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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2969/97

New Delhi this the 9th day of May, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTA SHASTRY, MEMBER (ADMNV)

Bal Kishan through L.R.
Meera Devi,
Wd/o Sh. Bal Kishan,
R/o 211, Padam Nagar,
Gali No.5, Sarai Rohilla,
Delhi.

...Applicant

(By Advocate Mr. G.D. Bhandari)

1. Union of India through the
General Manager,
Northern Railway, HQ Baroda House,
New Delhi.

2. Divisional Railway Manager,
Northern Railway, Moradabad. ...Respondents

(By Advocate - None)

O R D E R (ORAL)

By Reddy, J. -

Heard the learned counsel for the applicant and the respondents. The learned counsel Shri P.S. Mahendru, whose name is shown as the counsel for the respondents, submits that he is no longer the counsel for the respondents, as the brief was taken over from him by the Railways. On this ground, however, we are not prepared to adjourn the matter, as it is between the Railways and the Counsel to decide as to who should appear in the matter and who-so-ever it is, he should be ready when the case is called for hearing and as the matter is of 1997, we proceed to dispose of the same on merits, in accordance with Rule 16 of Central Administrative Tribunal (Procedure) Rules, 1987, setting the respondents *ex parte*, on the basis of the available pleadings.

CAB

2. The husband of the applicant was appointed as a Sub Loco Cleaner in 1987 on the basis of the certificate produced by him that he had worked as a casual labour with the Railways from 15.6.78 to 31.3.82. Subsequently, in 1991 it was alleged that the applicant secured the appointment on the basis of a forged and fraudulent casual labour card. A memo of charge has been issued to him in 1991. Since he had denied the charges, an enquiry has been initiated and on completion of the enquiry the disciplinary authority agreeing with the findings of the enquiry officer, removed the applicant from service on 26.10.94. The applicant's appeal was rejected by the order dated 19.12.95.

4. Meanwhile, the applicant's husband expired on 31.6.95. The applicant, therefore, filed the OA, challenging the order of removal of her husband.

5. The applicant filed MA-215/98 to condone the delay in filing the OA, wherein she has stated that her husband died in a most indigent condition and she came to know from a distant relation that in an identical matter the colleague of her husband who was also removed from service on the same allegations, having filed OA No.360/93, which was decided on 12.11.97, has been reinstated in 1997, she filed the present OA soon thereafter. She submits that this is an identical matter and she is also entitled to the benefit of the ratio in the above OA. The delay was not malafide or intentional and hence it should be condoned.

6. Let us now consider the question of limitation. In the reply, the respondents raised the plea of limitation. Admittedly the OA is filed after the period of limitation. The order was passed 26.10.94 and the appeal



was rejected on 19.12.95 but the OA was filed on 23.12.97. The reason given by the applicant in MA-215/98 was that her husband died in indigent condition and that she was not aware of the proceedings being a poor and illiterate lady. No reply is however filed to the MA. It should not be forgotten that the death of the employee, who was also the sole earning member, must be shocking to her and the poor widow cannot be expected to know her right to question the removal of her husband and that too within the period of limitation. It is also seen from that application that in an identical matter the applicant's husband has been reinstated on identical circumstances in OA-360/93 by judgement dated 12.11.97. In view of the above circumstances we are of the view that there is sufficient cause for the delay and hence the delay is condoned.

7. A further objection was raised as to the maintainability of OA, filed by the wife of the deceased. Law is, however, well settled that the heirs of the deceased can well challenge the order of removal of the deceased husband or parents and they are entitled for consequential reliefs. In the circumstances, it cannot be said that the OA is not maintainable.

8. The learned counsel for the applicant Shri G.D. Bhandari submits that the applicant's right to disprove the case is seriously jeopardised, as the respondents had not furnished the copies of the material documents, such as attendance register, paysheets register, paid vouchers, original casual labour card etc. It is also contended that there was practically no evidence in this case and the earlier statements of PW-1 are not admissible in the evidence. Thus the entire enquiry is vitiated.

OAB

9. We have given careful consideration to the pleadings as well as the arguments advanced by the learned counsel for the applicant. We have also gone through the material papers and other necessary records in this case.

10. The main charge against the applicant is that he had connived in committing forgery of the casual labour card to show that he has worked for the period from 15.6.78 to 31.3.82, as a casual labour and secured appointment by fraudulent means. In order to prove the case by the prosecution or to disprove the same by the applicant it was necessary for the prosecution to have furnished the original casual labour card of the applicant, attendance register for the relevant period, casual labour register, paysheets register, paid vouchers etc. These documents have not been filed by the prosecutor. The applicant, therefore, sought for supply of the same but the respondents have not supplied most of those documents on one ground or the other. It was stated that the casual labour card was with the Vigilance, paid vouchers are said to be not available. It is stated that the copies of the same were supplied and their originals need not be supplied. The charge of the applicant solely depends upon the proof that the applicant had not worked during the relevant period and the casual labour card produced by him was bogus and forged. For that purpose the documents asked for by the applicant are important piece of evidence in this case to disprove the charge. Admittedly, these documents are in the custody of the respondents and the respondents alone should produce the same. No valid reason is forthcoming why they should not be produced. In fact, no reason is given for not producing the paysheet



register and the copy of the attendance register. The respondents cannot escape from furnishing the same by stating that the other documents are not relevant.

11. In an identical matter in Shri Lal Singh v. General Manager, Northern Railway & Another, reported in Full Bench Judgments (CAT) Vol.III (1991-94) 251 considering the evidentiary value of the muster roll in order to disprove the case of the prosecution it was observed by the Full Bench that:

"The petitioner, in our opinion, is right in maintaining that muster roll is a very valuable piece of evidence for establishing the petitioner's case that he worked as a casual labour during the relevant periods. The petitioner could not have himself produced the same as they were in the custody of the concerned authorities. The Inquiry Officer, therefore, was not justified in not getting the muster rolls produced as there was no real difficulty or hurdle in getting them produced. We have, therefore, no hesitation in holding that the petitioner was denied the opportunity by not securing the relevant muster roll produced which was a valuable piece of evidence to prove his case that he actually worked as casual labour during the relevant period. Hence, we hold that the petitioner was denied reasonable opportunity of defending himself. It is on this short ground that the order of the disciplinary authority and that of the appellate authority affirming the same are liable to be quashed."

12. In the instant case the ratio of the above Full Bench Judgement is squarely applicable. More than one document has not been furnished to the applicant, which, in our view has seriously prejudiced the defence of the applicant. On this ground alone the OA has to be allowed. The OA is accordingly allowed.



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13. The impugned orders of the disciplinary authority dated 26.10.94 and the appellate authority dated 19.12.95 are quashed. The respondents are directed to pay full back wages from the date of removal of the applicant's husband till the date of his death. The applicant is entitled to all the consequential benefit of family pension etc. No costs.

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(MRS. SHANTA SHAstry)
MEMBER (ADMNV)

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(V. RAJAGOPALA REEDY)
VICE-CHAIRMAN (J)