

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3810 of 2024

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Gauri Devi Wife of Late Rajesh Ram Resident of Mehtar Toli, P.O.- G.P.O.,
District- Patna.

... .. Petitioner/s

Versus

1. The Union Of India through the Post Master General, Bihar, G.P.O., Patna.
2. The Chief Engineer (Civil) Postal Civil Circle, 6th Floor, Meghdoot Bhawan, G.P.O. Compound, Patna- 800001.
3. The Superintending Engineer (Civil), Postal Civil Circle, 6th Floor, Meghdoot Bhawan, G.P.O. Compound, Patna- 800001
4. The Executive Engineer, Postal Civil Circle, 6th Floor, Meghdoot Bhawan, G.P.O. Compound, Patna- 800001

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sushant Praveen,
Mr.Aayush Abhishek &
Ms.Nirmala Singh, Advocates
For the Respondent/s : Mr.Dr. K.N. Singh, ASG
Mr.Alok Kumar, CGC

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 19-09-2024

Petitioner has assailed the order of the Central Administrative Tribunal, Patna Bench, Patna (in short 'CAT') dated 12th February, 2016 passed in O.A. No. 050/00804/2014. Petitioner is wife of Late Rajesh Ram. She has assailed the order of dismissal of her husband from the post of Sweeper under



Rule 19(ii) of CCS (CCA) Rules, 1965 read with Rule 3(1)(ii) & (iii) and Rule 22 (b) of the CCS (Conduct) Rules, 1964 dated 24.05.2011 and further sought for compassionate appointment against one of the Group D post.

2. Rajesh Ram-employee of the respondents declared to have been died after seven years from the date of missing. He was missing from 02.04.2007. The respondents tried to contact deceased employee by all modes including news item in Dainik Jagran on 17.07.2009, since there was no response. Resultantly, charge memo was issued on 13.08.2010 and on the same day inquiring officer and presenting officer were appointed. We have noticed that charge memo was not notified in the newspaper when the respondents could not serve a copy of the charge memo on the late employee through some mode. Employee could have been declared as dead only after seven years from the date of missing. If the date of missing is taken from 01.04.2007, it would be only after 01.04.2014 he could be declared as dead (civil death). Therefore, respondents should have resorted to publishing charge memo in the newspaper and notifying the same and it has not been resorted to. Further, on the date of issuance of charge memo, inquiring officer and presenting officer were appointed and it is not in



accordance with law for the reasons that charge memo can be issued to an employee and on receipt of his explanation or reply, if any. If the disciplinary authority is not satisfied, in that event, he is permitted to hold enquiry by himself or appointing an inquiring officer and presenting officer. Further, appointment of the inquiring officer and presenting officer dated 13.08.2010 was withdrawn on 24.05.2011 and on the same day deceased employee had been dismissed. Respondents should have resorted to procedure for holding *ex parte* enquiry as mentioned in Para (4) under Rule 14 of CCS(CCA) Rules, 1965 and it reads as under :

“(4) Procedure for holding ex parte enquiry.-Whenever an official continues to remain absent from duty or overstays leave without permission and his movements are not known, or he fails to reply to official communications, the Disciplinary Authority may initiate action under Rule 14 of the CCS(CCA) Rules, 1965. In all such cases, the Competent Authority should, by a Registered A.D. letter addressed to the official at his last known address, issue a charge-sheet in the form prescribed for the purpose and call upon the official to submit a written statement of defence within a reasonable period to be specified by that



authority. If the letter is received undelivered or if the letter having been delivered, the official does not submit a written statement of defence on or before the specified date or at a subsequent stage does not appear in person before the Inquiry Officer or otherwise, fails or refuses to comply with the provisions of CCS (CCA) Rules, the Inquiring Authority may hold an ex parte inquiry. The notices of all hearings should be served on the accused or communicated to him unless the first notice says that the inquiry will continue from day to day. In ex parte proceedings, the entire gamut of the enquiry has to be gone through. The notices to witnesses should be sent, the documentary evidences should be produced and marked, the Presenting Officer should examine the prosecution witnesses and the Inquiring Authority may put such questions to the witnesses as it thinks to be fit. The Enquiring Authority should record the reasons why he is proceeding ex parte and what steps he had taken to ask the accused official to take part in the enquiry and avail of all the opportunities available under the provisions of Rule 14 of the CCS (CCA) Rules. In such a case, the details of what has transpired in his absence, including depositions, should



be furnished to the accused officer. During the course of enquiry, the accused is free to put in appearance and participate in the enquiry. If the accused appears in the enquiry when some business has already been transacted, it is not necessary to transact the same business again unless the accused official is able to give justification to the satisfaction of the Inquiry Officer for not participating in the enquiry earlier. The Competent Authority may, thereafter, proceed to pass the final orders dismissing or removing the official from service after following the prescribed procedure.

2. The procedure outlined above can be observed in the case of a Government servant, whether permanent or temporary remaining absent without authority, etc. Such a Government servant should not be placed under suspension but when an official who is under suspension disappears and cannot be contacted at his last known address, the suspension orders should be lifted and the proceedings in the manner stated above initiated for his removal in absentia.”

The aforementioned procedure has not been adhered in the present matter by the respondents, on this ground petitioner has made out case to interfere with dismissal order



and CAT order.

3. Petitioner-Gauri Devi, who is illiterate, have no other source of income and she had questioned the validity of dismissal of her husband from service before the CAT in O.A. No. 050/00804/2014 which was dismissed on 12th February, 2016. The CAT in para 6 and 7 it has held as under :

“6. In view of the above [and without interfering with the procedurally correct order of dismissal passed by the respondents in regard to the husband of the applicant], this Tribunal holds that the ends of equity and justice [in the specific circumstances herein] will be appropriately served by directing the respondents to consider extension of some form of assistance to the applicant whose husband can now be presumed to be no longer alive. Prima facie, although it appears that such assistance cannot be in the form of an appointment on compassionate grounds [In terms of the rules and the fact that her husband was dismissed], it is questionable whether the dismissal per se was on valid grounds of misconduct, since the respondents undertook no due diligence to verify the circumstances of the employee's disappearance even after the police intimation. As such, respondents can also treat this as a case of technical



dismissal and can extend relief to the applicant. Alternatively, such assistance can also be considered within the parameters of welfare scheme/ measures existing in Government departments and/ or the discretionary powers, where available, of the executive. Given the peculiar circumstances of this case, perhaps even the extension of ex-gratia assistance or other forms of employment can be considered. That having been said, this Tribunal also acknowledges that appropriate action would essentially be up to the good conscience of the respondents and the facts and circumstances of this case / situation.

7. In the above context, this Tribunal finds no legal basis to interfere with the orders of dismissal issued by the respondents. However, this Tribunal casts an obligation upon the respondents to take appropriate action in the context of directions and observations made in para 6 above. That such consideration and action should be completed within a period of four months from the date of receipt/ communication of this order. That, in course of doing so, the respondents will also have the liberty to separately inquire into the indigence and circumstances of the applicant and her family before taking a final view in regard to the



nature of assistance which would be justifiable in that context.”

4. Legal infirmities like not notifying the charge memo in the manner known to the law, if it is not served on the employee, it should have been notified in the newspaper. Appointment of inquiring officer and presenting officer on the date of issuance of charge memo is yet another lacuna and its withdrawal further order of dismissal from service, is yet another lacuna. *Ex parte* procedure cited has not been adhered and CAT has not appreciated the aforementioned infirmities.

5. We have noticed that deceased-Rajesh Ram, who was appointed initially as a daily wager in the year 1988, his services have been brought on temporary status on 24.06.1998. Thereafter his services were regularized on 12.06.2003 and he had worked as a regular employee till 01.04.2007. In this backdrop, he being illiterate and a sweeper, the official respondents should have resorted to regularize his services as and when he completed 10 years of service in the light of Hon'ble Supreme Court decision in the case of **Secretary, State of Karnatka and Ors. vs. Uma Devi & Ors.** reported in **(2006)4 SCC 1**. On the other hand, he was denied the benefit of regularization as and when he completed 10 years of service.

6. Be that as it may, respondents have policy decision



insofar as counting 50 % of the ad-hoc service read with regular service towards grant of pension and retiral benefits. The CAT has not appreciated the aforementioned infirmities which are forthcoming from the record. Therefore, petitioner has made out a *prima facie* case so as to interfere with the order of CAT dated 12th February, 2016 and it is set aside. Consequently, order of dismissal dated 24.05.2011 is set aside. The respondents are hereby directed to examine the service record of deceased Rajesh Ram. If he fulfills the conditions for the purpose of any pensionary benefits, in that event, petitioner is entitled to pensionary benefits along with the family pension. If the deceased Rajesh Ram fails to fulfill the requisite condition for the purpose of extending pensionary benefits and family pension in terms of relevant statutory provision, in that event, respondents are hereby directed to pay a lump sum compensation of Rs. 5 lakhs in view of the fact that deceased employee served the respondents-Department from the year 1988 and he was missing from 01.04.2007. Imposition of major penalty of dismissal on sweeper on the allegation of missing would be too harsh and moreover he had served respondents from the year 1988 to 01.04.2007. That apart, it is not a case of any misappropriation of Government fund so as to warrant for



imposition of major penalty of dismissal. The above exercise shall be undertaken by the concerned respondents within a period of four months from the date of receipt of this order.

7. Writ petition is allowed.

8. At this stage, learned counsel for the respondents submitted that there is delay of about 7 years in filing the writ petition. In terms of Hon’ble Supreme Court decision in the case of *L. Chandra Kumar V. Union of India & Ors.* reported in *(1997) 3 SCC261*, there is no time limit stipulated for the purpose of filing writ petition before a High Court against the CAT order. Moreover, petitioner is an illiterate widow woman, therefore, technical ground raised on behalf of the respondents is not appreciable in the case in hand.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

mcv/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	N/A
Transmission Date	N/A

