

10

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.2194 of 2002

New Delhi, this the 29th day of April, 2003

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Smt. Banarasi W/o Late Shri Bhagwan Singh
R/o Vill. & P.O. Mandhou, Teh - Neem Ka Thana
Distt. Sikar, (Rajasthan).

.....Applicant
(By Advocate : Shri U. Srivastava)

Versus

Govt. of NCT of Delhi, through

1. The Chief Secretary,
Govt. of NCT of Delhi,
5, Sham Nath Marg, New Delhi.
2. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.
3. The Deputy Commissioner of Police,
Police Control Room,
Delhi.

....Respondents

(By Advocate : Shri Ajay Gupta)

ORDER (ORAL)

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN :

Applicant - Smt. Banarasi is a wife of Shri Bhagwan Singh. The said Shri Bhagwan Singh was a Constable in a Delhi Police.

2. By virtue of the present application, the wife of Shri Bhagwan Singh seeks quashing of the orders passed by the disciplinary authority dated 26.5.1998 and the appellate authority dated 14.9.1999 with consequential benefits, and to declare that she is entitled to the pensionary benefits.

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3. Some of the facts can be delineated to appreciate the controversy raised before us. The husband of the applicant was posted in New Delhi Zone/PCR. On 24.7.1996, he was detailed for duty at PCR Van V-25 from 8.00 AM to 8.00 PM. It transpired that he had not reported for duty and was marked absent. Absentee notice was sent at his residential address directing him to resume duty. It was followed by a Registered notice, which was received back undelivered with the report that the addressee was not available at the said address. When the absentee notice was sent through special messenger, applicant's husband was not found at the said place and the mother of the applicant's husband refused to receive the same. Thereafter, another notice was sent and this time the applicant's husband again was not found present. His brother received the notice and assured that he will inform the husband of the applicant. In view of the continuous absence of the applicant's husband, disciplinary proceedings had been initiated against him.

4. During the course of the disciplinary proceedings, notice was again issued to the husband of the applicant by registered post, but it was received back with a report that the addressee was not available at the said address. Once again, on 16.1.1997, Constable Hemraj was also sent at the home address of the applicant's husband for service of the summary of allegations and it was delivered to the mother of the applicant's husband. She had informed

18 Ag

that the applicant's husband was residing at Ajmer. In this backdrop, disciplinary proceedings had been initiated. The findings of the enquiry officer were adverse to the applicant's husband because he had continuously remained absent from duty. It was held that he was willfully and unauthorisedly absented himself from duty. Agreeing with the findings of the enquiry officer, the disciplinary authority (Additional Deputy Commissioner of Police) dismissed the applicant's husband from service. The applicant preferred an appeal which was dismissed by the appellate authority. Thereafter, the applicant had preferred OA No.2471/2000 seeking the penitentiary benefits. This OA came up before the Bench of this Tribunal and was disposed of on 10.8.2001 giving liberty to the applicant as under:-

"4. In the result, although the applicant has failed to make any claim for family pension in absence of challenge to the dismissal order which cannot be adjudicated by a Single Bench. The applicant is accorded liberty to challenge the same before the appropriate Bench in accordance with rules. However, the respondents are directed, in case applicant makes a representation under Rule 41 of the Pension Rules, to consider the same within a period of four weeks from the date of receipt of a copy of this order. The respondents shall dispose of the same keeping in view of the indigent conditions of the family and the circumstances of the family and the circumstances within 8 weeks thereafter. The OA is disposed of accordingly."

It is thereafter the present application has been preferred.

5. Learned counsel for applicant contended that the husband of the applicant was not traceable. The

MS Ag

disciplinary proceedings against the applicant's husband had been taken ex parte without effecting due service upon him. Therefore, the aforesaid orders deserve to be set aside. Learned counsel relied upon the decision of the Supreme Court in the case of Union of India and others Vs. Dinanath Shantaram Karekar and others, JT 1998 (6) SC 1 to contend that procedure adopted in getting service effected on the husband of the applicant was not correct.

6. We have carefully considered the said submissions. So far as the decision rendered by the Supreme Court in the case of Dinanath Shantaram Karekar (supra) is concerned, that was confined to the fact that there was a single effort made to serve to the concerned person. Can the said principle be applicable in the facts of the present case? The answer would be in the negative. Reasons are obvious. Herein number of notices had been served to the husband of the applicant even before the disciplinary proceedings had been started. Attempts were made through special messenger to direct the applicant's husband to report for duty but without avail. He could not be traced when the disciplinary proceedings started. Once again, it was not a case of a single notice. In fact, the applicant, who is the wife of the said Constable, even is not in a position to state the whereabouts of the said Constable. Once it is so, to insist that personal service has to be effected on the husband of the applicant would be a traversing of fact and justice. The decision in the case of

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Dinanath Shantaram Karekar (supra), therefore, will not come to the rescue of the applicant in the peculiar fact of the present case. When a person is not traceable, then the necessity of personal service to be effected is an exercise in futile.

7. Confronted with such a situation, the applicant contended that in any case she should be awarded the pensionary benefits. The said plea had already been raised in her earlier Original Application and the same had been dismissed. The only point which we would like to add is that once the husband of the applicant has been dismissed due to his unauthorised absence which fact is not being disputed, the question of grant of pensionary benefits will not arise. No other arguments have been raised.

8. Resultently, OA must fail and is dismissed.

(GOVINDAN S. TAMPI)
MEMBER (A)

/ravi/


(V.S. AGGARWAL)
CHAIRMAN