

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

O.A. NO. 531 of 1987

Smt. Laxmi Devi

...

Applicant.

Vs.

Union of India & others

...

Respondents.

Hon. Justice K.Nath - V.C.

This application under section 19 of the Administrative Tribunals Act 1985 is for a declaration that the applicant's husband Sri Hari Dutt Jha is dead, to set aside the order of dismissal of the husband from service, and to award benefits of gratuity, pension and insurance amount with effect from 6.7.77 when Hari Dutt Jha disappeared.

2. No one is present on behalf of the applicant.

I have gone through the record with the case, with the aid of Sri K.C. Sinha, learned counsel for the opposite parties.

3. The facts are not in dispute.

4. Sri Hari Dutt Jha was a Sorting Assistant at the R.M.S. at Mathura Junction under Jhansi Division when he absented from 6.7.77. The Supdt. RMS-X, a class II Officer at Jhansi instituted disciplinary inquiry proceedings and made a charge-sheet dated 22.10.77 against Hari Dutt Jha for un-authorised absence under section 14 of CCS (CCA) Rules 1965. He appointed B.S. Srivastava, ASRMS at Agra Fort to be the Inquiry Officer. The chargesheet was despatched by registered post on 25.10.77 to Hari Dutt Jha, but was return by the postal authorities that Hari Dutt Jha left without address.

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5. Inquiry was conducted in the absence of Hari Dutt Jha and on the basis of the evidence produced by the department, Hari Dutt Jha was held to have been absent unauthorisedly and the charge was held proved "beyond shadow of doubt".

6. When the matter was taken for awarding punishment, it was found that the Supdt. RMS-X, Jhansi was not competent to award a major penalty under Rule 14. The Senior Supdt. of Post Offices Sri O.P. Gupta was therefore appointed adhoc disciplinary authority by an order dated 16.12.79. Sri O.P. Gupta after examining the inquiry record ^{husband,} upheld the finding against the applicant's ^{husband,} and found the charge proved, and on 1.1.80 ~~passed~~ ^{1/} passed order of dismissal of Hari Dutt Jha from service. The memo containing the order of dismissal was sent to Hari Dutt Jha by registered post on his official address, namely House No. 377, Shiv Shanker Gali, Dholipia, Mathura. So far as the department is concerned, Hari Dutt Jha was considered to have been dismissed from service with effect from 1.1.80.

7. The applicant is the widow of Hari Dutt Jha. On 22.4.85, she sent an application to the Supdt. RMS-X Jhansi stating that her husband was dead and praying that gratuity and pension as might have been due to her husband, may be paid to her. Since nothing was heard, she made an application dated 2.7.85 Annexure A-1 to the Post Master Genral, U.P., Lucknow reiterating the making of her application dated 22.4.85, and claiming to be paid the gratuity, pension and other retiral or death benefits ^{which could accrue} to her husband or to her. She further claimed that her husband received no information of the disciplinary proceedings or of the charge and that the dismissal order without intimation to her husband was illegal.

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8. On 12.12.85, the Supdt. RMS-X Division, Jhansi wrote to the P.M.G. with reference to both the letters dated 22.4.85 and 2.7.85 of the applicant, and reported that there was no proof that Hari Dutt Jha had died. It was reported that after the holding of an inquiry, as was possible, Hari Dutt Jha had been dismissed by order dated 9.1.80.

9. The applicant has claimed that Hari Dutt Jha is dead. She has not furnished any proof of the death of Hari Dutt Jha. The only presumption which can be drawn under the Evidence Act is that Hari Dutt Jha, who had not been heard of for over 7 years by the applicant who, being wife should have normally heard about him, is dead; but there is no presumption about the date or period of time when Hari Dutt Jha may have died. This application was filed on 12.6.87. The only presumption could be that on 12.6.87 Hari Dutt Jha was dead. The fact whether or not Hari Dutt Jha had died on 6.7.77 or at any other time prior to 12.6.87 could only be proved by legal evidence. There is no evidence whatsoever on the record of the case to show that Hari Dutt Jha had died on any particular date. The presumption on the contrary is that subject to the presumption under section 108 of the Evidence Act, he should have been alive. It is not possible to hold therefore that Hari Dutt Jha or the applicant was entitled to any retiral or post death benefits on or after 6.7.77.

10. In the matter of holding of the inquiry proceedings against Hari Dutt Jha, the significant feature is that the address on which the opposite party claimed the charge sheet and dismissal order to have been sent to Hari Dutt Jha by registered post was the official address, and

was the same which is set out by the applicant herself in her application dated 2.7.85 Annexure-1. In other words, the notice under dismissal order had been despatched by registered post ~~on~~ on a correct address. The presumption is that it was delivered at that address.

11. It is the own case of the applicant that Hari Dutt Jha had disappeared after 6.7.77. There is no error therefore in the department charging him for getting absent unauthoriseably; and unless it shown that Hari Dutt Jha had died at any time before the final order of dismissal dated 1.1.80, the order of dismissal cannot be said to be void on the ground of having been made against a dead person.

12. It may be mentioned that although the Supdt. RMS-X, Jhansi Division did not have the power of imposing a major penalty as a result of disciplinary inquiry, because he was not the appointing authority of Hari Dutt Jha, nevertheless he ~~was~~ ^{was} also competent to impose a minor penalty and, therefore, was also competent under Rule 13 (2) of the CCS (CCA) Rules to initiate disciplinary proceedings. There is no infirmity in the result of the disciplinary proceedings, namely the dismissal of Hari Dutt Jha from service.

13. In view of the fact, that the dismissal of Hari Dutt Jha from service cannot be held to be illegal, he could not be said to have been entitled to any pensionary benefit. He did not "retire", and therefore, there is no question of any pensionary benefit. The result is that the applicant is not entitled to any relief. The application is dismissed.

Mr-
Vice-Chairman

August 10th, 1989.