



2025:CGHC:48464-DB

**AFR**

**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**WPS No. 10215 of 2019**

1. Steel Authority of India Limited, Through Managing Director (now C.E.O.), Bhilai Steel Plant, Ispat Bhawan, Bhilai Nagar, Tahsil & District Durg, Chhattisgarh
2. General Manager (Mines), I.O.C. Rajhara Mines, Bhilai Steel Plant, Rajhara, Tahsil & District Durg, Chhattisgarh

**... Petitioners**

**versus**

1. Vikash Kothe, S/o Late Pandurang Kothe, Aged about 49 years, Sr. Technician (Electrical) Electrical Maintenance P.No.Bo14535/147005, Rajhara, District Durg, Chhattisgarh. Through (wife) Smt. Chanda Kothe, Aged about 46 years, W/o Shri Vikash Kothe, Qr.No.51, Street 35, Sector 6, Bhilai Nagar, Tahsil & District Durg, Chhattisgarh
2. Officer Incharge, Police Station Rajhara, Rajhara, Tahsil Rajhara, District Durg, Chhattisgarh
3. A.K. Biswas, Joint Director (Medical and Health Services), Sector 9 Hospital, Bhilai Nagar, Tahsil & District Durg, Chhattisgarh

**... Respondents**

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For Petitioners : Mr. P.R. Patankar, Advocate.

For Respondent No.1 : Mr. Dhiraj Kumar Wankhede and Ms. Aishley Shrivastava, Advocates.

For Respondent No.2 : Mr. H.A.P.S. Bhatia, Panel Lawyer.

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**Division Bench: -**  
**Hon'ble Shri Sanjay K. Agrawal and**  
**Hon'ble Shri Radhakishan Agrawal, JJ.**

*{WP(S)No.10215/2019}*

**Order on Board**  
**(22/09/2025)**

**Sanjay K. Agrawal, J.**

1. The petitioners herein seek to challenge the order dated 7-1-2019 (Annexure P-1) passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting: Bilaspur in Transferred Application No.203/00011/2014, by which the application filed by respondent No.1 herein has been allowed and the order of the disciplinary authority dated 17-9-2011 removing the husband of respondent No.1 from service, has been set-aside and the petitioners herein were directed to pay all consequential benefits to respondent No.1 herein.
2. The aforesaid challenge has been made on the following factual backdrop: -
3. The husband of respondent No.1 was working on the post of Senior Technician (Electrical) at Bhilai Steel Plant (BSP), Bhilai in Rajhara Mines. He was mentally ill and went missing and remained absent from duty for a very long time. On 14-1-2010, FIR was lodged at the instance of respondent No.1 regarding missing of her husband i.e. the BSP servant. Paper publication was also made in the local news paper regarding missing of respondent No.1, on 18-2-2010. Thereafter, the Station House Officer, Police Station Rajhara informed the General Manager, BSP regarding missing of respondent No.1's husband, but ignoring the missing status of the BSP servant, BSP issued charge-sheet against the husband of respondent No.1 on 11-12-2010 and sent the same to local and

permanent addresses of the BSP servant, however, the same were returned un-served since he was missing. Notices were affixed in the notice board of BSP for hearing of the BSP servant before the enquiry committee. However, ex parte proceeding was conducted and ex parte enquiry report was submitted by the Enquiry Officer on 12-5-2011. Ultimately, the disciplinary authority of BSP, by order dated 17-9-2011, passed order directing removal of the husband of respondent No.1 from service and to vacate the company quarter within one month leading to filing of writ petition before this Court which was transferred to Central Administrative Tribunal (CAT) for hearing and disposal in accordance with law.

4. The BSP filed reply justifying the action taken against the missing BSP servant i.e. the husband of respondent No.1, but ultimately, the learned CAT allowed the transferred application and set-aside the order of removal of the husband of respondent No.1 from service holding that though the BSP was informed about the missing status of the husband of respondent No.1, yet the BSP ignoring the same sought to conduct departmental enquiry against the missing BSP servant and proceeded to serve notice to him and also to affix the same on the notice board. The CAT, by the impugned order, set-aside the order of removal of the husband of respondent No.1 i.e. the BSP servant, from service passed by the disciplinary authority and further directed the BSP to grant all the consequential benefits to respondent No.1 within a period of three months from the date of communication of the order and also not to dispossess respondent

No.1 and her family members from the company's quarter in their possession leading to filing of the instant writ petition by the petitioners herein/SAIL, BSP, Bhilai.

5. Mr. P.R. Patankar, learned counsel appearing on behalf of the petitioners herein/SAIL, BSP, would submit that though the husband of respondent No.1 was absent from duty from fairly long time, yet, respondent No.1 i.e. his wife has no locus standi to file the present writ petition in absence of declaration by the competent authority to be missing presuming him to be dead. Therefore, the learned CAT is absolutely unjustified in granting the application.
6. Mr. Dhiraj Kumar Wankhede, learned counsel appearing on behalf of respondent No.1 herein, would submit that respondent No.1 being wife of the missing BSP servant is entitled to file the subject application which has rightly been entertained by the learned CAT and as such, the wife of the missing BSP servant has locus standi to file application before the CAT and declaration by civil court is not necessary as there is no dispute that he was not heard of for more than seven years. He would rely upon the decision of the Supreme Court in the matter of **Ramrati Kuer v. Dwarika Prasad Singh and others**<sup>1</sup> to buttress his submission.
7. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

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<sup>1</sup> AIR 1967 SC 1134

8. The question for consideration would be, whether declaration by civil court would be necessary in light of Section 108 of the Indian Evidence Act, 1872?

9. Section 108 of the Evidence Act states 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.”

10. Section 108 of the Evidence Act provides for presumption of a person being dead on fulfillment of conditions, as stipulated therein. The obvious inference to be drawn based on the provisions as above, is about the presumption that the man was dead at the time when the question arose subject to a period of seven years absence and being unheard of having elapsed before that time.

11. The Supreme Court in **Ramrati Kuer** (supra) has held that the proposition that person not heard of for seven years is to be presumed as dead, and observed as under: -

“15. ... As Ramruch had not been heard of for more than seven years after he disappeared from the village, he must be presumed to be dead and the plaintiffs-respondents would in the circumstances be entitled to the property of which he was the last male-holder. The appeal, therefore, must fail except with respect to one item of property to which we shall refer just now.”

12. The declaration under Section 34 of the Specific Relief Act, 1963 that a person is presumed to be dead in light of Section 108 of the Evidence Act is necessary where the facts are certain or undisputed

and in the instant case, there is no dispute that the husband of respondent No.1 is unheard of for more than seven years and therefore, the declaration under Section 34 of the Specific Relief Act would not be necessary. In this regard, the recent decision of the Calcutta High Court in the matter of **Tara Devi and another v. Bank of India and others**<sup>2</sup> may noticed herein in which it has been held as under: -

“**26.** It is also a settled law that to determination of the point of time of the death of the person, would be a matter of evidence and not of presumption, subject to proof of it depending upon the factual or circumstantial factors. It is not to be mentioned separately that the question for determination as above would arise only when the particular fact are uncertain or disputed, which is not a case here. Therefore, the glaring necessity of a decree of a Civil Court to be available may not be felt by the authorities in this case to consider petitioner's prayer as above.

**27.** This Court finds that the Bank should not have any difficulty in presumption of death of the person when admittedly for more than seven years, no whereabouts of the said missing person could be traced. And in that event, there should not be any impediment for the respondent Bank to allow a wider connotation to the scheme as mentioned above to consider the present writ petitioners to be beneficiaries under the said scheme.”

13. In view of the aforesaid position and in light of the decision of the Supreme Court in **Ramrati Kuer** (supra), since the husband of respondent No.1 has not been heard of for more than seven years, he is presumed to be dead.

14. Now, the question of locus standi of respondent No.1 to file application before the CAT would arise.

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2 2024 SCC OnLine Cal 5549

15. Admittedly, respondent No.1 is the wife of the missing BSP servant and she is dependent upon the BSP servant for her livelihood and for her family. Apparently, institution of departmental enquiry and consequent termination will definitely effect the livelihood of the wife of the BSP servant. Furthermore, as held above, her husband was missing and presumed to be dead by virtue of Section 108 of the Evidence Act. It is settled law that the master and servant relationship cannot be cut-off quite arbitrarily and the proceedings can be finalised only after serving charge-sheet, if at all there is any instance of misconduct, and after affording an opportunity of hearing to prove the innocence. As such, the argument that respondent No.1 has no locus standi to file application before the CAT questioning the termination of her husband from service, stands rejected.
16. Now, the question would be, whether the learned CAT is justified in granting consequential benefits to respondent No.1 – wife of the missing/deceased BSP servant?
17. In this regard, the Office Memorandum under the Subject “Provision for extending benefits under CCS (Pension) Rules or CCS (EOP) Rules to family of missing Central Government employees covered under National Pension System (NPS)-reg.” issued by the Government of India, Ministry of Personnel, Public Grievances and Pension, Department of Pension and Pensioners’ Welfare, dated 28-4-2022 may be noticed in which, in paragraph 4, it has been stated as under: -

{WP(S)No.10215/2019}

“4. If a Government servant covered by the CCS (Pension) Rules, 1972 goes missing, the benefits of arrears of salary, family pension, retirement gratuity, leave encashment, etc. are paid to the families of the missing employees in accordance with the instructions issued vide this Department's OM No. 1/17/2011-P&PW(E) dated 25.06.2013. References have been received from Ministries / Departments for extending the provisions of the OM dated 25.06.2013 to Government servants covered under NPS, who go missing during service and whose whereabouts are not known.”

18. This Union of India's Office Memorandum dated 28-4-2022 is also applicable to BSP which clearly states that if a Government servant covered by the CCS (Pension) Rules, 1972 goes missing, the benefits of arrears of salary, family pension, retirement gratuity, leave encashment, etc. are paid to the families of the missing employees in accordance with the instructions vide Office Memorandum dated 25-6-2013.

19. In that view of the matter, the learned CAT has not committed any legal error in directing payment of consequential benefits to respondent No.1. Since the husband of respondent No.1 is missing since 14-1-2010, payment of consequential service benefits to respondent No.1 be finalised expeditiously.

20. We do not find any merit in this writ petition, it deserves to be and is accordingly dismissed with the above direction to the petitioners to finalise the service benefits of the husband of respondent No.1.

No order as to cost(s).

Sd/-  
(Sanjay K. Agrawal)  
**Judge**

Sd/-  
(Radhakishan Agrawal)  
**Judge**