

LIBRARY

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA**

OA. 350/00103/2015

Date of Order: 1.6.16.

Present

:Hon'ble Ms. Bidisha Banerjee, Judicial Member

Jaya Rani Ghosh, aged about 73 years,
Wife of late Madhab Chandra Ghosh, who
died in harness before retirement on
29.11.2005 who was a permanent employee
of Metal and Steel Factory, Ishapore under
Ministry of Defence, Government of India,
whose ticket No. Ext/132, residing at C/o.
Samir Sarkar and late Krishna Chandra
Sarkar, Shantigarh, Post Office- Shyamnagar,
Police Station- Jagatdal, District- 24 Pgs (N)
Pin- 744127.

.....Applicant.

-versus-

1. Union of India service through the Secretary
Ministry of Defence (Production), Government
of India, South Block, New Delhi- 110011.
2. The Chairman, Ordnance Factory Board,
Having his office at 10A, Shaheed Khudiram
Bose Road, Kolkata- 700001.
3. The General Manager, Metal and Steel Factory,
Ishapore, Post Office- Nawabganj, District-
North 24 parganas, Pin- 743144.
4. The Additional General Manager, Metal and
Steel Factory, Ishapore, Post Office-
Nawabganj, District- North 24 Parganas,
Pin- 743144.
5. The Senior General Manager, Metal and
Steel Factory, Ishapore, Post Office-
Nawabganj, District- North 24 Parganas,
Pin- 743144.

.....Respondents.

For the Applicant

: Mr. PC Das, Counsel

For the Respondents

: Ms. R. Basu, Counsel

ORDER

Per Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. The order under challenge in the present OA is a speaking order issued on 27.12.2014 in pursuant to the direction given in OA. 765 of 2013, whereby and whereunder the respondents, Asstt. Works Manager/Admin has denied the pension and pensionary benefits to the wife of the deceased Madhab Chandra Ghosh, the applicant, on the ground that her husband was terminated from service at Metal & Steel Factory on 19.07.1969 in terms of Rule 5(1) of CCS (Temporary Service) Rules, 1965 after his discharge from duties for 4 years from 16.09.1965 on probation extended till 15.09.1969.

3. Heard learned counsel for both the parties and perused the materials on record.

4. The respondents in the reply have emphatically declared the following:

"Shri Madhab Ch. Ghosh was terminated from service w.e.f.17.08.1969(FN) by giving one month's notice as per Sub-rule (1) of Rule 5 of the Central Civil Service (Temporary Service) Rules, 1965".

No notice or record of payment in lieu of notice was produced.

5. Despite repeated chances the respondents failed to substantiate their contention by producing the following documents:

- (i) any scrap papers demonstrating that the employee was on probation as on the date of alleged termination from service on 17.07.1969.
- (ii) the basis of extension of probation to four years when as per MHA OM dated 15.04.1959 probation period should not be extended for more than a year.
- (iii) that the termination order of 17.07.1969 was ever served upon the employee, whereas law demands that a termination/discharge in order to effective has to be served upon the employee.

In **Amar Singh Harika's** case [AIR 1966 SC 1313] the Hon'ble Apex Court rejected the contention that the dismissal order became effective as soon as it was issued, and held that mere passing of the order of dismissal would not make it effective unless it was published and communicated to the concerned Officer. That was also the view taken in an earlier decision in the case of **Bachhittar Singh v. State of Punjab** [AIR 1963 SC 395].

In **State of Punjab v. Khemi Ram** case [AIR 1970 SC 214], the question which came up before a Constitution Bench of the Hon'ble Supreme Court was, 'if it is essential that an Order of suspension shall take effect only after its actual receipt by the officer concerned or not'. The Court examined a good number of Hon'ble High Court and Hon'ble Supreme Court decisions and distinguishing the decision in **Bachhittar Singh v. State of Punjab**, which was a case of dismissal from service, where the impugned "remarks or order, whatever they be, were never communicated officially, to the appellant" held:

"It will be seen that in all decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned, the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever, of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned Government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a Government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and dispatched to him before such date."

The Court, however, observed:

"Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in the State of Punjab v. Amar Singh, contemplates."

6. In view of such failure on the part of the respondents' authorities as enumerated supra, the alleged finding of the concerned officer that the employee was terminated from service on 17.07.1969, in terms of Rule 5(1) of CCS (Temporary Service) Rules, 1965 while he was on probation could not be countenanced.

AB

7. Therefore in all fairness, the impugned speaking order is quashed and the OA is disposed of with a direction upon the respondents to re-construct the record and re-consider the case of the applicant sympathetically for the benefits, she has prayed for, untrammelled by their earlier observation that the employee was terminated while on probation in terms of CCS (Temporary Service) Rules, 1965 and pass an appropriate order be passed within 3 months.

8. No costs.


(Bidisha Banerjee)
Member (J)

pd