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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.559/95

New Delhi this the 16<sup>th</sup> day of September, 1999.

HON'BLE MR. JUSTICE V.RAJAGOPALA REDDY, VICE-CHARIMAN(J)  
HON'BLE MRS. SHANTA SHASTRY, MEMBER (A)

Smt. Badami,  
Wd/o late Shri Chaju,  
Gaur Bhawan, Gali No.40,  
Sadh Nagar, Palam Colony,  
New Delhi.

...Applicant

(By Advocate Shri V.P. Sharma)

-Versus-

1. Union of India through  
the General Manager,  
Western Railway,  
Church Gate,  
Bombay.
2. The Divisional Railway Manager,  
Western Railway,  
Jaipur.
3. The Divisional Engineer (West),  
Western Railway,  
Jaipur.

...Respondents


(By Advocate Shri P.S. Mahendru)

O R D E R

By Reddy, J.

One Shri Chaju, who was Railway employee, has been removed from service on 28.4.92 on grounds of unauthorised absence from duty. He preferred an appeal against the said order on 6.7.92, and it has been rejected. The employee, however, died on 24.9.93. Thereafter, the applicant who is his wife filed the present OA, seeking to quash the order of removal of her husband and for payment of family pension.

2. It is the case of the applicant that while husband was in service was absent from duty from 4.6.84 on the ground of sickness. He did not join duty till 1991. On recovery of illness the employee submitted the fitness medical certificate. But he was issued a



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chargesheet on 29.9.91 and an enquiry was held and he was removed from service by order dated 28.4.92 on the ground of unauthorised absence from April 1984 to April, 1992. It is, however, the allegation of the applicant that the employee was taken on duty in 1992 and he was also asked by the third respondent to submit his pension papers but by the time he submitted the papers he was removed from service. The husband of the applicant filed OA-2088/93, questioning the order of removal but the same was disposed of after the death of her husband, directing the respondents to dispose of the appeal dated 6.7.92 filed by him within a period of two months. But till date the appeal has not been disposed of. This OA is filed questioning the order of termination of the applicant's husband dated 28.4.92, on several grounds.

3. It is contended by the learned counsel for the applicant that as the respondents regularised the period of absence of the applicant's husband, the charge of misconduct does not survive. The learned counsel relies upon the decision in State of Punjab & Ors. v. Bakshish Singh, 1999 (1) ATJ 191, in which it was held that when the period of absence was regularised by converting the same into leave without pay, the charge of unauthorised absence did not survive. Hence, the impugned order of dismissal was set aside by the Supreme Court and the case was remanded back to the disciplinary authority for passing fresh order of punishment.

4. In the counter-affidavit it is averred that in spite of several notices since 1984 the applicant's husband did not report for duty. The allegation as to

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the reporting of the applicant's husband to duty in 1991 is also denied. Her husband was issued a chargesheet and he admitted that he was absent from duty without intimation. After enquiry the report of the enquiry officer was furnished to the applicant's husband along with a show cause notice, who did not send any reply. He was, therefore, removed from service on 28.4.92. It was also averred that the appeal filed by the applicant's husband was rejected by the appellate authority and it was duly communicated to the employee by registered letter dated 19.4.93. The learned counsel for the respondents submits that the applicant has been unauthorisedly absent for over seven years and the enquiry was held after issuing a chargesheet and he was removed from service on the basis of the finding of the enquiry officer and the appeal filed by the applicant's husband against the impugned order was also rejected. It is, therefore, contended that there is no warrant to interfere with the impugned order.

5. Questioning the impugned order of removal the applicant has moved this Tribunal and the same was disposed of, directing the appellate authority to dispose of the appeal filed by the employee. The OA was accordingly disposed of. It is true that in the earlier OA the Tribunal has not gone into the validity of the impugned order. Hence, it is open to the applicant to raise the validity of the impugned order in the present OA. It is not disputed that the applicant was issued a chargesheet and an enquiry was held and on the basis of the findings of the enquiry officer the employee was removed from service. It is also manifest from the

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impugned order that the enquiry officer submitted an enquiry report to the disciplinary authority, holding that the employee was unauthorisedly absent from duty and hence the charge was established. Accordingly, the applicant was found guilty of the charges and punishment of removal was awarded against the employee. The contention of the learned counsel for the applicant that without holding enquiry the applicant's husband was removed from service, cannot be accepted. We are also of the view that the order does not suffer from any infirmity.


6. However, it remains to be seen whether the impugned order is vitiated on the ground that the period of absence having been regularised in service. It is true, as held by the Supreme Court in Bakshish Singh's case (supra), if the sole charge is of unauthorised absence on which the punishment was awarded and if the period of absence was regularised the charge would not survive any further and the delinquent is entitled to be exonerated. But in the present case there was no mention either in the impugned order or in the grounds raised in the OA that the period of absence was treated as leave and it was thus regularised. The learned counsel for the respondents, however, relies upon the averment made in para 4.3 in the counter-affidavit filed on behalf of the respondents. It is true that it was stated, therefore, that the applicant was treated as on leave without pay. It should be seen that this averment was made after the averments that "the employee was unauthorisedly absent since 4.6.84. He did not send any intimation about taking private treatment from 4.6.84 to 20.10.91 nor send

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any leave application." Without there being even a leave application it cannot be visualised how the period of absence could be treated as leave. It is also not mentioned that the entire period of absence was treated on leave. The applicant has not filed any order where her husband's period of absence was treated as leave. It is also not the case of applicant's husband in the OA filed by him that his period of absence was regularised. In the absence of sufficient material to show that the period of absence of the applicant's husband was regularised and also in the absence of any leave application, we are not prepared to rely upon the solitary averments made in the counter-affidavit. In the circumstances, we are of the view that the decision cited by the learned counsel for the applicant is inapplicable to the facts of the case.

7. In the circumstances the OA fails and is accordingly dismissed. No costs.

  
(Smt. Shanta Shastri)  
Member (A)

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(V. Rajagopala Reddy)  
Vice-Chairman(J)