

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.2331/2014

Reserved on:06.08.2018
Pronounced on:17.08.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Geeta
W/o Ved Prakash
D/o Shyam Lal
R/o RZF-754/11, Gali No.1
Raj Nagar Part-II
Palam Colony
New Delhi – 110 045.

... Applicant

(By Advocate:Ms. Harvinder Oberoi)

VERSUS

1. North Delhi Municipal Corporation
Dr. S.P.M. Civic Centre
Minto Road
Delhi – 100002.

2. Medical Superintendent
Bara Hindu Rao Hospital
Subzi Mandi, Malka Ganj
Delhi – 110 007.

...Respondents

(By Advocate:Shri R.K.Shukla)

O R D E R

The applicant in the OA states that her husband was working as Daily Wager Ward Boy with the respondents where his services were regularised on 03.05.2002. He continued to work as a Ward Boy since May 2002. However her husband went missing w.e.f.20.08.2005 and nothing was heard from him, hence, the applicant reported to the police on 30.09.2005 that her husband was missing since 20.08.2005 after he left for duty at 20.00 hrs from his official residence Quarter No.8, Double Storey, I.D. Hospital, Delhi.

2. The applicant states that she approached the police and made all possible efforts to search her husband who was missing, but no information was received by the applicant regarding his whereabouts. More than seven years have elapsed since her husband went missing and the applicant is now living with her father at her parental home. She has three school going children and no alternative source of income. The sudden disappearance of the lone bread earner of the family has led to an extreme indigent condition. The applicant applied to the Municipal Commissioner, Delhi (present Commissioner, MCD, North Delhi) on 7th November, 2013 requesting for compassionate appointment but has not heard anything in this regard.

3. The applicant avers that she has now been communicated an order, filed alongwith the counter affidavit of the respondents, alleging that her husband was removed from service on 06.08.2010. The applicant as well as her family had no knowledge about the departmental proceedings, and/or the penalty order dated 06.08.2010 initiated against the applicant's husband. Since the impugned order was never communicated to the employee hence it is bad in law. After seven years, a missing employee is treated as dead against whom no inquiry is permissible under law. Aggrieved, the applicant has filed the OA praying for the following reliefs :-

- "8(A) to quash and set aside the impugned order dated 06.08.2010 directing the respondents to grant all relief like as family pension as well as other service consequential benefits.
- (i) Direct the respondents to consider the case of the applicant for appointment on compassionate grounds.
- (ii) Direct the respondents to decide the case of the applicant in the light of the consolidated instructions issued by DOPT on Compassionate Appointment."

4. In their reply, the respondents state that the applicant has hidden the fact that Shri Ved Prakash, while working as Ward boy was running absent from duty and three notices had been issued to him on 08.12.2005,

10.01.2006 and 10.03.2006 at his given address. These notices however came back undelivered. The address, which is recorded in the service book is House No.8 I.D. Hospital, Delhi, but since nobody was residing at the given address the notices could not be served.

5. Respondent mention that the deceased has not filled up the service nomination form, hence the names of the purported legal heirs of the deceased employee are also not on record. It was their duty to inform the respondents regarding missing of the deceased employee which was not done (by the applicant). It was as late as 07.11.2013 that a representation, for the first time, was received from the applicant requesting for compassionate appointment. When the request was processed it was found that Shri Ved Prakash has already been removed from service on 06.08.2010, and there is no provision to grant compassionate appointment to the family member of a removed employee.

6. The respondents further contend that it is even doubtful whether the applicant is the wife of the applicant Shri Ved Prakash since the deceased employee did not give any particulars in respect of his family members or his wife in his service record, in the absence of which, her claims have no legal validity.

7. During the course of hearing, the learned counsel for the applicant Ms. Harvinder Oberoi vociferously argued that it is a settled position of law that if a person goes missing after seven years he/she is presumed to be dead. The removal order dated 06.08.2010 produced by the respondents in their counter to the OA, is the result of an ex-parte inquiry. She submitted that the applicant is the legally wedded wife of Shri Ved Prakash as borne out from Annexure 4 containing birth certificates dated 19.04.2000 of the three children of the applicant and late Shri Ved Prakash. Learned counsel

informed the bench that the applicant had filed a petition for custody of her minor children in the family court of Learned Principal Judge Family Courts, Dwarka, New Delhi, which went in favour of the applicant instead of Shri Chandan Mehra, (brother of Shri Ved Prakash Mehra) leaving no room for doubt that the applicant is the wife of late Shri Ved Prakash Mehra and is thus entitled to all retiral benefits etc. The learned counsel relied upon the judgment of the Hon'ble High Court of Delhi in WP(C) No.8013/2003 in the case of Smt. Banarasi Vs. Government of NCT of Delhi & Ors., in support of her contention.

8. The learned counsel for the respondents reiterated the averments already raised in the counter affidavit.

9. In the instant case, respondents have shown extreme insensitivity towards genuine claim of the applicant after the deceased went missing in 2005. The respondents issued him a chargesheet dt. 26.11.2009, and sent it to his last known residential address through registered AD which came back undelivered due to 'incomplete address'. This was followed by a notice in the newspapers on 12.05.2010. Getting no response, the disciplinary authority concluded that it was not reasonably practicable to proceed with the enquiry and invoking Regulation 9(ii) imposed a penalty of 'Removal' upon late Shri Ved Prakash holding him guilty of the charges of gross misconduct.

10. In my view, the inquiry and the penalty order issued by the respondents in respect of the missing Ved Prakash (now assumed to be dead) is not legally tenable. The department has arrived at the conclusion only taking into account the fact that Shri Ved Prakash was missing. They did not try to ascertain whether his absence was wilful or not. If he was already dead, it cannot be construed to be an act of wilful absence from

duty. In the case of Smt. Banarsi (supra) the Hon'ble High Court held that **"16. If an employee, who is residing in accommodation provided by the employer, away from his family suddenly goes missing and is thereafter neither seen or heard of, either by his employers, colleagues or his family members, the responsibility of answering the question about his whereabouts lies, at least in the first instance, with the employer and not the family members of the missing person."** In para 19 of the same judgment it has been held that

"19. We have considered the respective submissions thoughtfully. It is not in dispute that the husband of the petitioner went missing, which was treated as absent from duty. On this basis, disciplinary proceedings were initiated against Shri Bhagwan Singh, husband of the petitioner. As his whereabouts could not be found, ex-parte inquiry was held and he was dismissed from service. Normally, on the charge of absence from duty, such an action could be taken by the respondents. To that extent there may not be any quarrel. However, in the present case, what is to be borne in mind is that it is not a case where Shri Bhagwan Singh started absenting from duty, though he was very much available. It is a case where whereabouts of Shri Bhagwan Singh right from the date of his absence could not be known to any person in this world, including his family members. In the process, more than seven years passed and therefore, presumption under Section 108 of the Indian Evidence Act to the effect that Shri Bhagwan Singh is not alive came into effect. In such a scenario, it cannot be said that absence of Shri Bhagwan Singh from service was wilful, When he is presumed dead, may be such a presumption arises after the expiry of seven years from the date he was not seen, it can reasonably be presumed that absence from service by Shri Bhagwan Singh was not intentional."

11. The claim of the petitioner for pensionary benefits and compassionate appointment has been rejected by the respondents by placing the entire responsibility upon the family of Shri Ved Prakash to prove his demise, and by taking the plea that name of the applicant does not figure in the service record of the deceased Shri Ved Prakash.

12. That the applicant is the wife of Shri Ved Prakash gets support from the birth certificates produced by the applicant as well as the order dated

21.11.2013 of the Ld. Principal Judge, Family Courts, granting her the guardianship of her children, fathered by the deceased. In view of the aforementioned documents, the genuineness of the claim of the applicant cannot be denied.

13. I accordingly allow the OA and set aside the impugned penalty order dated 06.08.2010 on the premise that Shri Ved Prakash was dead and punishment of removal from service on a deceased person is not appropriate/legally tenable. Consequently, the petitioner is, entitled to family pension and other benefits like consideration for compassionate appointment etc., as admissible under the rules.

14. The respondents are directed to process and finalise the case of the applicant for these benefits, as per law, within three months from the date of receipt of a copy of this order. No costs.

(Praveen Mahajan)
Member (A)

/uma/