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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

R.A. NO.155/2009
M.A. NO.1633/2009
M.A. NO.1634/2009
IN
O.A. NO.463/1995

New Delhi, this the 3rd day of December, 2009

CORAM: **HON'BLE MR. SHANKER RAJU, MEMBER (J)**
HON'BLE DR. VEENA CHHOTRAY, MEMBER (A)

Union of India & Ors

Petitioners in RA
(Respondents in OA)

(By Advocate: Shri R.L. Dhawan)

versus

Smt. Gyatri Devi

Respondent in RA
(Applicant in OA)

(By Advocate: Shri R.K. Kapoor)

ORDER

By Dr. Veena Chhotray, Member (A):


The present RA has emanated out of the Tribunal's Order dated 1.5.2009 in OA No.463/1995. The aforesaid order was in the first instance challenged before the High Court vide Writ Petition (Civil) No.10606, however, the same was dismissed vide High Court's order dated 3.8.2009 giving liberty to the petitioners, i.e. the Railways to file a Review Petition before the Tribunal. Accordingly the present RA was filed on 26.8.2009. Despite notice, no reply to the RA was filed by the applicant in the Original Application. However, giving an opportunity of hearing to the counsels on both the sides, this order in the RA is being passed.

2. The OA No.463/1995 pertained to the imposition of major penalty after a disciplinary proceeding against one Shri Gajraj Singh,

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Fireman-II under the Railways on a charge of being in an inebriated condition and altercation with another Fireman which had impacted the performance of official work. On initiation of a major penalty disciplinary proceeding and the charges held proved by the Inquiry Officer, the penalty of removal was imposed. Subsequently, on the demise of the punished employee and on a representation from his widow, the Revisionary Authority had reduced the punishment of 'removal' to that of 'compulsory retirement'. The OA No.463/1995 filed by the widow again was assailing the aforesaid order of punishment and had come in for consideration on merit on a remand from the High Court.

3. After a detailed consideration of the case on merit and taking the submissions on both sides, the Tribunal had found the imposition of penalty as unsustainable in law. Para 565 of the Medical Manual wherein a case of suspected drunkenness, it is incumbent to fill a proforma and the person has to be examined medically, and relying upon several judicial precedents the view had been taken that non-observance of these provisions by itself had rendered the penalty illegal. Accordingly, the conclusive finding of the Tribunal was that leaving other grounds open, this legal infirmity itself was sufficient to vitiate the enquiry. Allowing the OA and setting aside the assailed orders, the deceased Railway servant was directed to be reinstated in service on 28.12.1992 till his death on 27.10.1993. Besides, it was also directed that the pay and allowances due would also be released to the applicant, the widow of the deceased Railway servant.





4. The main plea in the present RA is that the reliance on para 565 of the Indian Railway Medical Manual had not formed a part of the submissions during the consideration of the O.A. and thus the respondents had had no opportunity to submit their case about the non-applicability of these provisions in the present case.

Having allowed the RA and having given the opportunity to the learned State counsel Shri R.L. Dhawan, with all respect we are not inclined to accept these contentions.

5. It is an accepted norm that a Court/Tribunal in judicial review is expected to take all relevant aspects of the issue in consideration before arriving at a view. This would encompass not only the relevant rules, regulations but also executive instructions besides, of course, pronouncements in judicial rulings having a bearing on the subject under adjudication. The order of the Tribunal presently being sought to be reviewed is a very detailed one and has been passed taking into consideration the averments on both the sides.

Reagitation of issues in the garb of review has not been held to be permissible under law. Nor do we find it a case of an error apparent on the face of record. In view of the foregoing we do not find this a fit case for review of our earlier order. The RA is dismissed. With the above, MAs also stand disposed of.


(VEENA CHHOTRAY)
MEMBER (A)


(SHANKER RAJU)
MEMBER (J)