

(2015) 09 DEL CK 0453
In the Delhi High Court
Case No : W.P. (C) 3035/2014

Govt. of NCT of Delhi

APPELLANT

Vs

Manbhar Devi

RESPONDENT

Date of Decision : 21-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 108, 8

Citation : (2015) 09 DEL CK 0453

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Naushad Ahmed Khan, Additional Standing Counsel, for the Appellant; Anjana Gosain and Vishu Agrawal, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G.S. Sistani, J.—The Government of NCT of Delhi has filed the present writ petition seeking a direction to quash the order dated 24.12.2013 passed by the Central Administrative Tribunal (hereinafter referred to as "the Tribunal"), thereby allowing the OA filed by the respondent herein.

2. The necessary facts to be noticed for disposal of this petition are that the respondent, wife of one Sh. Govind Ram Jat, who was appointed as a Constable in Delhi Police on 25.03.1988 was posted in Delhi. A departmental inquiry was initiated against him on 06.08.2001 for allegedly being absent from government duty without authorization. The summary of allegations were served on him on 20.09.2001. He did not plead guilty. The husband of the respondent initially attended the departmental inquiry on 20.09.2001 and 07.12.2001, but thereafter disappeared. The proceedings against him were held ex parte and he was dismissed from service by the petitioner on 02.09.2002. The wife of Sh. Govind Ram Jat filed an OA before the Tribunal and prayed that the order of dismissal be quashed against her husband and service benefits be paid to her as her husband had been missing for eight years and his whereabouts were unknown. The OA

filed by the respondent being wife of Sh. Govind Ram Jat was allowed.

3. Counsel for the petitioner has contended that the Tribunal has failed to take into consideration that the husband of the respondent had failed to appear before the Inquiry Officer. Counsel also contends that the Tribunal failed to appreciate that the husband of the respondent had absented himself which led to the issuance of a charge sheet and thus, there is no infirmity in the order passed by the Inquiry Officer and also the Disciplinary Authority.

4. We have heard the learned counsel for the petitioner and also carefully examined the order passed by the Central Administrative Tribunal.

5. In this case, the husband of the respondent has been missing for a period of more than eight years, which fact is not in dispute. It is also not in dispute that after the findings of the Inquiry Officer, no representation was made by the delinquent person. In fact, the documents sent at his residence had to be pasted as none was present.

6. In the case of Smt. Banarasi Vs. Government of NCT of Delhi and Others, , in which in a similar case, it was held as under:

"Constitution of India, 1950 - Art. 226 - Writ Petition challenging order passed by CAT upholding order of disciplinary authority whereby Bhagwan Singh was dismissed from service- Petitioner, wife of Bhagwan Singh seeking grant of pensionary benefits-Held : It is a case where whereabouts of Sh. Bhagwan Singh right from the date of his absence could not be known to any person in this world, including his family members - 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 view of the fact that Shri Bhagwan Singh was not residing with his family and was living in police barracks, when he went missing from the place of duty under the control of the respondents and did not go back to his own house and his whereabouts could not even be traced, the charge of absence from duty, coupled with the fact that Sh. Bhagwan Singh has not been seen for all these years, cannot be treated as sustained in the facts and circumstances of this case - In case the husband of the petitioner was dead when he went missing in 1996, it would be highly inequitable and unjust to the petitioner to deny her family pension - Writ petition allowed Punishment of dismissal passed by the respondent against Sh. Bhagwan Singh set aside on the premises that Sh. Bhagwan Singh was dead - Petitioner shall be entitled to family pension and such other benefits as may be admissible to her under the rules with arrears and for future."

7. It is not in dispute that the husband of the respondent Sh. Govind Ram Jat has been missing for more than seven years and thus, the presumption under Section 8 of the Indian Evidence Act would come into effect that Sh. Govind Ram Jat is not alive. The case of Banarasi (Smt.) (supra) in our view is fully applicable to the facts of the present case. We are surprised that the Department made no attempt to search one of their officers Sh. Govind Ram Jat. We find no infirmity

in the order passed by the Tribunal.

8. Consequently, the writ petition is dismissed being without any merit.

CM.APPL 6356/2014(stay)

9. Since the present writ petition has been dismissed, the application also stands disposed of.