

**Central Administrative Tribunal
Principal Bench**

OA No.463/1995

New Delhi this the 1st day of May, 2009.

Hon'ble Mr. Shanker Raju, Member (J)
Hon'ble Dr. Veena Chhotray, Member (A)

Smt. Gyatri Devi, wd/o late Sh. Gajraj,
Ex-2nd F/Man JP,
H. No.JS/17/E, Loco Colony,
Jaipur (Raj).

-Applicant

(By Advocate Shri R.K. Kapoor)

-Versus-

1. Union of India through the
General Manager, Western Railway,
Churchgate, Bombay.
2. The Divisional Railway Manager,
Western Railway Manager,
Jaipur (Raj).
3. The Sr. Divisional Mechanical Engineer,
Western Railway Jaipur (Raj).

-Respondents

(By Advocate Shri R.L. Dhawan)

O R D E R

Hon'ble Mr. Shanker Raju, Member (J):

On the issue of maintenance of a claim by a widow of the deceased employee the matter has been remanded back from the High Court of Delhi.

2. Applicant, whose late husband was employed as a Fireman in Railways, impugns respondents' order dated 28.12.1992, whereby after a disciplinary proceeding for a major penalty under SF-5 a penalty of removal from service was inflicted. Also assailed is appellate order dated 22.7.1993 whereby the penalty has been upheld. Lastly assailed is an order passed in revision whereby on

compassionate grounds the punishment of removal has been modified to compulsory retirement.

3. Applicant while working as Fireman-II on 17.2.1991 was proceeded against for misbehaviour with driver Shri Ramjilal in train No. 4737 UP while in the state of intoxication and was also not in a position to discharge his duties effectively or satisfactorily as a result of which the train was carried with diesel engine from Isarda to Jaipur.

4. A preliminary enquiry was conducted where the statement of driver of the train was also recorded. On examination of witnesses the enquiry officer has held applicant guilty of the charge, which on being represented against resulted in removal. Modification of penalty in revision to compulsory retirement gives rise to the present OA.

5. Learned counsel of applicant stated that the present is a case of 'no evidence' and 'no misconduct' and that the orders passed by the authorities are non-speaking and the finding of being under intoxication has been arrived at without subjecting the applicant to medical examination. The learned counsel would also contend that defence plea of applicant was not at all considered, as one Ramji Lal, who was Fireman-I and has consumed alcohol was fully intoxicated has obstructed him from performing his duties, as such there was an altercation, yet when the train reached at Barwada he informed the PCR that he is unable to work in the train, but his request was not acceded to and at the station the police has taken Fireman-I, who was intoxicated and as the

applicant was not, he was not subjected to any medical examination.

6. Learned counsel would also contend that no witness has witnessed the factum of fight etc. and merely on *ipsi dixit* of the authorities they have deposed that the deceased employee was under intoxication.

7. On the other hand, learned counsel of respondents vehemently opposed the contentions and Shri R.L. Dhawan cited the decision of the Apex Court in **Bank of India v. Yoga Rao**, 2008 (2) SLJ 369 to contend that the Tribunal has no power to substitute its own view. While relying upon the decisions in **Govt. of India v. George Phillips**, 2006 (12) SCALE 122, **State Bank of Patiala v. S.K. Sharma**, JT 1996 (3) SC 722 and **State Bank of Bikaner v. Prabhu Dayal Grover**, 1996 (1) SLJ SC 145, it is contended that the Court should act to facilitate performance of fundamental duty of a government servant and to ensure that the discipline is maintained. As serious charges have been levelled against the applicant, he has been afforded a reasonable opportunity and on totality of the facts hearing has not been denied to him.

8. Learned counsel would contend that present is not a case of 'no evidence' and as witnesses have deposed that the applicant has consumed alcohol but also entered into a fight.

9. On careful consideration of the rival contentions of the parties, we are of the considered view that the present is a case where on perusal of the record and testimony we find that nobody

has seen applicant consuming the alcohol, yet at the railway station when Ramjilal was arrested by the police he was taken for medical examination. The applicant was not found intoxicated and was not under the influence of alcohol. What has been deposed by the witnesses is that the applicant was looking normal but from the smell and his abnormal behaviour it appears that he was drunk, is not a conclusive piece of evidence against the applicant. No doubt, in a disciplinary proceeding preponderance of probability and 'hear-say' evidence is admissible, yet conclusive evidence should be brought on record to indicate towards guilt of applicant. The allegation against applicant that he was under intoxication but none of the witnesses have stated so, apart from the statement of witnesses even the enquiry officer has only proved that applicant has consumed alcohol but he has not concluded that he was under its influence. Whereas the charge against the applicant was that he was under the influence of alcohol or was intoxicated, yet the disciplinary authority agreeing with the finding of the enquiry officer held him guilty of under the influence of alcohol. The respondents have established an extraneous charge, which is not levelled against deceased railway servant, without giving an opportunity to rebut or to defend it properly. A punishment on this charge cannot be sustained in view of the decision of the Apex Court in **M.V. Bijlani v. Union of India & Ors.**, 2006 (4) SCALE 146. Also held by the Apex Court in **State of Assam v. Mahender Kumar Das**, 1971 (1) SCR 81 the enquiry officer cannot travel beyond the scope of the enquiry. On this ground alone the punishment, including modified punishment is rendered illegal. Non-examination of deceased railway servant on an allegation of

being drunk or under influence of alcohol by a medical doctor, specially in Railways is mandated as per para 565 of Medical Manual, where in case of a drunkenness it is incumbent to fill a proforma regarding particulars of suspected case of drunkenness and the person concerned has to be medically examined. As held by the High Court of Madras in **A.S. Murthy v. The Director General**, 2000 L&IC 375 that non-examination of Doctor where the allegations pertained to consumption of alcohol certainly vitiate the order of the inquiry as well as the order of punishment.

10. A Division Bench of this Tribunal at Lucknow Bench in **Latoor Singh v. Union of India & Ors.**, 2003 (1) ATJ CAT 105 observed as under:

"11. If one has regard to the aforesaid principles as crystallized by the various pronouncements of the Apex Court and applying the ratio to the facts and circumstances of the present case, we find that the basis of holding the proceedings against the applicant is a fact of his having found intoxicated and the report of DMO. The respondents have stated that this report and the observation though does not specifically observe the applicant to be intoxicated having consumed alcohol but yet from the finding of altered consciousness which is one of the ingredients of intoxication and coupled with the fact that the applicant was smelling foul from his mouth had consumed alcohol to establish the charge. In the course of the inquiry, the inquiry officer had also relied upon the report of the DMO and the reasons for not examining the DMO is that his report already existed. Now, if this fact is found in the light of the principles of natural justice and his reasonable opportunity, the aforesaid reasoning is to demolish.

12. Hon'ble High Court of Madras, while dealing with the identical circumstance, in **A.S. Murthy v. T. Director General**, 2000 Labour and Industrial Cases 375 has held that non-examination of Doctor where the allegations pertained to consumption of alcohol certainly vitiate the order of the inquiry as well as order of punishment.

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13. Moreover, any document which is produced in the inquiry, cannot be validly proved if the maker of that document is not summoned in the inquiry for the purpose of affording the reasonable opportunity to the charged officer to cross-examine him. The right of cross-examination is a cardinal principle of natural justice, which cannot be rightly done away by withholding the witness though available.

14. Having regard to the peculiar facts and circumstances, where the defence plea is that the applicant had not consumed any intoxicated drink and his condition at that time was not on account of certain other factors and the fact that had he consumed alcohol or some intoxicated drinks as per the procedure laid down for medical examination, his case sheet for examination of drunkenness should have also been filled up. We are satisfied with this plea that his medical report does not state and there is no specific observation as to consumption of alcohol by the applicant or he is being under influence or intoxicated, being a non-medical entity, the concerned authority should not have acted upon the same and had the Doctor been examined, applicant would have been in a position by way of cross-examination to establish his defence. Merely because the applicant has been referred to hospital for admission would not indicate that it was on account of his intoxication. On mere reference to altered consciousness now reflected by the respondents as one of the ingredients of intoxication should have been left to the expert, i.e., DMO, who was without any justifiable reason was withheld and not offered as witness.

15. Moreover, the other evidence does not inspire confidence as out of two witnesses, one says that there was no foul smell coming out of the applicant and he joined duties in normal condition and the other when asked about the condition of the applicant, it is not on account of intoxication but on his illness, he failed to answer the same and left it to the expert medical authority.

16. In the light of the Apex Court decision in S.B. Ramesh supra, as the Doctor has not been examined and produced for cross-examination by the applicant, the charge of consumption of alcohol and intoxication, to our considered view, has not at all been established. This legal infirmity has greatly prejudiced the applicant in his defence and is sufficient to vitiate the proceedings.

17. Moreover, as per Para 565 of the Medical Manual, it is incumbent in cases of drunkenness, to fill a proforma regarding particulars of suspected case of drunkenness. Having no such finding in the medical

report and moreover the same has not been validly proved, the same cannot be relied upon to hold the applicant guilty of charge."

11. Resultantly, for the foregoing reasons, leaving other grounds open, this legal infirmity is sufficient to vitiate the enquiry as well as the consequent punishment. OA is allowed to the extent that the impugned orders are set aside. Respondents are directed to deem the deceased railway servant reinstated in service on 28.12.1992 till his death on 27.10.1993. The pay and allowances and other benefits shall be released to applicant, i.e., the widow of the deceased railway servant. As the applicant has been treated as compulsorily retired by a modified punishment in revisional order, he had already been given the pensionary benefits, which shall hold good for all purposes. Respondents are further directed to comply with these directions within a period of 2 months from the date of receipt of a copy of this order. No costs.


(Dr. Veena Chhotray)
Member (A)


(Shanker Raju)
Member (J)

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