

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

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OA No.304/99

New Delhi this the 24th day of May, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Shri Kripal, deceased through
LRs:

1. Smt. Leela Vati
W/o late Sh. Kripal,
R/o Subhash Nagar,
behind Khanna Building,
Near Ganda Nallah,
Bareilly, UP.
2. Smt. Sheela Devi,
W/o Sh. Madan Pal,
R/o Subhash Nagar,
Behind Khanna Building,
Near Ganda Nallah,
Bareilly (U.P.)
3. Smt. Susheela Devi,
W/o Sh. Shyamu,
R/o Gola Gokaran Nath,
Distt. Lakhimpur Khiri (UP).
4. Sh. Babu Lal, S/o late Sh. Kripal,
R/o Subhash Nagar, Behind Khanna Building,
Near Ganda Nallah, Bareilly UP.
5. Sh. Raj Pal,
S/o late Sh. Kripal,
R/o Subhash Nagar, Behind Khanna Building,
Near Ganda Nallah, Bareilly UP.
6. Smt. Seema,
W/o Sh. Mohit,
R/o Subhash Nagar, Behind Khanna Building,
Near Ganda Nallah, Bareilly UP.
7. Sh. Som Pal,
S/o late Sh. Kripal,
R/o Subhash Nagar, Behind Khanna Building,
Near Ganda Nallah, Bareilly UP.
8. Sh. Rajesh,
S/o late Sh. Kripal,
R/o Subhash Nagar, Behind Khanna Building,
Near Ganda Nallah, Bareilly UP.

...Applicants/LRs

(By Advocate Shri J.K. Bali)

-Versus-

Union of India through:

1. The Secretary,
Railway Board, Rail Bhawan,
New Delhi.

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2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Chief Mechanical Engineer,
Northern Railway Headquarters,
Baroda House, New Delhi.
4. The Divisional Railway manager,
Northern Railway, Moradabad, UP.
5. Sr. Divisional Mechanical Engineer,
Northern Railway,
DRM's Office, Moradabad. ...Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

By Mr. Shanker Raju, Member (J):

This application is now contested by the legal heirs of the deceased applicant as the applicant died during the pendency of the OA on 25.2.2000. In this OA the applicant has assailed an order passed by the disciplinary authority on 29.4.94 whereby he has been awarded a major penalty of removal from service on the ground of remaining absent unauthorizedly from duty w.e.f. 6.10.92 to 15.3.93. According to the applicant a mercy appeal was filed to the department on 30.6.94 which was not entertained by the respondents and thereafter on filing a revision petition the same was rejected as time barred by an order passed on 15.10.98, which is assailed here in this OA.

2. The applicant was working as a Group 'D' employee and his normal date of superannuation was 30.6.97. He was proceeded against in a disciplinary proceeding on a major penalty chargesheet alleging unauthorised absence from 6.10.92 to 15.3.93. The enquiry officer after serving the chargesheet under SF-5 held the applicant guilty of the charge. The disciplinary authority on the basis of the enquiry report imposed a penalty of removal from service.

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On filing an appeal, as contended by the applicant, nothing was heard from the respondents and thereafter the revision petition was filed which was rejected as time barred on 15.10.98. The applicant in this OA contended that the enquiry officer has wrongly held the applicant guilty of the charge on the basis of his admission as although he had admitted the charge in toto, but yet made a statement seeking pardon and also giving his justified explanation for remaining absent on account of the serious illness of his wife and son. The applicant has also contended that on joining duty on 15.3.93 he had submitted the requisite medical record to the department. In this background it is contended that the procedure adopted by the enquiry officer to hold him guilty on the basis of his admission is illegal as the admission was neither absolute nor unconditional and unequivocal but the same was conditional, giving an explanation of his absence and further after the confession instead of forwarding the enquiry report to the disciplinary authority the enquiry officer proceeded to record evidence and continued with the enquiry as such once the decision was taken to proceed with the enquiry the reliance on confession to come to the conclusion of guilt is not legally permissible. The learned counsel of the applicant by referring to rule 9 (3) of the Delhi Police (Punishment & Appeal) Rules, 1968 contended that if the charges are admitted the disciplinary authority shall have to record finding on each charge and the same procedure was not resorted to as such the admission of the applicant loses its significance and as a consequence the entire enquiry is to be proceeded with by the enquiry officer and finding on the basis of confession is not legal as the admission was not absolute. It is further contended that

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by resorting to the decision of this Tribunal in Mr. A. Prasada Rao v. The General Manager, South Central Railway, Secundrabad & Others, 1994 (2) ATJ 434 it is contended that in case of no allegation of wilful absence in the chargesheet mere absence of a justified ground, i.e., in the present case illness of the wife and son for which the medical record has been produced the applicant is not to be held guilty for any misconduct. It is further contended that the punishment imposed was absolutely arbitrary and is not commensurate with the misconduct as the applicant had already completed a qualifying service of more than 30 years and was due for his retiral benefits. Mere absence of five months that too in extenuating circumstances will not bring his case to that of graviest act of misconduct warranting extreme punishment of removal. It is further contended that the charge issued to the applicant lacks in material particulars. There is no reference of previous bad record but yet the enquiry officer while recording the finding of guilt taken into consideration the previous bad record which was agreed to by the disciplinary authority without making it a definite charge and according a reasonable opportunity to the applicant to defend the same. The learned counsel for the applicant has relied upon the ratio of the Apex Court in State of Mysore v. K. Manche Gowda, AIR 1964 SC 506. The learned counsel for the applicant further relies upon the Railway Board's letter dated 24.6.57 to contend that in respect of the charges admitted by the delinquent employee no enquiry should be held whereas in the present case the respondents had examined witnesses and continued the enquiry against the rules. As regards the appeal it is contended that the applicant has made mercy petition to the department instead

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of preferring an appeal as he was not in a position and state of mind to file a regular appeal. The learned counsel of the applicant has also drawn our attention on a query to the proof of despatch of appeal dated 30.6.94 by producing a copy of the UPC addressed to Additional DRM, Northern Railway, Moradabad issued from District Court Bareilly on 30.6.94. It is also contended that the applicant has filed a revision petition Chief Mechanical Engineer, Northern Railway, Headquarter office Baroda House, but the same has not been forwarded by the respondents to the concerned authority and has been rejected by the DRM who is not competent to decide the same. Placing reliance on Surjeet Singh Bhatia v. Union of India & Others, 1988 (6) ATC 638, it is contended that such a procedure is bad in law. Lastly placing reliance on a decision of this Tribunal in Smt. Shah Jahan Begum v. Union of India & Others, 1988 (2) CAT 257 where the applicant was removed from service and died during the pendency of the OA, the penalty has been substituted. Placing reliance on the ratio of B.C. Chaturvedi v. Union of India, JT 1995 (8) SC 65 it is contended that this Tribunal by way of judicial review can interfere in the matter of punishment if it shocks its conscience. As regards the limitation it is contended that the respondents themselves passed an order on his revision petition by rejecting it as time barred on 15.10.98 and he had approached the Tribunal within the stipulated period of one year as prescribed under Section 21 of the A.T. Act, 1985. As regards the exhaustion of remedies, it is contended that as the OA was admitted on 24.2.99 the said objection cannot be sustained in view of the Section 20 of the A.T. Act, 1985 and also contended that in view of the ratio laid

down by the Full Bench of the Tribunal in B. Parameshwara Rao v. The Divisional Engineer, Telecommunications, Eluru and Anr., CAT (FB) Vol.II 250 that the Tribunal would not ordinarily admit the OA unless alternate available remedies are exhausted, but in exceptional circumstances and rarest of the rare cases and being the case as unusual as the applicant had been awarded very harsh punishment and had died during the pendency of the OA the OA can be entertained without exhausting the remedy.

3. On the other hand the respondents refuted the contentions of the applicant and took preliminary objection regarding limitation by contending that the applicant has challenged an order passed on 29.4.94 without filing a statutory appeal against that order and merely filing a revision petition would not enhance his limitation and for the reliance has been placed on Rattam Chandra Sammanta & Ors. v. Union of India & Ors., JT 1993 (3) SC 418. It is also refuted that the applicant has filed any appeal to the appellate authority and has also questioned the genuineness of the UPC filed by the applicant and contended that the same would not be a legal proof of service of the appeal on the respondents. As regards the revision petition it is contended that the same has not been filed in accordance with the rules as provided under rule 24 (3) of the rules *ibid*. Admittedly the applicant a Group 'D' employee could file a revision only if his appeal has been disposed of by the appellate authority. As in the revision petition the appellate order has not been impugned, the same was not legally maintainable. On merits, it is contended that the applicant in all clear terms admitted his guilt and as such the enquiry officer has held him guilty of the charge. It

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is contended that the medical record etc. was not submitted during the absence and was submitted on the date of joining duty on 16.3.93 and as no prior permission was taken the period of absence remained unauthorised. It is further contended that the applicant has also not filed a representation to the finding.

4. The applicant in his rejoinder reiterated the pleas taken in the OA.

5. Without going into the merits of the case and keeping in view the ratio laid down in Full Bench judgment in the case of B. Parameshwara Rao's case (supra) and the fact that the application stood admitted, we entertain this OA without insisting on exhaustion of the remedies as an exceptional and unusual case on the ground that the applicant has died during the pendency of the present OA and even without alleging any wilful absence extreme punishment of removal has been awarded for remaining absence for five months that too on the ground of illness of his wife and son.

6. As regards the limitation is concerned, the applicant has filed a revision petition to the revisional authority and the same was dismissed as time barred and not dismissed as not being maintainable under the Rules. As such in accordance with Sections 19 and 20 of the A.T. Act, what confers the jurisdiction to the Tribunal to entertain the OA is a final order passed and in this case being the order of revision though rejected as given a cause of action to the applicant to approach this Tribunal.

As such keeping in view the exceptional circumstances in the present case, we condone the delay; if any, in filing the present application.

7. Though the respondents have denied to have received the appeal but the applicant has contended that he has filed a mercy application/appeal and the same was not disposed of and for this he produced a UPC which, though admittedly is not a proof of the receipt of the appeal but the fact that the appeal was sent by the applicant and in exceptional circumstances of the present case where the LRs of the applicant have contested the present OA and as there is no charge of wilful absence alleged against the applicant and the fact that he had rendered a service of about 30 years, our conscience has been shocked by the penalty which has been awarded without alleging wilful absence and on the ground of absence for which the applicant has already tendered his explanation and medical record which was not considered by the respondents. In our considered view the punishment is disproportionate and is not commensurate with the charge.

8. In the result, We would like to interfere by way of judicial review and in this furtherance it would be just and proper to direct the respondents to consider the appeal filed by the applicant at Annexure A-7 colly., on merits, as well as the contentions taken by him in this OA without adhering to the limitation period as prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968 and also to consider the proportionality of punishment, keeping in view the observations made above in our order and to dispose of the appeal by passing a

detailed and speaking order within a period of two months from the date of receipt of a copy of this order. The OA is disposed of, as above, without, however, any order as to costs.

S. Raju

(Shanker Raju)
Member(J)

'San.'

V.K. Majotra

(V.K. Majotra)
Member(A)