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

Reserved on: 18 February 2025
Pronounced on: 1 July 2025

\+ W.P.(C) 12604/2022

RANI SINGH .....Petitioner

Through: Mr. R.V. Sinha, Mr. A.S. Singh, Mr. Amit Sinha, Ms. Nidhi Singh and Ms. Shriya Sharma, Advs.

versus

GOVERNMENT OF NCT OF DELHI & ORS. ....Respondents

Through: Mr. Raghav Bhatia, Adv. with Mr. Syed Hussain Taqvi and Ms. Aradhya Chaturvedi, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT

% 01.07.2025

C. HARI SHANKAR, J.

The *lis*

1. The petitioner Rani Singh, moved the Central Administrative Tribunal[1] by way of OA 516/2021, seeking family pension in terms of

[1] "the Tribunal", hereinafter

Office Memorandum[2] dated 29 August 1986 issued by the Department of Pension & Pensioners' Welfare[3], on the ground that as her husband had left home on 8 June 2005 and had never returned, he was presumed dead and, consequently, she was entitled to family pension in terms of the aforesaid OM. The Tribunal has rejected the petitioner's OA. She has, therefore, approached this Court by means of the present writ petition.

2. The dispute is only, therefore, whether the petitioner is entitled to family pension in terms of DOPPW OM dated 29 August 1986.

Relevant Instructions

3. DOPPW OM dated 29 August 1986, as also DOPPW OM dated 18 February 1993, to the extent relevant, are reproduced thus:

> DOPPW OM dated 29 August 1986
>
> "(9) **Payment of retirement gratuity and family pension to the family, in case an official whereabouts are not known.-** 1. A number of cases are referred to this Department for grant of family pension to eligible family members of employees who have suddenly disappeared and whose whereabouts are not known. At present, all such cases are considered on merits in this department. In the normal course, unless a period of 7 years has elapsed since the date of disappearance of the employee, he cannot be deemed to be dead and the retirement benefits cannot be paid to the family. This principle is based on Section 108[4] of the Indian Evidence Act which provides that when the question is whether the man is alive or dead and it is proved that he has not been heard of for 7 years by those who would naturally have heard of him if he had been alive,

[2] "OM", hereinafter
[3] "DOPPW", hereinafter
[4] **108. Burden of proving that person is alive who has not been heard of for seven years**. –Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

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2. The matter has been under consideration of the Government for some time as withholding of the benefits due to the family has been causing a great deal of hardship. It has been decided that (i) when an employee disappears leaving his family, the family can be paid in the first instance the amount of salary due, leave encashment due and the amount of GPF having regard to the nomination made by the employee (ii) after the elapse of a period of one year* other benefits like retirement or death gratuity/family pension may also be granted to the family subject to the fulfillment of conditions prescribed in the succeeding paragraphs.

3. The above benefits may be sanctioned by the Administrative Ministry/Department after observing the following formalities:-

(i) The family must lodge a report with the concerned Police Station and obtain a report that the employee has not been traced after all efforts had been made by the Police.

(ii) An Indemnity Bond should be taken from the nominee / dependants of the employee that all payments will be adjusted against the payments due to the employee in case he appears on the scene and makes any claim.

4. The Head of Office will assess all Government dues outstanding against the Government servant and effect their recovery in accordance with Rule 71 of CCS (Pension) Rules, 1972, and other instructions in force for effecting recovery of Government dues.

5. The family can apply to the Head of the Office of the Government servant for grant of family pension and death / retirement gratuity, after one year* from the date of disappearance of the Government servant in accordance with the prescribed procedure for sanction of family pension and death / retirement gratuity. In case the disbursement of death / retirement gratuity is not effected within three months of the date of application, the interest shall be paid at the rates applicable and responsibility for the delay fixed.

NOTE - The above orders regulate genuine cases of disappearance under normal circumstances and not the cases in which officials disappear after committing frauds, etc. In latter type of cases, the family pension needs to be sanctioned only on the Government employee being acquitted by the Court of Law or after the conclusion of the disciplinary proceedings, etc., as the case may be.

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DOPPW OM dated 18 February 1993

"(11) **Family pension should be sanctioned from the date of lodging FIR or expiry of leave of the employee, whichever is later. -** *** At present, the family pension is sanctioned and paid to the eligible member of the family one year after the date of registering the FIR with the Police and no family pension is paid for the intervening period of one year from the date the FIR is lodged to the date the family pension can be sanctioned. This practice is causing hardship to the families. It has now been decided that the family pension which, in pursuance of the earlier orders, will continue to be sanctioned and paid one year after the date of lodging the FIR, will accrue from the date of lodging the FIR or expiry of leave of the employee who has disappeared, whichever is later. When the sanction for family pension is issued, the payment of pension from the date of accrual may be authorized. The usual procedure of obtaining the Indemnity Bond, etc., as laid down in the OM, dated 29-8-1986 [Decision (9) above] will continue to be followed. While sanctioning payment of family pension, it will be ensured by the concerned authorities that family pension is not authorized for any period during which payment of pay and allowances in respect of the disappeared employee has been made."

Facts

4. Jiwan Kumar Singh[5], the husband of the petitioner, joined the Delhi Police as Sub Inspector in 1989. According to the petitioner, he had been sanctioned 33 days' leave, by the respondents, on 6 May 2005, and was due to report back to office on 13 June 2005. However, during that period, Jiwan left home on 8 June 2005. He never returned, and, according to the petitioner, was never seen thereafter.

5. After making certain preliminary inquiries, the petitioner informed the respondents about the disappearance of her husband on

[5] "Jiwan", hereinafter

16 June 2005.

6. Over 15 years thereafter, on 2 October 2020, the petitioner addressed a "notice of demand" to the respondents, invoking the aforenoted DOPPW OMs dated 29 August 1986 and 18 February 1993 and claiming family pension thereunder, as there was no news of her husband for over seven years since the time he left home on 8 June 2005.

7. On 23 October 2020, the Deputy Commissioner of Police[6] addressed the following communication to the petitioner, rejecting her request:

> **"OFFICE OF THE DY. COMMISSIONER OF POLICE SECURITY:HQ: VINAY MARG, CHANKYA PURI, NEW DELHI-21**
> **Telephone No.011-24671493/011-24154700/225**
>
> Subject:- Notice Dated 02.10.2020 Received (Through Advocate Amit Sinha from Smt. Rani Singh W/o Sh. Jiwan Kumar Singh, No.D-2808 (Ex-SI, PIS No.16890091-Reportedly Missing Since 16.06.2005)- For Grant of Post Death Financial Benefits to her.
>
> Reference Notice Dated 02.10.2020 received in this office in the matter of grant of post death financial benefits in the case of Sh. Jiwan Kumar Singh: (Ex-SI, PIS No. 16890091 -Reportedly Missing Since 16.06.2005).
>
> It is intimated that as per this office record, Sh. Jiwan Kumar Singh (Ex-SI, PIS No. 16890091). was' dismissed from service vide this office Order No. 8026-8125/HAP-Sec. (P-l), Dated 23.12.2005 (Copy Enclosed) due to his involvement in Criminal Case registered vide F.I.R. No.358/2005 Dated 06.06.2005 U/s 363 (365) IPC P.S. Bhagalpur, 'Bihar.

[6] "DCP", hereinafter

As provided in Rule 24 of CCS. Pension Rules -1972 (Copy Enclosed) "Dismissal or removal of a Government Servant from a service or post entails forfeiture of his past service". Hence, in the. case of Sh. Jiwan Kumar Singh, Ex-SI No.D-2808 (PIS No. 16890091). Pension/Family Pension/Gratuity are not admissible as he was dismissed from Service.

However, family (Wife) of the Ex-SI may report to Account Branch-Security at Vinay Marg, Chankyapuri, New Delhi on any working day alongwith the documents such as G.P.F. Book/GP.F. Balance Sheet her Aadhar Card/PAN Card/Bank Pass Book etc. so that this office may process for final payment of G.P.F./C.G.E.G.I.S in the .Case, if any found payable.

ACP-HQ
For Dy. Commissioner of Police,
Security (HQ), New Delhi"

8. On 28 January 2021, GPF[7] dues of ₹ 1,96,671, along with interest till November 2005, were released by the respondents to the petitioner.

9. It was in these circumstances that the petitioner approached the Tribunal by way of OA 516/2021. The prayer clause in the OA read thus:

"In view of the facts and circumstances as made herein above, it is most respectfully prayed that this Hon'ble Tribunal graciously be pleased to :-

(i) call for the relevant records of the respondents in the matter,

(ii) hold and declare that the husband of the Applicant Shri Jiwan Kumar Singh, Ex-S.I., PIS No.16890091 working under the respondent No.2 is dead in terms of section 107 & 108 of the Indian Evidence Act, 1872 with consequential relief under law.

(iii) Hold and declare that the order dated 23.12.2005, passed by the Respondent No.2 vide No.8026-8125/HAP-SEC(P1) is non est and nullity in the eyes of law and

[7] General Provident Fund

consequently quash the same.

(iv) Hold and declare the letter dated 23.10.2020 of the Respondents No.1 & 2 to the extent it denies the grant of family pension to the applicant as illegal, arbitrary and accordingly quash the same to that extent.

(v) Hold and declare that the applicant is entitled for family pension and arrears thereof including other retiral benefits i.e. Gratuity, Leave Encashment, CGEGIS, etc. w.e.f. 16.06.2005 with interest thereon the arrears @ 12% per annum till the realization with consequential relief directing the respondents to pay the same within time bound manner.

(vi) Hold and declare that nonpayment of interest on the GPF account of the husband of the applicant as per rate of interest applicable on GPF amount till date of payment and restricting the interests on GPF paid by the Respondent No.3 till 11/2005 is arbitrary and illegal and consequently direct the respondent to release the difference of interest from 11/2005 till payment of the GPF amount.

(vii) award cost of the proceedings in favour of the applicant and against the official respondents.

(viii) may also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice."

10. We may note, at the very outset, that prayer (ii) was beyond the scope of jurisdiction of the Tribunal. A declaration that Jiwan was dead, as he had not been seen for seven years, could only have been sought by way of a civil suit, and the Tribunal could not have issued such a declaration. Prayer (ii) in the OA was, therefore, clearly misconceived.

11. Mr. R.V. Sinha, learned Counsel for the petitioner submits, however, that he was not pressing, before us, prayer (ii) as advanced before the Tribunal as the petitioner was, even under the OMs dated

29 August 1986 and 18 February 1993 of the DOPPW, entitled to family pension consequent on her husband having remained unseen for over seven years.

12. Before the Tribunal, the petitioner placed reliance on the aforenoted DOPPW OMs as well as the judgments of the Supreme Court in ***State of Punjab v Amar Singh Harika***[8]***, Dulu Devi v State of Assam***[9] and ***UOI v Dinanath Shantaram Karekar***[10]**.**

13. Additionally, in support of her contention that the dismissal of Jiwan from service was illegal, the petitioner placed reliance on the following authorities:

(i) ***UOI v Tulsiram Patel***[11]**,**

(ii) ***Satyavir Singh v UOI***[12]**,**

(iii) ***UOI v Polimetla Mary Sarojini***[13]**,**

(iv) ***T.K. Parukutty Amma v Garrison Engineer***[14]**,**

(v) ***Banarasi v Government of NCT of Delhi***[15]**,**

(vi) ***Govt. of NCT of Delhi v Manbhar Devi***[16]**,** and

(vii) ***Tripta Rani v UOI***[17]**.**

14. Contesting the petitioner's claim, the respondents contended, before the Tribunal, that the case was not one of a person being missing for seven years and, therefore, being presumed dead, but of

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[8] **AIR 1966 SC 1313**
[9] **(2016) 1 SCC 622**
[10] **(1998) 7 SCC 569**
[11] **AIR 1985 SC 146**
[12] **(1985) 4 SCC 252**
[13] **2017 SCC Online Hyd 24**
[14] **1987 (4) ATC 248**
[15] **2008 (8) AD (Delhi) 193**
[16] **2015 SCC Online Del 12375**
[17] **2016 SCC Online Del 3692**

absconding. The respondents pointed out that Jiwan, after having been sanctioned leave for 33 days on 6 May 2005, did not report back to work on 13 June 2005. On 26 June 2005, FIR No.358/2005 was lodged against him. On 7 July 2005, Jiwan was suspended from service and the order of suspension was served on the petitioner. Further inquiries conducted by the Police revealed that Jiwan was having illicit relations with his niece. For all these reasons, Jiwan had been dismissed from service by order dated 23 December 2005 invoking the Explanation to Rule 17(2)[18] of Delhi Police (Punishment and Appeal) Rules, 1980[19]. The respondents contended that it was clear that Jiwan was absconding to escape criminal prosecution. The case could not, therefore, be treated as one of a missing person within the meaning of DOPPW OM dated 29 August 1986 *supra*.

15. It is necessary to refer, briefly, to the order dated 23 December 2005 issued by the Deputy Commissioner of Police as the petitioner's Disciplinary Authority[20], dismissing Jiwan from service, as it constitutes, in a sense, the backbone of the respondents' case, as well as the main consideration which has weighed with the Tribunal in dismissing the petitioner's OA.

16. The initial recitals in the order dated 23 December 2005 set out the facts relating to FIR 358/2005, registered against Jiwan at PS Bhagalpur. According to the FIR, Jiwan was alleged to have abducted

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[18] *Explanation* – The procedure laid down with regard to the conduct-of departmental enquiries may be dispensed with –

(a) If a police officer has been convicted by a court of law of criminal offence involving moral turpitude; or

(b) if police officer charged with misconduct refuses or fails to attend an enquiry without reasonable excuse or has absconded or has deserted or cannot be found without inordinate delay.

[19] "DPPAR", hereinafter

[20] "DA" hereinafter

one Preeti Meenakshi, who happened to be his sister's daughter, and already married. Owing to his involvement in the case registered under the aforenoted FIR, Jiwan was placed under suspension *vide* order dated 7 July 2005, which was served on the petitioner, as Jiwan was not traceable. Thereafter, on 13 September 2005, the Investigating Officer[21], investigating into the FIR, visited the office of the Respondents and submitted a written report regarding the investigations that had been conducted thus far. An absentee notice was also issued, regarding the non-availability of Jiwan, on 22 September 2005, which was also received by the petitioner on 8 October 2005, as Jiwan was not available at his residence. An officer from the office of the respondents also visited the residence of Jiwan on 7 October 2005, whereupon he was informed by the petitioner that Jiwan had proceeded to his native place after having obtained earned leave from the respondents and that she had no knowledge of his whereabouts. Further investigations revealed that Jiwan and Preeti Meenakshi had disappeared simultaneously and switched off their cell phones together. Further inquiries from the petitioner revealed that Jiwan had been carrying on a liaison with Preeti Meenakshi for some time, resulting in strain in his marriage with the petitioner. *Inter alia* on the basis of these facts, the order dated 23 December 2005 alleged that Jiwan had violated Rules 3(1)(i), (ii) and (iii)[22] of the CCS (Conduct) Rules, 1964, by maintaining illicit relations with a married lady, and had also breached Rule 26(3)(ii)[23] of the DPPAR by failing

[21] "IO" hereinafter

[22] (1) Every Government servant shall at all times –
(i) maintain absolute integrity;
(ii) maintain devotion to duty; and
(iii) do nothing which is unbecoming of a Government servant.

[23] (ii) A Police Officer under suspension shall be transferred to the lines if not already posted there. He shall attend all roll calls and shall be required to perform such duties and to attend such parades as the Deputy

to attend office after the suspension on 7 July 2005 and remaining absent without authorisation with effect from 13 June 2005. Following these recitals and observations, the Order proceeded to conclude thus:

> "Thus, he deserves strict disciplinary action. When he is absconding since 6.6.2005, as such it is not practically possible to initiate a regular DE against him. Thus I have no other alternative except to examine his misconduct under article 311(ii)(B)[24] of the Constitution of India. As far as his misconduct is concerned, he has committed a grave misconduct. Being a Government Servant, it was incumbent upon him to maintain absolute integrity, maintain devotion to duty and do nothing which is unbecoming of a Government servant but he did not do so. He maintained illicit relation with a married lady and that too with that lady who is having a relation as his daughter because the delinquent SI is her real "*Mausa*[25]*"*. Further, he has acted in a manner unbecoming of a Police Officer which is highly prejudicial to the society. He has indulged in a heinous crime. The task is much more difficult when the SI being a member of law protecting agency, is himself involved in such type of heinous crime and is now absconding. Therefore, his further retention in the force is totally undesirable and an injustice to the uniformed force.
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> Considering the overall facts and circumstances of the case, gravity of misconduct, I, therefore, Dependra Pathak, DCP/Security came to the conclusion that it would not be reasonably practical to hold a DE under these circumstances where the SI is absconding. I have also no reason to disbelieve the reports of D.O. Main Line Security, Sh. Ravi Sehgal, ACP/Sec. and Crime Branch Delhi police as well as SP Bhagalpur. It is also established that under these circumstances an opportunity of defence could not be provided to SI Jeevan Kumar Singh, as he is absconding. Thus, I had no other alternative in such a situation except to dismiss him from the force in the interest of principle of natural justice. Therefore, SI Jeevan Kumar Singh No. D-2808 (PIS No. 16890091) is hereby dismissed from the force under the provision of article 311 (ii) (B) of Constitution of India immediate effect.

Commissioner of Police may direct provided that he hall not perform guard duty or any other duty entailing the exercise of the powers of functions of a Police officer, shall not be placed on any duty involved the exercise of responsibility and shall not be issued of with ammunition. A Police officer under suspension shall ordinarily be confirmed to lines, when off duty, but shall be allowed responsible facilities for the preparation of his defence when transferred to the lien, lower or upper subordinate shall deposit their kits in the line and shall not wear any article of uniform till they are reinstated or specifically" permitted by the Commissioner o Police as contained in sub-rule (iii) of Rule 15 of the Delhi Police (General Conditions of Service) Rules, 1980.

[24] Correctly, "proviso (b) to Article 311(2)"

[25] maternal uncle

> The suspension period from 7.7.05 to the date of issue of this order is decided as period not spent on duty for all intents & purposes. Further his absence period from 13.6.05 to 6.7.05 is also decided as period not spent on duty and the same is not being regularised in any manner."

17. The Tribunal, by judgment dated 7 April 2022, dismissed OA 516/2021 instituted by the petitioner, observing and holding, in the process, thus:

> "14. It is evident that SI Jiwan Kumar Singh proceeded on sanctioned leave on 06.05.2005 and did not resume his duty after the said leave period. In view of the criminal case filed against him and as he was absconding from duty, he was placed under suspension. Accordingly, a PE was initiated under Rule 15(i) of Delhi Police (Punishment & Appeal) Rules, 1980 vide Order dated 13.10.2005. The EO in his report submitted that allegations of willful and unauthorised absence as well as allegation of concealment of facts that he is named in FIR No. 358/2005 under Section 363 PS Bhagalpur, are already proved. The EO further reported that the delinquent and the said lady are missing and not traced so far. The Disciplinary Authority observed in his order that in view of SI Jiwan Kumar Singh violating provisions of various rules, he deserved strict disciplinary action and that since he is absconding from 06.06.2005, it is not practically possible to initiate regular DE against him and, therefore, his misconduct has to be examined under Article 311 (2)(b) and accordingly he is dismissed from service. In the DA Order dated 23.12.2005, it is clearly stated that he can file an appeal against the order within 30 days from the date of its receipt by him or his wife, as the case may be.
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> 16. We have perused the judgments relied upon by the applicant and found them distinguishable from the facts of the instant case.
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> 17. Sections 107 and 108 of the Indian Evidence Act, 1872 can be well applicable in those cases where an employee simply goes missing and does not return back to his normal work and there is no immediate action taken against him for other violations much before the period of 7 years. Disciplinary Proceedings in the case of applicant's husband were started and culminated in the dismissal from service within a period of six months. In the O.A., the challenge is also to the non-communication of dismissal order. In

this case, suspension order, absentee notice and the dismissal order have all been sent to the address of the SI Jiwan Kumar Singh and also to the applicant. As the person himself is absconding, as submitted by the respondents, in order to avoid his arrest and conviction in the criminal case, it could well be a deliberate action on his part and cannot be considered as a non-communication of the order to him, which would make the impugned order non est or nullity in the eyes of law. The SI, Jiwan Ram Singh, husband of the applicant, was found indulged in activities which cannot be ignored in any way, especially being a person who is a member of the law protecting agency. In his case PE was conducted and in view of the applicant's husband absconding, the Disciplinary Authority decided his case under Section 311(2)(b) in accordance with law. Penalty of dismissal was imposed upon him by the Disciplinary Authority for violation of:

1. CCS (Leave) Rules, 1972, as he did not report for duty after the expiry of his E.L.

2. Rule 3(1) (i) (ii) & (iii) of CCS (Conduct) Rule-1964 as he maintained illicit relation with a married lady.

3. Rule 26 (3)(ii) of Delhi Police (Punishment & Appeal) Rules, 1980 as he did not report to CDI/Main Lines Security when he was placed under suspension.

It is also a fact that the applicant has, for the first time, submitted the Demand Notice in 2020, i.e. after 15 years, seeking pensionary benefits and retiral dues, requesting that in terms of Sections 107 and 108 of Indian Evidence Act, her husband should be presumed dead. It is evident that there is no illegality and infirmity in the impugned Order dated 23.12.2005 as the husband of the applicant was dismissed from service and, in view of that, the applicant is not entitled for pension, family pension, gratuity etc. We also do not find any infirmity in the dismissal order by applying Article 311(2)(b)."

18. Aggrieved by the decision of the Tribunal, Rani Singh, as the applicant before the Tribunal, has approached this Court by means of the present writ petition.

19. We have heard Mr. R.V. Sinha, learned Counsel for the petitioner and Mr. Raghav Bhatia, learned Counsel for the

respondents, at length.

Rival Submissions

20. Submissions of Mr. R.V. Sinha

20.1 Mr. Sinha has advanced four submissions.

20.2 Firstly, relying on the DOPPW OMs dated 29 August 1986 and 18 February 1993, Mr. Sinha submits that once Jiwan had remained missing for seven years, the petitioner, as his wife was *ipso facto* entitled to family pension. The subsequent order dated 23 December 2005, whereby the respondent purported to have dismissed the petitioner even from service could not make any difference to the petitioner's right to family pension.

20.3 The second contention of Mr. Sinha is that the order of dismissal was never served on the petitioner, as required by Rule 17(1)[26] of the DPPAR. Service of the order on his wife did not tantamount to service on the petitioner. In these circumstances, it could not be said that the order dated 23 December 2005 had ever taken effect. For the proposition that an order of punishment only takes effect only when it is served on the concerned officer, Mr. Sinha besides relying on Rule 17 of the DPPAR, further cites para 11 of the

[26] **17. Final order. –**
(1) On receipt of the finding from the enquiry officer, the disciplinary authority shall pass an order imposing any penalty on the Police officer as specified in rule 5 of the Delhi Police (Punishment and Appeal) Rules, 1980. The order passed by the disciplinary authority shall be communicated to the accused officer. He shall also be supplied with a copy of the finding of the enquiry officer free of cost with direction to file an appeal .within 30 days from the date of receipt of order, if he so desired.

decision in ***Amar Singh Harika*** and paras 15 and 16 of the judgment in ***Dulu Devi***, which may be reproduced thus:

Para 11 of ***Amar Singh Harika***

> "11. The first question which has been raised before us by Mr. Bishan Narain is that though the respondent came to know about the order of his dismissal for the first time on the 28th May 1951, the said order must be deemed to have taken effect as from the 3rd June 1949 when it was actually passed. The High Court has rejected this contention; but Mr. Bishan Narain contends that the view taken by the High Court is erroneous in law. We are not impressed by Mr. Bishan Narain's argument. *It is plain that the mere passing of an order of dismissal would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passed an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case of a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. It may be that in some cases, the authority may feel that the ends of justice would be met by demoting the officer concerned rather than dismissing him. An order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned.* If it is held that the mere passing of the order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise. If before receiving the order of dismissal, the officer has exercised his power and jurisdiction to take decisions or do acts within his authority and power, would those acts and decisions be rendered invalid after it is known that an order of dismissal had already been passed against him? Would the officer concerned be entitled to his salary for the period between the date when the order was passed and the date when it was communicated to him? These and other complications would inevitably arise if it is held that the order of dismissal takes effect as soon as it is passed, though it may be communicated to the officer concerned several days thereafter. It is true that in the present case, the respondent had been suspended during the material period; but that does not change the position that if the officer concerned is not suspended during the period of enquiry complications of the kind already indicated would definitely arise. *We are therefore, reluctant to hold that an order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it will take effect as from the date on which the order is actually written out by the said authority; such an order can only be*

effective after it is communicated to the officer concerned or is otherwise published. When a public officer is removed from service, his successor would have to take charge of the said office; and except in cases where the officer concerned has already been suspended, difficulties would arise if it is held that an officer who is actually working and holding charge of his office, can be said to be effectively removed from his office by the mere passing of an order by the appropriate authority. In our opinion, therefore, the High Court was plainly right in holding that the order of dismissal passed against the respondent on the 3rd June 1949 could not be said to have taken effect until the respondent came to know about it on the 28th May 1951."

(Emphasis supplied)

Paras 15 and 16 of ***Dulu Devi***

"15. The Constitution Bench judgment of this Court in ***State of Punjab v Amar Singh Harika*** considered this aspect of the matter. Writing the judgment, His Lordship (Gajendragadkar, C.J.) held that *mere passing of an order of dismissal or termination would not be effective unless it is published and communicated to the officer concerned. If the appointing authority passes an order of dismissal, but does not communicate it to the officer concerned, theoretically it is possible that unlike in the case on a judicial order pronounced in Court, the authority may change its mind and decide to modify its order. The order of dismissal passed by the appropriate authority and kept with itself, cannot be said to take effect unless the officer concerned knows about the said order and it is otherwise communicated to all the parties concerned. If it is held that mere passing of order of dismissal has the effect of terminating the services of the officer concerned, various complications may arise.*

16. Similar view has been taken by this Court in ***Union of India v Dinanath Shantaram Karekar***, wherein this Court observed :

> "9. Where the services are terminated, the status of the delinquent as a government servant comes to an end and nothing further remains to be done in the matter. But *if the order is passed and merely kept in the file, it would not be treated to be an order terminating services nor shall the said order be deemed to have been communicated*."

(Emphasis supplied)

20.4 The third contention of Mr. Sinha is that the respondent acted in total breach of the DPPAR, in the manner in which they dismissed him from service. The order dated 23 December 2005, dismissing Jiwan from service, was passed as a direct sequel to the preliminary enquiry conducted by the respondent in terms of Rule 15[27] of the DPPAR. In the process, Rule 16[28] of the DPPAR was completely

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[27] **15. Preliminary enquiries. –**

(1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s). (ii) to collect prosecution evidence, (iii) to judge quantum of default and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above-mentioned points exists a Preliminary Enquiry need not be held and Departmental enquiry may be ordered by the disciplinary authority straightway. In all other cases a preliminary enquiry shall normally proceed a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a conganizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Additional Commissioner of Police concerned as to whether a criminal case should be registered and investigated or a departmental enquiry should be held.

(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witness. The file of preliminary enquiry shall not form part of the formal departmental record, but statements therefrom may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if-the considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by enquiry officer.

[28] **16. Procedure in departmental enquiries. –** The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where rank facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer :

(i) A police officer accused of misconduct shall be required to appear before the disciplinary authority, of such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry Officer shall prepare a statement summarising the misconduct alleged against the accused officer in such a manner as to give full notice to him of the circumstances in regard to which evidence is to be regarded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution will be given to the defaulter free of charge. The contents of the summary arid other documents shall be explained to him. He shall be required to submit to the enquiry officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defence evidence to refute the allegations against him.

(ii) If the accused police officer after receiving the summary of allegations, admits the misconduct alleged against him, the enquiry officer may proceed forthwith to frame charge, record the accused officer's pleas and any statement he may wish to make and then pass a final order after observing the procedure laid down in Rule 15 (xii) below if it is within his power to do so. Alternatively the finding in duplicate shall be forwarded to the officer empowered to decide the case.

(iii) If the accused police of officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a Magistrate and is either signed by the person making it or has been recorded by such officer during an

investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or Magistrate who had recorded the statement of the witnesses concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements of documents thus brought on record.

(iv) When the evidence in support of the allegations has been recorded the Enquiry Officer shall-(a)If he considers that such allegations are not substantiated, either discharge the accused himself, if he is empowered to punish him or recommended his discharge to the Deputy Commissioner of Police or other officer, who may be so empowered or,(b)Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(v) The accused officer shall be required to state the defence witnesses whom he wishes to call and may be given time, not exceeding two working days, to prepare a list of such witnesses together with a summary of the facts they will testify and to produce them at his expense in 10 days. The enquiry officer is empowered to refuse to hear any witnesses whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge. He shall record the statements of those witnesses whom he decides to admit in the presence of the accused officer who shall be allowed to address question to them, the answers to which shall be recorded; provided that the enquiry officer may cause to be recorded by any other Police Officer superior in rank to the accused officer the statements of a witness whose presence cannot be secured without delay, expenses or inconvenience and may bring such statements on record. When such a procedure is adopted, the accused officer may be allowed to draw up a list of questions he wishes to be answered by such witnesses. The enquiry officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. Such statements shall also be read over to the accused officer and he will be allowed to take notes.

(vi) The accused officer shall, for the purpose of preparing his defence, be permitted to inspect and take extracts from such official documents as he may specify, provided that such permission may be refused for reasons to be recorded in writing, if in the opinion of the enquiry officer such records are not relevant for the purpose or against the public interest to allow him access thereto. The latest orders of the Government shall be applicable with regard to the charging of copying fees, etc.

(vii) At the end of the defence evidence or if the Enquiry Officer so directs, at an earlier stage after the framing of charge the accused officer shall be required to submit his own various of facts. He may file a written statement for which he may be given a week's time, but he shall be bound to answer orally all questions arising out of the charge, the recorded evidence, his own written statement or any other relevant matter, within the enquiry officer may deem fit to ask.

(viii) After the defence evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called "Court witness" whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross-examine all such witnesses and then to make supplementary final defence statement, if any, in case he so desires.

(ix) The Enquiry Officer shall then proceed to record the findings. He shall pass orders of acquittal or punishment if himself empowered to do so, on the basis of evaluation of evidence. If the proposes to punish the defaulter he shall follow the procedure as laid down in Rule 16(xii). If not so empowered he shall forward the case with his findings (in duplicate) on each of the charges together with the reasons therefor, to the officer having the necessary powers. If the enquiry establishes charges different from those originally framed, he may record finding on such charges, provided that findings on such charges shall be recorded only if the accused officer has admitted the facts constituting them or has had an opportunity of defending himself, against them.

(x) On receipt of the Enquiry Officer's report the disciplinary authority shall consider the record of the inquiry and pass his orders on the inquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other enquiry officer, according to the circumstances of the case for such evidence to be duly recorded. If such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defence, if he so desires, and to submit a supplementary statements, which he may wish to make.

(xi) If it is considered necessary to award a service punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charge against him. and he shall be given opportunity to defend himself as

jettisoned.

20.5 Mr. Sinha fourthly submits that, even in a case where it was not reasonably practicable to hold an enquiry within the meaning of Rule 17(2) of the DPPAR, a charge sheet had necessarily to be issued to the officer concerned and attempts made to serve the charge sheet and summon the officer to participate in the enquiry proceedings. It was only when in a case where the officer did not appear despite having been asked to participate, that the Disciplinary Authority could proceed under Rule 17(2) of the DPPAR. Thus, the respondent materially erred in invoking the Explanation to Rule 17(2) and dismissing Jiwan from service merely on the basis of a report following a preliminary enquiry under Rule 15.

21. Submissions of Mr. Bhatia

21.1 Responding to Mr. Sinha's submission, Mr. Bhatia placed reliance on Rule 17(2) of the DPPAR. He submits that though there was no communication attempted with Jiwan between the date of the Preliminary Inquiry Report and the passing of the dismissal order on 23 December 2005, attempts at contacting Jiwan, prior to the

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required by rules.

(xii) If the disciplinary authority, having regard to his findings on the charges, is of the opinion that a major punishment is to be awarded, he shall –

(a) furnish to the accused officer free of charge a copy of the report of the Enquiry Officer, together with brief reasons for disagreement, if any, with the finding of the Enquiry Officer.

(b) Where the disciplinary authority is himself the Enquiry Officer, a statement of his own findings, and

(c) If the disciplinary authority, having regard to its finding on all or any of the charges and on the basis of the evidence adduced during the enquiry is of the opinion that any of the penalties specified in rule 5 (i to vii) should be imposed on the Police Officer, it shall make an order imposing such penalty and it shall not be necessary to give the Police Officer any opportunity of making representation on the penalty proposed to be imposed.

Preliminary Enquiry Report had all been futile. It was for this reason that the suspension order dated 7 July 2005 had also to be served on the petitioner, as her husband was not traceable. In these circumstances, Mr. Bhatia submits that the respondent was justified in dismissing Jiwan from service. He has drawn attention in this context to the concluding paragraphs from the order dated 23 December 2005 issued by DCP whereby Jiwan was dismissed from service, which already stand reproduced *supra*.

21.2 Once the order of 23 December 2005 dismissing Jiwan from service had thus been shown to have been correctly issued, Mr. Bhatia submit that by virtue of Rule 24[29] of the CCS (Pension) Rules, the entire past service of Jiwan prior to the dismissal order stood forfeited. The petitioner would not therefore be entitled to any family pension.

21.3 Mr. Bhatia also relies on sub-Rule (1)(a) and (10) of Rule 51 of the CCS (Pension) Rules, 1972. Mr. Bhatia's contention is that as the criminal proceedings had been instituted against Jiwan under Sections 363 / 365 of the IPC, in which he was ultimately declared a Proclaimed Offender[30], under Section 82 of the Code of Criminal Procedure, 1973[31], Rule 51(1)(a) would not apply by virtue of Rule 51(10). As a result, the petitioner would not be entitled to family pension as her right to family pension would emanates from Rule 51(1)(a). To support his submissions, Mr. Bhatia places reliance on

[29] **24. Forfeiture of service on dismissal or removal. –** Dismissal or removal of a Government servant from the service or post any days forfeiture of his past service.
[30] "PO", hereinafter
[31] "Cr. PC", hereinafter

the judgment of the Supreme Court in ***Union of India v Geeta Devi***[32]**.**

Issues that arise for consideration

22. The issues that arise for consideration are, therefore

(i) the applicability of the DOPPW OMs dated 29 August 1986 and 18 February 1993,

(ii) the applicability of Rule 17 of the DPPAR read with the judgment of the Supreme Court in ***Amar Singh Harika*** and ***Dulu Devi,*** *vis-à-vis* Mr. Sinha's submission that the dismissal order dated 23 December 2005, never having been personally served on Jiwan, was of no effect,

(iii) the applicability of Explanation (b) to Rule 17(2) of the DPPAR, and

(iv) the entitlement of the petitioner to family pension in the light of Rule 24 and Rule 51(1)(i)(a) read with Rule 51(10) of the DPPAR.

23. Re. DOPPW OM dated 29 August 1986 and 28 February 1993

23.1 Of these two OMs, it is obvious that the rights ventilated by the petitioner are predicated on DOPPW OM dated 29 August 1986.

23.2 DOPPW OM dated 29 August 1986 envisages grant of family pension to eligible family members of employees subject to the cumulative satisfaction of the following conditions:

[32] **(2002) 10 SCC 166**

(i) The employee must have disappeared, and his whereabouts not known to his family members.

(ii) Seven years must have passed since the employee disappeared.

(iii) The family member must have lodged a report with the Police Station.

(iv) The Police Station must have reported that, despite all efforts, the employee could not be traced.

(v) An indemnity bond would have to be furnished by the family member, before release of family pension, to the effect that, if the employee were subsequently traced or if he turned up, any payments towards family pension made under the OM would be adjusted against any payments which the employee might claim.

(vi) The case had to be a genuine case of disappearance. The OM would not apply where the disappearance was on account of fraud or misconduct. In such cases, the entitlement to family pension would arise only after the employee, if involved in criminal proceedings, was acquitted therefrom, or if any disciplinary proceedings initiated against the employee stood concluded.

23.3 There is no dispute about the fact that the aforenoted ingredients

of the OM dated 29 August 1986 stand satisfied in the present case. The respondents do not contest the correctness of the petitioner's assertion that, after 8 June 2005, she never saw Jiwan. Nor is there any evidence or material, placed on record by the respondents, on the basis of which the correctness of this assertion could be doubted. For the purposes of applicability of the OM, therefore, it has to be accepted that, in fact, after Jiwan left home on 8 June 2005, he was never seen again by the petitioner.

24. The respondents' contention, which has been accepted by the Tribunal, is that, as Jiwan was dismissed from service by order dated 23 February 2005, his entire past service stood forfeited by operation of Rule 24 of the CCS (Pension) Rules.

25. That Rule 24 of the CCS (Pension) Rules, in express terms, entails forfeiture of past service of an employee who is dismissed or removed from service, is apparent from the Rule itself. If, therefore, the order dated 23 December 2005, dismissing Jiwan from service is validly enforceable against him, the respondents would be correct in their contention that no family pension would be payable to the petitioner, and that she would be entitled only to gratuity, which already stands released to her.

26. Apropos the Order dated 23 December 2005, whereby Jiwan was stated to have been dismissed from service, Mr. Sinha advances two contentions.

27. <u>Argument of non-service</u>

27.1 The first submission of Mr. Sinha, with respect to the Order dated 23 December 2005, is that the Order was not served on Jiwan and was not, therefore, enforceable against him. For this, Mr Sinha places reliance on Rule 17(1) of the DPPAR and on the judgments of the Supreme Court in ***Amar Singh Harika***, ***Dulu Devi*** and ***Dinanath Shantaram Karekar***.

27.2 The argument fails to impress.

27.3 The decisions in ***Amar Singh Harika***, ***Dulu Devi*** and ***Dinanath Shantaram Karekar*** are, on their plain reading, clearly distinguishable. They enunciate the principle that an order of punishment, once passed, cannot be retained by the DA with himself. It has to ensue forth to the officer against whom has been issued. The justification for this, as is contained in all these the decisions cited by Mr. Sinha, is that, so long as the DA retains possession and control over the order, and has not issued it to the officer concerned, the order does not reflect the final decision of the DA. Till it is issued to the officer concerned, the DA may change his mind or modify the order. The order, therefore, takes effect only when it issues forth to the officer against whom it is passed. It is only then that the order becomes enforceable against the officer.

27.4 These decisions cannot, certainly, be cited as authorities for the proposition that service of the order on the wife of the employee concerned, where the employee himself is untraceable and, as the respondents would submit, absconding, is not sufficient service within

the meaning of Rule 17(1) of the DPPAR. Accepting such a submission would result in a strange consequence, in that, by absconding and remaining untraceable, an employee can, forever, prevent the order of dismissal or removal from becoming enforceable in law. The very possibility of such an absurd consequence is itself good reason not to accept Mr Sinha's contention that there was no service of the order dated 23 December 2005 on Jiwan. Service of the order on the petitioner has, in the circumstances, to be regarded as sufficient service for the purposes of Rule 17(1).

28. Legality of the order

28.1 Mr. Sinha's also contests the legality of the order dated 23 December 2005, dismissing Jiwan from service.

28.2 Unfortunately, though prayer (iii) in the OA filed by the petitioner before the Tribunal specifically sought quashing of the order dated 23 December 2005, dismissing Jiwan from service, the Tribunal has returned no observation or finding on this issue, or addressed the prayer. Apart from noting, in para 14 of the impugned judgment, the fact that the order dated 23 December 2005 recorded the opinion that it was impracticable to hold a regular departmental enquiry against Jiwan, the justification for such an opinion, in law, has not been addressed by the Tribunal.

28.3 The order dated 23 December 2005 purports to have been

passed under proviso (b) to Article 311(2)[33] of the Constitution of India. Under this proviso, the requirement of a disciplinary enquiry, before an employee is dismissed, removed or reduced in rank, as contained in Article 311(2), is dispensed with, "where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such an enquiry". In the present case, the order dated 23 December 2005 observes that it was not reasonably practicable to hold an enquiry against Jiwan as he was absconding.

28.4 Clearly, by deciding to dismiss Jiwan from service without holding an enquiry, the Respondents have escaped the rigour of Rule 16 of the DPPAR, and of the procedure for enquiry envisaged thereunder. We have to examine whether this was permissible.

28.5 The need to examine whether the decision of the DA to dismiss Jiwan from service without holding a disciplinary inquiry against him is, or is not, justifiable under proviso (b) to Article 311(2) of the

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[33] **311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State-**

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(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply—]

(*a*) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(*b*) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(*c*) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry.

Constitution, however, stands obviated by Explanation (b) to Rule 17(2) of the DPPAR, which clearly permits it. Explanation (b) exempts the requirement of holding a departmental enquiry in a case in which, *inter alia*, the police officer "has *absconded or has deserted or cannot be found without inordinate delay*". In the facts of the present case, Jiwan has, even as per the case that the petitioner seeks to set up, remained untraceable, and his whereabouts unknown, after 8 June 2005. Clearly, therefore, the case would fall within one or more of the expressions "absconded", "deserted", or "cannot be found without undue delay", employed in Explanation (b) to Rule 17(2) of the DPPAR.

28.6 A specific opinion, to that effect, stands recorded in the Order dated 23 December 2005. We do not find any cause to hold the said opinion, as held by the DA, to be vitiated in law for any reason.

28.7 No submissions were advanced by Mr Sinha regarding the merits of the order dated 23 December 2005. Indeed, no such submissions were advanced before the Tribunal either.

28.8 The challenge to the order dated 23 December 2005 has, therefore, necessarily to fail on merits as well.

Conclusion

29. In the result, we find no cause to upset the impugned judgment of the Tribunal, which is, therefore, affirmed in its entirely.

30. The writ petition is therefore dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

JULY 1, 2025*/aky/yg*

Click here to check corrigendum, if any