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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 57/1989

New Delhi this 11th Day of February 1994

THE HON'BLE MR. J.P. SHARMA, MEMBER (J)

THE HON'BLE MR. B.K. SINGH, MEMBER (A)

Mrs. Asarfi Devi through her legal representatives
Safaiwali,
w/o Shri Dalip Singh,
Central Railway Hospital,
Basant Lane,
New Delhi.

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| 2. Shri Rajinder Kumar (Son) | : | |
| 3. Shri Surinder Kumar (Son) | : | All sons and |
| 4. Shri Ashok Kumar, (Son) | : | daughters of |
| 5. Mrs. Bimla, (Daughter) | : | the deceased |
| 6. Mrs. Vijay Laxmi (Daughter) | : | Mrs. Asarfi Devi |
| | | .. Applicants |
- (By Advocate Shri B.S. Mainee)

VERSUS

Union of India through

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| 1. The General Manager,
Northern Railway,
Baroda House, New Delhi. | |
| 2. The Chief Hospital Superintendent,
Central Railway Hospital,
Basant Lane, New Delhi | |
| 3. The Divisional Medical Officer (Admn.),
Central Railway Hospital,
Northern Railway, Basant Lane,
New Delhi. | .. Respondents |
- (By Advocate Shri K.K. Patel)

ORDER

HON'BLE MR. J.P. SHARMA, MEMBER (J)

The deceased employee Smt. Asrafi Devi was working as 'Safaiwali' since November 1957, in the Central Railway Hospital, New Delhi. She remained on unauthorised absence from duty with effect from 13.6.1987

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did not
/not sent any information regarding her absence.

A major penalty charge-sheet was issued dated 13.10.1987. Dr. Y. Gupta was appointed Enquiry Officer. The charged employee did not turn up to join the enquiry proceedings in spite of the repeated letters sent to her by registered post. She also did not submit any representation or defence and as such failed to respond to the opportunities ~~to~~ given to her to explain the reasons for her unauthorised absence from duty with effect from 13.6.1987. The Enquiry Officer, therefore held that the charge against the employee has been established and she failed to maintain devotion to duty unbecoming of the railway servant contravening Rule 3 (i) and (ii) of the Railway Servants Conduct Rules, 1960. The Divisional Medical Officer imposed a penalty under Rule 6 of the Railway Servants (Disciplinary Appeal) Rules 1968 passing the punishment of removal from service with effect from 6th July 1988. The applicant preferred an appeal against the aforesaid order on 23.8.1988. The competent authority rejected the appeal by the order dated 5.9.1988.

2. The deceased employee filed the present application on 6.1.1989 and prayed for the grant of the relief that the impugned orders of punishment is set aside and she be reinstated in service with full back wages.

3. A notice was issued to the respondents who contested the application and stated that the applicant did not participate in the disciplinary enquiry, held under the relevant rules in spite of the repeated information given to her through registered post, before the enquiry

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Officer. The Enquiry Officer on the basis of the record held that the charge of unauthorised absence has been established and passed the impugned order of punishment which was upheld by the appellate authority.

4. She has also filed rejoinder reiterating the same facts and stating further that no enquiry was held in her case, nor the copy of the enquiry report was supplied to her.

5. The employee i.e. Smt. Asrafi Devi died on 16.4.1991 and thereafter her legal representatives sons and daughters have been brought on record who are pursuing this application. Amended application has been filed in which it is prayed that the punishment awarded to Smt. Asrafi Devi be quashed and all consequential benefits including back wages be paid to the legal heirs.

6. The legal heirs of the deceased have also filed M.A. No. 3713/91 for amending the application by adding para 4.10 that the disciplinary authority did not supply a copy of the enquiry officer's report to the applicant (i.e. the deceased) and failed to get the remarks of the deceased before passing the punishment order which is violative of the laws laid down by the Full Bench in the case of Prem Nath K. Sharma.

7. We have heard the learned counsel for the parties at length and perused the record. The department has also placed before us the departmental file of enquiry. It is a fact that the deceased employee did not parti-

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participate in the enquiry. The learned counsel for the applicant argued that she had to run to Narnaoul to attend on her seriously suffering brother's wife for which she received an urgent call. The deceased herself fell ill and on account of her heart trouble was under the treatment of Dr. M.C. Sharma at Narnaoul till 12.8.1988. When the deceased recovered from her illness she returned to Delhi and she got the impugned order dated 6.7.1988 under which the applicant has been removed from service. Thereafter she preferred an appeal. However, it appears from the enquiry officer's report that the enquiry officer Dr. Y. Gupta on commencement of the enquiry summoned her on 24.3.1988 and the letter was issued on 2.3.1988. She did not turn up to attend the enquiry and the registered letter sent at her given address was received back with the endorsement, 'out of station by the postal authorities'. The enquiry officer fixed another date 21.4.1988 and she was again informed by registered post and the same was received back with the postal endorsement "BAAR BAAR JANAY PAR MAKKAN PAR TALLA LAGGA MILTA HAI".

As such she failed to participate in the enquiry proceedings. The Enquiry Officer, therefore, on the basis of the report of the leave account produced by CHI gave the findings that she continues to be absent from her duty since 13.6.1987. We have seen the departmental file and both the letters alongwith the postal endorsements are on record. The punishment order was also despatched to her enclosing the copy of the Enquiry Officer's Report. The learned counsel for the applicant argued that since the applicant had

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gone to Narnaoul and was under the treatment of doctor, so she was not present at her residence. However, the medical certificate (Annexure A 3) filed by the applicant goes to show that she was recommended commuted leave for the period from 13.6.1987 to 22.8.1988, advising her rest and for treatment. This medical certificate is issued by a private doctor, Dr. M.C. Sharma. However, in the appeal preferred by the applicant dated 23.8.1988 (Annexure A IV) she has written that she received the letter of removal from service on 18.7.1988. In that appeal she has explained her absence from duty. However, this statement in the appeal goes to show that she was very much present on 18.7.1988 and that falsified the medical certificate. The appeal was presented by her from Delhi Address. The medical certificate also does not convince that the applicant was actually treated by Dr. M.C. Sharma at Narnaoul. This certificate bears the date of issue as 13.6.1987. If she has got the certificate on 13.6.1987, then there was no reason why it was not sent to the hospital authorities alongwith an application for leave. Moreover, she could have got her examined by the Government doctor as she was herself working in railway hospital. The contention of the learned counsel is that the respondents should have served the notice of enquiry by the mode of publication but it is not mandatory and nor it is required under the procedure prescribed under Railway Servants Disciplinary Appeal Rules, 1968. The authority of the Principal Bench relied by the applicant cannot be applied to the present case because the applicant was sent twice notices by registered post at her given address and the legal


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representatives who ^{are} now substituted in her place are four sons and they have also given the same address in the amended application as was given by the deceased employee in the original application No. 152/2 Minto Bridge, New Delhi. Thus, it is evident that the deceased employee avoided the enquiry knowingly and did not participate in the same. The findings of the enquiry officer, therefore, cannot be faulted with.

8. The disciplinary authority as well as the appellate authority have duly considered the proceedings of the enquiry and the punishment awarded. That does not call for any interference at all when there is nothing to justify the absence of the deceased employee from duty.

9. The application, therefore, is totally devoid of merit and dismissed leaving the parties to bear their own costs.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal