 10-05-1998 and was allotted Panchayat Election duty on 13-05-1998. However the applicant received a Radiogram message on 20-05-1998 from Thakurpukur P.S., wherefrom she came to learn that her husband was overstaying leave and was directed to join his duty on 21-05-1998 at Durgapur (Annexure-A).</p>	

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	<p>On receiving such Radiogram, the applicant rushed to Durgapur and on quarry she came to learn that her husband was not overstaying leave but joined duty on 10-05-1998 and was allotted Panchayat Election duty at Katwa, where he joined on 13-05-1998 but since 14-05-1998, the whereabouts of her husband were not known to the authorities. Subsequently the Police Ration of her husband was stopped from September 1998 against which she made representation before the authority concerned. However vide Memo No. 54/RO dated 22-01-2001(Annexure-B), she was served with a copy of the letter dated 07-08-2000 issued by the D.I.G. (P & W) (Annexure-C) wherein subsidised Police Ration was denied on the ground that missing constable cannot be treated on duty. However inspite of several representation since 05-06-1998, the applicant did not received any information about her husband and only from the aforesaid Memos, the applicant came to learn that the authority concerned treating her husband as missing. Being aggrieved with, the applicant filed the application being OA-1523 of 2001 praying for the following reliefs :-</p>	

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	<p>a) Direction be given to the concerned Police Authority to furnish all relevant papers showing the steps taken by them in accordance with law in respect of the husband of the applicant after his joining in duty at Durgapur since May 1998 and allocation of Panchayat Election Duty to him at Katwa on 13-05-1998.</p> <p>b) Direction to release Police Ration to the applicant and her children and also schedule quantum of amount of money for the arrear period.</p> <p>During the pendency of the aforesaid application, the applicant received a copy of Charge Sheet dated 15-03-2002 (Annexure-D) issued by the Commandant S.A.P. 5th Battalion Durgapur alleging unauthorised absence of her husband since 14-05-1998. During the pendency of the said application, the applicant was surprised to receive D.O. No. 6285 dated 30-11-</p>	

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	<p>2004, whereby the husband of the applicant was dismissed from service on the allegation of unauthorised absence for the period from 14-05-1998 to 30-11-2004 (Annexure-G). The said order of dismissal was served along with the letter dated 26-11-2004 (Annexure-F) and the copy of the Enquiry Report dated 21-10-2004 (Annexure-E).</p> <p>Being aggrieved with the impugned order of dismissal, the applicant preferred one OA No. 2620 of 2005 on 30-11-2005 as he is neither dead nor has been declared dead in the eye of law by any competent Civil Court. On the contrary, the respondents had raised the preliminary objection with regard to the locus standi of the applicant being wife of the missing constable. On the aforesaid ground, the said OA was disposed of on 02-02-2006 (Annexure-H). In the meantime, the erstwhile OA No. 1523 of 2001 had come for hearing on 23-11-2007, the same was also not entertained on the ground of maintainability of the application.</p> <p>In view of the aforesaid orders, the</p>	

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	<p>applicant filed a declaratory suit being T.S. No. 3086 of 2008 before the Learned Civil Judge (Junior Division) 5th Court Alipore, with a prayer of declaring her husband as legally dead. The respondents filed written statement wherein it was admitted that the applicant was found absent from camp at Katwa from 14-05-1998. However the Learned Civil Judge (Junior Division) 5th Court Alipore vide his judgment dated 20-09-2011 (Annexure-I) also declared that Shri Pradip Majumder be presumed to be dead in the eye of law as per Section 108 of the Evidence Act. Thereafter the applicant filed one representation through his Learned Advocate on 12-12-2011 praying for disbursement of all service benefits of her husband (Annexure-J). However no retrial benefit have been received by them.</p> <p>Being aggrieved with, the applicant preferred this instant application challenging the dismissal order as well as praying for disbursement of all service benefits as a consequential relief. It has been further submitted by the Counsel for the applicant that</p>	

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	<p>the said Title Appeal No. 153 of 2012 was finally disposed of by judgment dated 28-05-2018 affirming the Judgment and Decree dated 20-09-2011 passed by the Learned Civil Judge (Junior Division), 5th Court Alipore in T.S. No. 3086 of 2008.</p> <p>The respondents have filed their reply wherein they have stated that the husband of the applicant i.e. Shri Pradip Majumder joined his duty on 10-05-1998 after availing 30 days Earned Leave and he was directed along with other force and officers to report Sub-Divisional Police Officer Camp at Katwa Stadium under P.S. Katwa, Burdwan for Panchayat Election Duty in 1998 vide said Armed Police, 5th Battalion, Durgapur Panchayat Election 1998, T.A.C.C. No. 1 of 1998 dated 13-05-1998. Though all the forces and officers reported to S.D.P.O. Katwa Camp at Katwa Stadium on 14-05-1998, however the husband of the applicant leave the camp without any permission from the competent authority and remain absent unauthorizedly. Thereafter departmental proceeding was drawn up against the said constable on 15-03-2002 on</p>	

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	<p>the charge of gross indiscipline and unauthorized absence. As the charged constable did not submit his written statement or attended the enquiry thus final order was passed dismissing the charge constable. As per the respondent, as the State respondent has preferred one second appeal before the Hon'ble High Court being SAT 53/19 and since the said appeal is pending before the Hon'ble High Court, the applicant is not entitled to receive any retrial benefit of a dismissed employee. The applicant has filed his rejoinder denying the contentions of the respondents.</p> <p>As per the applicant, the respondents have admitted that the applicant was missing since 14-05-1998, however no action was taken on the part of the respondents whereabouts of the constable. On the contrary, they had issued charge sheet and subsequently dismissed the husband of the applicant. Even the respondents have also admitted that the said fact of missing of the husband of the applicant in both the 2(two) original applications as well as in the said title suit. Therefore when the Civil Court as well as</p>	

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	<p>the Appellate Court has affirmed the declaration of the death of the said employee, the respondents cannot deny the benefit of service to the applicant as till date even the appeal in the High Court has not been admitted nor any stay has been granted.</p> <p>We have heard the parties and perused the records. It is noted that admittedly the applicant was missing since 14-05-1998 as would be evident from the Memo dated 22-01-2001 issued by the Commandant S.A.P. 5th Battalion Durgapur with regard to the family ration which is as follows :-</p> <p>“Please find enclosed herewith a copy of the letter of DIG (P & W) in regard to the entitlement of family ration in respect of missing constable/167 Pradip Majumder”.</p> <p>Further the Deputy Inspector General of Police (P & W) vide his Memo No. 1566 Wel/Rat-65/98 had rejected the subsidies police ration to the family of the said constable by following order :-</p> <p>“A missing constable cannot be</p>	

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	<p>treated as on duty. Therefore, he is not entitled to subsidise Police Ration. Under normal circumstances, his family also is not entitled to Police Ration”.</p> <p>From the above, it is evident that the respondents were very much aware of the missing of the said constable even then they had issued charge sheet dated 15-03-2002 against the said constable when the applicant had approached this Tribunal to know his whereabouts as well as praying for police ration in OA No. 1523 of 2001. Thereafter only, after a long lapse of 4(four) years, they have issued the charge sheet against the said constable even in the aforesaid OA, the respondents had raised preliminary objection with regard to the maintainability of the said application on the ground that the present applicant i.e. the wife of the said constable has no locus standi to come up with this application as her husband was neither dead nor has been declared dead in the eye of law. Such averment is evident from the order dated 02-02-2006 passed by this Tribunal</p>	

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	<p>in OA No. 2620 of 2005, which is as follows :-</p> <p>“In the instant matter, the Petitioner before us, who is wife of a Police Constable, has come up before us with the prayer for quashing the departmental proceeding as also the dismissal order passed against her husband by the concerned Department, alleging that her husband is missing and such fact has also been admitted by the concerned Department. As such this prayer has been made by her before us.</p> <p>Ld. Adv. Appearing for the Respondent, however, raises a technical question alleging that the lady, who is a Petitioner before this Tribunal, has no locus standi to come up with this application mainly for a reason that her husband is neither dead, nor has been declared dead in the eye of Law by any competent Civil Court.</p> <p>In such situation, the application</p>	

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	<p>filed by the lady before us, being wife of a government employee, cannot be entertained by this Tribunal.</p> <p>Now, having heard the parties before us and specially, in view of the technical objection raised on behalf of the Respondent, we feel that the Petitioner, being the wife of a government employee, has no locus standi to come up before us with this application in the given situation.</p> <p>In this situation, we are not admitting this application and the same is treated as disposed of accordingly”.</p> <p>Even the OA No. 1523 of 2001 was also not entertained on the same ground. Therefore the applicant was obviously forced to move the Civil Court for declaration of death of her husband as no tress was found by either side about the missing constable. Thereafter the Civil Court in a detailed order, considering both the aspects of disciplinary proceeding as well as missing the said constable, had declared him as dead with a reasoned and detailed order and had also declared that the</p>	

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	<p>legal heirs of the said constable are entitled to get the service benefit vide his Judgment dated 20-09-2011, which was further affirmed by the Appellate Court vide Judgment dated 28-05-2018. It has been further observed that though the respondents have preferred a second appeal before the Hon'ble High Court, which has even not being admitted by the Hon'ble High Court till date but nowhere the respondents are claiming that the said constable is alive. Therefore the competent Civil Court has declared him as dead since 14-05-1998. Therefore in our considered opinion that when the respondents had themselves admitted that the applicant was missing since 14-05-1998, they cannot issue charge sheet against such missing person that too after 4(four) years from the date of his missing as well as after filing the case before this Tribunal praying for a direction to know the whereabouts of the said missing constable and to grant subsidised pension to his family. Further it is very surprising that a constable who was in election duty and was absent or missing during that period, no GD or FIR had</p>	

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A.K.P.	<p>been filed neither by the Election Commission nor by the authorities. Therefore after a period of 4(four) years and denying subsidised pension on the ground of missing constable as well as taking objection on the said ground before this Tribunal repeatedly in 2(two) Original Application does not substantiate the claim of the respondents.</p> <p>Accordingly, we have no hesitation to quash the entire departmental proceeding No. 10 of 2002, which was subsequently renumbered as 68/2004 dated 10-08-2004 as well as dismissal order dated 30-11-2002. We also direct the respondents to disburse all service benefit as a consequential relief including the family pension to the wife of the applicant. The entire procedure should be completed with a period of 8(Eight) weeks from the date of receipt of this order.</p> <p>Accordingly, the OA is disposed of with the above observations and direction with no order as to cost.</p> <p>SUBESH KUMAR DAS URMITA DATTA (SEN) MEMBER (A) MEMBER (J)</p>	

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