

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,  
JAIPUR

Date of order: 22.11.2004

OA No.340/2003

Smt. Gyana Devi w/o late Shri Chhaju Ram Meena, aged about 40 years, r/o Village Khorl Dhani Kotwaloani Post Banskho, Tehsil Bassi, District Jaipur.

.. Applicant

Versus

1. Union of India through its Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Commissioner of Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, Jaipur 302005.
3. Additional Commissioner (Personnel & Vigilance) Office of Commissioner of Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, Jaipur-302 005.

.. Respondents

Mr. C.B.Sharma, counsel for the applicant.

Mr. Gaurav Jain, counsel for respondents

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

ORDER

Per Mr. M.L.Chauhan

The applicant who is widow of late Shri Chhaju Ram Meena, has filed this OA for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to extend family pension and other benefits.

*lwl*

with effect from 11.8.2000 by quashing dismissal order dated 17.7.2000 with all consequential benefits including interest at market rate on delayed payment.

- (ii) That the respondents be further directed to entertain the appeal filed by the applicant and consider the same by quashing letter dated 24.4.2003 (Annexure-A/7)
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Facts of the case are that while working as Halwai (Canteen) in the scale of Rs. 260-400 the husband of the applicant was proceeded departmentally and the departmental proceedings culminated into dismissal of husband of the applicant from service. The order of dismissal was passed on 17.7.2000. Unfortunately, husband of the applicant died on 11.8.2000. It is case of the applicant that she was not aware about the dismissal of the services of her husband till 2.3.2001 when communication dated 2.3.2002 was received to the effect that benefit of appointment on compassionate grounds cannot be extended as her husband has been dismissed from service vide order dated 17.7.2004. It is further alleged that the applicant on the advise preferred an appeal before the respondent No.2 and respondent No.3 vide letter dated 24.4.2003 informed the applicant that appeal under Rule 23 of the CCS (CCA) Rules, 1965 can be preferred only by a Government servant (including a person who has ceased to be in government service) and that too, within the prescribed time limit, which means legal heirs cannot prefer appeal. Copy of

62

the letter dated 24.4.2003 has been placed on record as Ann.A7. The applicant has prayed for quashing of this letter.

3. The respondents have filed reply. In the reply, it has been stated that late Shri Chhaju Ram Meena was the only Halwai in the Canteen and his regular attendance for the job was required, but he used to remain absent from duty either authorisedly or unauthorisedly since January, 1993. During <sup>period between</sup> January, 93 and May, 98 he remained on leave for 845 days authorisedly or unauthorisedly which hampered the smooth functioning of departmental canteen. Hence, he had also been warned from time to time not to repeat such kind of action but he did not bother to improve his behaviour and proceeded for another span of unauthorised absence from 30.11.98 to 14.3.99 without applying any kind of leave. Accordingly, regular disciplinary proceedings had to be initiated against the deceased employee as per provisions of CCS (CCA) Rules, 1965. The chargesheet dated 9.7.99 issued to him had been duly received by him on 13.07.99 but he did not submit his reply to the charge sheet till 8.11.99. An Inquiry Officer was appointed on 9.11.99 to further inquire into the matter. The Inquiry officer had issued letter dated 17.12.99, 4.1.2000 and 14.2.2000 for his presence before the Inquiry Officer for hearing to be held on 24.11.99, 11.1.2000 and 23.2.2000 respectively, but he did not come forward on any date to cooperate. Then, he appeared before the Inquiry Officer on next dated 29.3.2000 and on being read over the charges and asked to submit his defence, he requested to grant him 2-3 days time. Hence, the next date of hearing was fixed on 31.3.2000 but again he failed to appear before the Inquiry Officer on the stipulated date i.e. 31.3.2000 nor he submitted his defence reply. Then the intimation for next date of

49

hearing on 19.04.2000 was sent to him vide Inquiry Officer's letter dated 13.4.2000 but again failed to appear. Hence, the Inquiry Officer had to decide to conduct the inquiry on the basis of the fact and records available. On completion of the inquiry proceedings the  PO submitted his brief dated 15.5.2000 which was also sent to late Shri Chhaju Ram Meena and it was requested to submit his representation on the same. On non-submission of his defence reply to PO's brief, the Inquiry Officer submitted his inquiry report dated 22.6.2000. The Inquiry Officer's report was forwarded vide show-cause notice dated 27.6.2000. When no reply to show-cause notice was received till 7.7.2000, the penalty of dismissal from service was imposed on the applicant's husband vide order dated 10.7.2000. Thus, the inquiry was held in accordance with the CCS (CCA) Rules, 1965.

4. The applicant has filed rejoinder. In the rejoinder, it has been specifically stated that the order of dismissal from service passed on 17.7.2000 was never served on the late husband of the applicant till death i.e. 11.8.2000 and as per provisions of Rule 17 and 30 of CCS (CCA) Rules, 1965 order shall be served in person on Government servant or through registered post. The respondents nowhere proved that dismissal order was served on the late husband of the applicant. In view of this position, dismissal order passed by the respondents is not sustainable in the eye of law.

5. In order to meet this contention raised by the applicant in the rejoinder, the respondents were directed to file additional affidavit. The respondents have filed additional affidavit, in which it has been stated that the chargesheet was issued to the applicant's husband on 9.7.99

ll

and the same was served on late Shri Chhaju Ram Meena on 13.7.1999. The husband of the applicant appeared before the Inquiry Officer on 29.2.2000. The Inquiry Officer concluded inquiry on 22.6.2000 ex-parte and sent his report to Shri Chhaju Ram along with a notice to show cause dated 27.6.2000 proposing penalty under CCS (CCA) Rules and the show-cause notice was received by the wife of late Shri Chhaju Ram on 29.6.2000, who is applicant in the present OA. However, neither Shri Chhaju Ram appeared nor any reply was filed to the show-cause notice. It is further stated in the affidavit that punishment of dismissal from service was awarded to late Shri Chhaju Ram vide order dated 17.7.2000. The punishment order was sent to Shri Chhaju Ram through registered AD post. As per report made by the postal department on the envelopes, it reveals that postal authorities made efforts to deliver the same to Shri Chhaju Ram on 19.7.2000, 20.7.2000, 21.7.2000, 24.7.2000 and 28.7.2000 at the given address. Photocopy of the same has been enclosed with the additional reply and marked as Ann.R1. It is further stated that the punishment order dated 17.7.2000 was pasted on the notice board of the department on 17.7.2000 itself vide dispatch No. 266-273 dated 17.7.2000 and a copy of the same has been annexed as Ann.R2. Thus, according to the respondents, there is no violation of the rules and it was not necessary to serve the order of dismissal from service personally on the husband of the applicant.

6. We have heard the learned counsel for the parties and gone through the material placed on record.

6.1 The facts as stated in the additional affidavit have not been controverted by the applicant. The only argument which has been advanced by the learned counsel for the applicant is that there is non-compliance of Rule 17 and 30 c

le

the CCS (CCA) Rules, 1965, inasmuch as copy of the dismissal order was not served in person on the deceased husband of the applicant, as such the said order is no order in the eyes of law and the applicant is entitled to family pension on accounts of her deceased husband.

6.2 We have given due consideration to the submissions made by the learned counsel for the applicant, but we are not inclined to accept the same. There is no requirement under the rules that service of the order should be personally effected on the Government servant. A communication of the order itself is sufficient proof that the order has been served upon the Government servant. At this stage, it will be useful to quote Rule 17 and 30 of the CCS (CCA) Rules, 1965 on which emphasis has also been placed by the applicant which is in the following terms:-

"17- COMMUNICATION OF ORDERS

Orders made by the disciplinary authority shall be communicated to the government servant who shall also be supplied with a copy of the report of the inquiry, if any, by the disciplinary authority and a copy of its findings on each article of charges or where the disciplinary authority is not the inquiry authority, a copy of the report of the inquiry authority and a statement of the findings of disciplinary authorities together with brief reasons for its disagreement, if any, with the findings of the inquiry authority unless they have already been supplied to him and also a copy of the advice, if any, given by the commission, and where the disciplinary authority has not accepted the advice of the commission, a brief statement of reasons for such non acceptance.

llg

30- SERVICE OF ORDERS, NOTICES etc.

Every order, notice and other process made or issued under these rules shall be served in person on the Government servant concerned or communicated to him by Registered Post."

6.3 From the conjoint reading of Rule 17 as well as Rule 30, which has been reproduced hereinabove, the requirement is that the order made by the disciplinary authority shall be communicated to the Government servant who shall also be supplied copy of the report of the inquiry and such order should be served in person on the Government servant concerned or it can be communicated to him by Registered Post. The respondents have placed sufficient material on record that the order of dismissal from service was communicated to the husband of the applicant by Registered Post, not only that, a copy of the same was also pasted on the notice board. Thus, there is a sufficient compliance of the aforesaid rule and the action of the respondents cannot be faulted on the ground that the copy of the dismissal order has not been served personally on the husband of the applicant, which according to us, is not mandatory requirement of the rule. Copy of the order of dismissal was communicated to the applicant by Registered AD post is sufficient compliance of the rule. We have seen copies of the Registered AD whereby efforts were made by the postal authorities to deliver the same to the husband of the applicant on 19.7.2000, 20.7.2000, 21.7.2000, 24.7.2000 and 28.7.2000. The address which has been notified is the same which is shown by the applicant in the present OA. On the envelop, it has been recorded by the postal authority that on 20.7.2000 the concerned person 'NF' (not found) and thereafter

62

on 24.7.2000 it has been recorded that intimation has been given to the family members. From this, it can be concluded that the husband of the applicant was evading service.

6.4 Be that as it may, since the requirement of the rule is that the order of dismissal has to be communicated to the Government servant by Registered AD, according to us, the respondents have complied the requirement of the rule. As such the order of dismissal cannot be ignored solely on the ground that it was not served in person on the husband of the applicant. At this stage, it may be useful to refer to the Constitutional Bench decision of the Hon'ble Apex Court in the case of State of Punjab vs. Amar Singh Harik, AIR 1966 SC 1313, whereby it has been held that the order of dismissal shall be effective after it is communicated to the officer concerned or is otherwise published. In the case before the Apex Court, the respondent therein was dismissed from service by an order purported to have been passed on 3rd June, 49. This order was communicated to the respondent on 2/3 January, 1953. The respondent filed a suit against the State of Punjab alleging that the impugned order whereby he was dismissed from service was invalid and illegal. The order of dismissal from service was passed pursuant to the findings given by the enquiry committee whereby the respondent was held guilty of the charges levelled against him and vide communication dated 2/3 May, 1949 it was further suggested that he may exercise his option to resign. It was however added that even if he resigned, it should not be taken to imply any commitment on the part of the Government to accept the same. Pursuant to this letter, the respondent tendered his resignation on 6th May, 1949. Notwithstanding his resignation, the appellant proceeded to pass an order of dismissal against him on 3rd June, 1949. This order was purported to take effect from the

ky



date of the respondent's suspension which was 5th July, 1948. Copy of this was forwarded to those persons noted therein but no copy was sent to the respondent himself. On 29th January, 1951, the respondents made a representation to the Government of Pepsu in which he asked for a copy of the report of the Committee, a copy of the allegations on which the said report was based and a copy of the chargesheet to show cause why the respondent should not suffer the punishment as proposed by the Government before taking final action in the matter. He also prayed for a reasonable opportunity to show cause against the said punishment. In reply, the respondent was informed on 16th April, 1951 by the Papsu Government that his representation could not be considered in view of the fact that he had tendered resignation. However, it was on 28th May, 1951 that the respondent was informed that the record of the office showed that he had been dismissed from Government service w.e.f. the date of his suspension. It was under this context, the Hon'ble Apex Court has held that the order of dismissal passed against the respondent on 3rd June, 1949 could not be said to have effect until he came to know about on 28th May, 1951 i.e. when the said order was communicated to him. In the instant case, the order of dismissal was communicated to the husband of the applicant through Registered AD post and the same was also pasted on the notice board of the department on 17.7.2000. As such, the same came into effect the moment it was communicated as well as it was published in the notice board. Thus, in view of what has been stated above, the order of dismissal cannot be set-aside solely on the ground that the same has not been served in person on the late husband of the applicant. Since validity of the dismissal order is not under challenge in this case except on the limited grounds that it was not served in person on the late husband of the applicant,

18

as such the dismissal order cannot be quashed and set-aside. On the face of the order of dismissal, the applicant is not entitled to pensionary benefits so long as the order of dismissal is not quashed and set-aside in view of Rule 24 of the CCS (Pension) Rules, 1972 which stipulates that dismissal or removal of a Government servant from service or post entails forfeiture of his past service. Thus, according to us the applicant is not entitled to any relief.

6.5 The applicant has also prayed that direction may be given to the respondents to entertain the appeal filed by the applicant and consider the same by quashing letter dated 24.4.2003 (Ann.A7). This point was not specifically argued during the course of arguments, as such no finding is given on this point. However, it will be open for the applicant to raise this point by filing a substantive OA thereby annexing copy of the appeal, which the applicant has filed before the appellate authority so that it can be examined on merit whether the appeal was filed on the limited ground that the order of dismissal from service was not served in person on the husband of the applicant or the applicant has also taken additional grounds besides the one on which findings has been <sup>given</sup> by us in this order i.e. service of the order of dismissal in person on the husband of the applicant; including whether the order of the appellate authority in not entertaining the appeal, is legal.

7. With these observations, the OA is disposed of with no order as to costs.

  
(A.K. BHANDARI)

Member (A)

  
(M.L. CHAUHAN)

Member (J)