



2025:DHC:10229-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 17.11.2025

+ W.P.(C) 7087/2019
NORTH DELHI MUNICIPAL CORPORATION

.....Petitioner

Through: Mr.Arun Birbal, Adv.
versus

GEETA

.....Respondent

Through: Mr.Rajesh Kumar Chauhan &
Mr.G.D. Chawla, Adv.

**CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE MADHU JAIN**

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 17.08.2018 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in O.A. No. 2331/2014, titled ***Geeta v. North Delhi Municipal Corporation & Anr.***, allowing the said O.A. filed by the respondent herein with the following directions:-

"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.



4. The learned Tribunal, as noted hereinabove, allowed the aforesaid O.A. filed by the respondent herein, observing as under:-

“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 to 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."

5. The learned counsel for the petitioner submits that the learned Tribunal has erred in appreciating that the death of Shri Ved Prakash cannot be presumed from the date that he went missing. Such presumption would arise only 7 years thereafter, in terms of Section 108 of the Indian Evidence Act, 1872. He submits that the learned Tribunal has erred in placing reliance on the Judgment of this Court in *Smt. Banarasi v. Government of NCT of Delhi & Ors.*,



2008:DHC:963-DB, inasmuch as, therein, the employee was residing in the Government quarter and not with the family.

6. On the other hand, the learned counsel for the respondent submits that the petitioner was well aware of Shri Ved Prakash being missing. He submits that this is evident from a notice issued by the Police Station, Mukherjee Nagar to the petitioner seeking some information on a missing persons complaint which was lodged by the respondent *vide* DD No. 23A dated 30.09.2005. He submits that in spite of such knowledge, the petitioner proceeded with the departmental proceedings against Shri Ved Prakash, alleging that he was wilfully absenting himself from duty, and also removed him from service. He submits that in these facts, the order of removal from service has rightly been set aside by the learned Tribunal.

7. We have considered the submissions made by the learned counsels for the parties.

8. It is not disputed that Shri Ved Prakash went missing from duty without any information, and his whereabouts were unknown as from 25.08.2005. A missing person complaint was lodged by the respondent on 30.09.2005 at the Police Station, Mukherjee Nagar, *vide* DD No. 23A dated 30.09.2005. The police authorities, thereafter, also issued a notice to the petitioner seeking information on various aspects. The petitioner was, therefore, aware that Shri Ved Prakash had been missing and could not have been attributed wilful absenteeism. Nevertheless, despite this knowledge and despite the fact that the notices issued to Shri Ved Prakash could not be delivered for want of complete address, the petitioner proceeded to terminate the



services of Shri Ved Prakash.

9. In the peculiar facts of the present case, it cannot be said that the absence from duty by Shri Ved Prakash was wilful or intentional. Therefore, the order passed by the petitioner terminating the services of Shri Ved Prakash cannot be sustained and has rightly been set aside by the learned Tribunal.

10. The question as to on what date the employee would be presumed to be dead, is not relevant to the facts of the present case. The fact remains that once the whereabouts of Shri Ved Prakash were not known for a period of 7 years and he was presumed to be dead, his absence cannot be said to be wilful. The learned Tribunal has merely granted family pension to the respondent, which would, of course, operate only from the date of presumption of death of Shri Ved Prakash.

11. We, therefore, find no infirmity in the order passed by the learned Tribunal.

12. The learned counsel for the petitioner also raises a contention that in the service record of Shri Ved Prakash, the name of the respondent has not been recorded. He submits that the learned Tribunal has, merely on the basis of a decree-sheet produced by the respondent, presumed her to be the wife of Shri Ved Prakash.

13. In our view, barring the above vague submission of the petitioner, the petitioner has also not been able to show anything which disproves the claim of the respondent of being the legally wedded wife of Shri Ved Prakash, especially in light of the decree passed by the learned Family Court appointing her as a guardian of the

