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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No.743 of 1995.

New Delhi, this the 9th day of February, 1996.

HON'BLE MR B.C.SAKSENA, VICE CHAIRMAN(J)
HON'BLE MR R.K.AHOOJA, MEMBER(A)

Smt.Krishna Wd/o late Shri Satbir Singh
R/O Village Gannore, Ward No.6,
Distt.Sonepat(Haryana).

... .. Applicant.

(through Mr V.P.Sharma, Advocate)

Versus

1. Union of India through the General Manager,
Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Delhi Division,
Near New Delhi Railway Station, New Delhi.
3. The Divisional Mechanical Engineer,
D.S.Office, Northern Railway Chemford Road,
New Delhi.

.....Respondents.

(through Mr B.K.Aggarwal, Advocate).

ORDER

(delivered by Hon'ble Mr R.K.Ahooja, Member(A))

This application has been filed by
Smt.Krishna, who is the widow of Shri Satbir
Singh, an employees of the Railways. The
application is directed against the show-cause
notice dated 11.12.1990, the charge-sheet
dated 18.1.1988 and the removal of the husband
of the applicant from service in December, 1990.

2. The facts of the case are that Shri Satbir Singh

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joined the Railway Department in 1966 and in due course became skilled fitter (C&W) at Bhiwani Railway Station in February, 1985. He was issued transfer orders on 25.11.1986, which, it is claimed were stayed by the higher authorities. It is also stated that Shri Satbir Singh sent his application for leave fully accompanied by medical certificate but the same was not allowed. He filed an O.A. bearing No. 1945 of 1987, before the Principal Bench of the CAT in which the respondents were directed to allow him to work at Bhiwani till 31.3.85. However, allegedly, during the pendency of the aforesaid O.A., the respondents issued a notice dated 21.11.1987 and an inquiry was initiated against him. The applicant claims that her husband was not satisfied with the appointment of the Inquiry Officer and sought a change thereon but the same was refused. On 28.4.1990, the deceased employee was served with a notice for appearing in the inquiry but on the grounds of illness he could not do so. This was followed by [^]show cause notice dated 11.12.1990 for removal from service without completion of inquiry under Rule 14(ii) without any inquiry report. The deceased employee could not, on account of illness send a reply within the stipulated period of 15 days but made a representation dated 7.10.1993 to which no reply has been received till date. The employee ~~however~~ died in January, 1995. The applicant submits that her husband was removed from service without any proper order in December, 1990 in contravention of the mandatory provisions

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of Railway Services (Discipline & Appeal) Rules, 1968. The applicant has sought setting aside of the impugned order on the ground that not only it was against the Rules but also on extraneous considerations, such as ^{his} involvement in criminal cases ^{which} had been taken into account as the basis of the impugned orders.

3. The respondents have controverted the claim of the applicant and have submitted that the necessary procedure was followed ^{and} the inquiry officer was appointed after serving a ^{major} ~~immediate~~ penalty charge-sheet. But the husband of the applicant misbehaved with the person who went to deliver the notice and also the husband of the applicant did not make any representation to the show-cause notice. The respondents also ^{now} ~~had~~ submitted ^{that} that the deceased employee deliberately avoided appearance before the Inquiry Officer though 20 sittings were held. Accordingly a show-cause notice was given to him as to why he should not be punished as it was not reasonably practicable to hold an inquiry against him.

4. The respondents have raised a preliminary objection that since the cause of action accrued to the applicant by the issue of the letter dated 18.1.1988 (Annexure R-1), the present application is barred by limitation. Arguing before us on the preliminary question of limitation, the learned counsel for the applicant submitted that there could not be a question of limitation when the order of dismissal was never conveyed to the deceased employee. He submitted that a decision taken on the file, being kept on the records of the

respondents, would not give rise to a cause of action when the same was not duly communicated to the charged employee. He further submitted that there is a clear requirement of the rules that any decision of the disciplinary authority must be published as well as be communicated to the concerned employee. He submitted that the deceased employee could not file a representation against the order since the same was never communicated to him in the first place.

5. On a perusal of the record, we find that there is not much force in the arguments advanced on behalf of the applicant. The order of dismissal clearly shows that it was sent to the deceased employee by registered post. Furthermore, it is admitted by the applicant that an inquiry had been initiated against the deceased employee and that a show-cause notice had also been issued regarding the removal from service without holding the inquiry as the same was not possible on account of the conduct of the deceased employee. The learned counsel for the applicant states that the representation was given against this in 1993 but no reply thereto has been sent so far. It is clear that after the order of ^{Dismissal from} ~~termination~~ of service was issued the deceased employee could not have received any pay or salary or even subsistence allowance if he had been placed under suspension. Therefore, in these circumstances, the applicant was bound to know that such an action had been taken against him. The argument that the applicant remained ignorant and unaware of the order of ^{Dismissal} ~~termination~~, therefore,

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does not stand to reason. Furthermore, he was certainly aware of the ^{Dismissal} ~~termination~~ order in 1993 since he made a representation against it on 7.10.1993. On the other hand, the present application has been filed only on 20.4.1995. The same is therefore, clearly time barred.

6. The learned counsel for the applicant also submitted that in case the preliminary objection of the respondents is accepted then the Misc.application filed(MA No.924 of 1995), for condonation of delay, may be considered. In this application the applicant has sought to justify the delay on the ground that the husband had been ill and was admitted in the hospital and it was not possible for him to approach the higher authorities or to seek any other remedy. While, one may have sympathy with the applicant, this cannot be a basis for overlooking the long delay, considering that the show-cause notice was dated 10.12.1990 and the order of termination from service was dated 12.2.1991. The applicant has also not attached any certificates from the hospital to establish the period of treatment of the deceased employee. In the circumstances, the prayer for condonation of delay cannot be granted.

7. In the light of the above discussion, we find that the application is barred by limitation and laches. Accordingly, it is dismissed on that ground alone without going into the merits of the case.

No costs.
~~Member~~
(R.K.Ahooja)
Member (A)

B.C.Saksena
(B.C.Saksena)
Vice Chairman(J)

/sds/