CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH

OA/020/00850/2016

HYDERABAD, this the 16th day of October, 2020

Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

U.V.Padmavathi W/o late U.Srinivasa Rao,
Aged 29 years, Occ : Housewife,
R/o C/o D.Venkata Ramaiah,
D.No.117, Post Office Street,
Valluripalem Post, Thotlavallur Mandal,
Krishna District, Andhra Pradesh. ...Applicant

(By Advocate : Mr.K.R.K.V.Prasad)

Vs.

1. Union of India represented by
The General Manager, South Central Railway,
Rail Nilayam, Secunderabad.

2. The Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.

3. The Additional Divisional Railway Manager,
South Central Railway, Vijayawada Division,
Vijayawada.

4. The Senior Divisional Operations Manager,
South Central Railway, Vijayawada Division,
Vijayawada.

5. The Assistant Operations Manager (M),
South Central Railway, Vijayawada Division,
Vijayawada. ....Respondents

(By Advocate : Mr. S. M. Patnaik, SC for Railways)

ORAL ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

Through Video Conferencing:

2. The OA is filed in regard to setting aside the punishment of removal imposed on the husband of the applicant and grant of consequential benefits including compassionate appointment in favour of the applicant.

3. Applicant's late husband, who worked as Senior Yard Porter in the respondents' organization, was having serious health issues and based on medical advice he sought alternative employment in posts, where work was light, which was not considered by the respondents. On 26.3.2008, he fell sick and was referred to Railway Hospital Vijayawada on 29.4.2008 for treatment and the later continued the deceased employee on sick list. As his health was deteriorating, applicant's husband was admitted in a private hospital and while taking treatment, he passed away on 14.7.2011. When retiral benefits were sought by the applicant, she was informed that her late husband was removed from service for unauthorised absence and hence, she is ineligible for terminal benefits. Thereupon, applicant represented on 16.9.2011 informing that her husband died because of poor health and that no charge sheet was served on him nor the removal order, to prefer an appeal. As there was no information forthcoming, she sought information under RTI Act and got the charge sheet dated 2.4.2009 issued for unauthorised absence of 309 days for the period 27.3.2008 to 18.3.2009. Based on the details obtained, representations were made on 17.4.2012, 25.9.2012 and in October 2015, for which response vide the impugned proceedings dt. 27.01.2016 was that the deceased employee was removed

from service and hence, applicant is not entitled for any terminal and other benefits.

4. The contentions of the applicant are that the charge memorandum was issued without issue of a show cause notice. Respondents were aware that the applicant was referred to Railway Hospital for treatment and therefore, displaying the charge sheet on the notice board was improper. Deceased employee was under continuous medical treatment from 2007 onwards, till his death and due to continuous failing health; he could not communicate with the respondents. Inquiry officer did not get the notices properly served on the deceased employee at different stages of the inquiry. By simply taking the signature of 2 witnesses on the charge sheet and the inquiry notices, it would not mean proper notice was issued to the deceased employee. The undated inquiry report dealt with the period of absence not mentioned in the charge memo which has prejudiced the mind of the disciplinary authority. Mode followed to deliver the inquiry report was not indicated. Presenting officer was not appointed. The report did not deal as to whether the absence was willful. Disciplinary authority imposed the penalty of removal by taking extraneous factors into consideration. Principles of Natural Justice were violated by not giving an opportunity to the applicant to defend himself. Fairness in dealing with the case was evidently absent. Respondents took action at the back of her husband when he was alive thereby violating Articles 14, 16 & 21 of the Constitution of India.

5. Respondents, *per contra,* state that the applicant was a habitual absentee and in his 5 years 2 months of service, he was absent for 958 days. Applicant's conduct is violative of rules. Only on the advice of the Station Superintendent, Medapadu he was referred to Samalkot Health unit and from there on, to the Railway Hospital Vijayawada. At no point of time either the applicant or his family members informed about the sickness of the applicant. Applicant failed to produce sick certificate issued by a railway doctor and hence, disciplinary action was initiated against him for unauthorized absence for 309 days. Applicant left the station and his address was not known and therefore, respondents displayed the charge sheet in the public notice board and after 10 days, by taking 2 witness signatures, it was returned to the disciplinary authority. Inquiry officer appointed intimated the deceased employee to attend the inquiry and since he did not attend, notices of inquiry were displayed on the notice board. On examining the available witness, inquiry officer submitted a report stating that the applicant was unauthorisedly absent for 309 days. Ex parte inquiry is permitted under Rule 9(23) of RS (D&A) Rules 1968. Disciplinary authority imposed the penalty of removal on the husband of the applicant vide order dt. 28.12.2010 which was served on him on 11.1.2011 and the applicant stating that she was not aware her late husband's removal from service is surprising. Applicant died on 14.7.2011 without availing the remedies of appeal/ revision petition. Proxy appeal by the applicant is not maintainable. Applicant represented for reconsideration of the penalty and release of family pension plus compassionate appointment, which was rejected as per rules. Calling for records in regard

to memo dated 28.12.2010 is time barred under Section 21 of the Administrative Tribunals Act, 1985.

Applicant filed a rejoinder, stating that her husband's frequent absence was on health grounds and not willful. The I.O. has expanded the inquiry to additional days of absence and the penalty order spoke of 958 days. It is on record that the applicant was treated by Samalkot Health Unit and Railway Hospital Vijayawada. None of the documents including the charge sheet were delivered to the deceased employee. Station Superintendent displaying the charge sheet in the notice board is a mechanical exercise. No notices were issued about the ex-parte inquiry by the Inquiry Officer. The OA is not time barred because the penalty order dated 28.12.2010 was not served and the question of appeal also would not arise. The details as to when the memo was served and in whose presence it was served have not been indicated. Earlier communications were not served and therefore, order of removal would not sustain. Even on the date of alleged serving of penalty order on 11.01.2011, the late employee was sick (Annexure A-3 – Medical Record). Assuming that the penalty order was served, even on that day it was evident that the applicant was sick, proving that the absence was not willful. Penalty order was issued by a superior of the disciplinary authority, which is impermissible. Respondents should have sent the charge sheet to the address known to them, to which communication in regard to the compassionate appointment was sent on 31.7.2002 to the mother of the deceased employee. Even the mother-in-law of the applicant informed the respondents about the subsequent address in her letter dated 24.9.2008. Thus, without verifying the personal file, notices

were sent to Station Superintendent/ Traffic Inspector despite being aware that the applicant's husband was sick. When previous communications were not served, it is surprising that the penalty order was shown to have been served by TI/RJY, who acted as the Inquiry Officer, when the deceased employee was seriously ill. If so, it is not understood as to why the Inquiry Officer could not deliver the previous communications namely charge sheet etc. When the applicant represented on 17.4.2012 to conduct a probe as to whether the penalty order was served there was no positive response forthcoming. Mandatory provision of sub rule 23 of Rule 9 of RS (DA) Rules, 1968 was not followed.

6. Heard both the counsel and perused the pleadings on record.

7. I. Here is an interesting case involving a legal battle in regard to the primacy of health over rules and vice versa. The applicant's husband appointed on compassionate grounds on 15.07.2005 was not keeping good health and therefore, was not to able to attend duty regularly. The frequent bouts of illness forced him to be absent from duty for long spells, which the respondents construed it as misconduct and removed him from service on 28.12.2010 for unauthorised absence. After removal, applicant's husband was no more to seek further remedies. It, therefore, fell upon the applicant to seek legal solutions to the consequential issues like family pension and compassionate appointment to eke out a decent living. Applicant's main plank of attack is that the respondents have acted illegally at every stage of the disciplinary proceedings in removing her husband from service by taking action at his back and in contrast, respondents mounted a valiant defence by claiming that the action taken was in perfect wavelength with

the rules, with no echo of dissonance. The nodal points of the entire dispute when analyzed, we would be able to arrive at a clear conclusion which would uphold justice. In this direction, we proceed as under:

II. Whether respondents before issue of charge sheet for unauthorised absence have called for the explanation of the deceased employee?

They did not. Usually before taking the extreme measure of issue of a charge sheet, it is expected of the respondents to call for the explanation and thereupon, depending on the response a decision as to whether to issue the charge memo or otherwise is taken. This preliminary step is taken so that it gives an opportunity to either side to know as to what is the ground reality and more importantly, allows the delinquent to fall in line with the organizational requirements through an appropriate change in his work style. Equally, it enables the respondents to understand the grievances arising because of the system inadequacy and resolve them by a policy initiative so that the quantum of grievances does not gallop to disproportionate dimensions. Therefore, the evolution of the X and Y theories of Management emerging in the past. X theory believes in the issue of charge sheet for anything and everything and Y theory speaks of allowing the employee to explain himself so that management can attempt reformative action. X believes in getting things done by fear and Y by removing fear. Legal equivalence of these Management principles is the Principles of Natural Justice wherein the employee is first heard before taking any action against him. It is our considered view that no harm would have befallen on the respondents if they had given an opportunity to the

Applicant's husband, hereinafter referred to as 'deceased employee', to explain the reasons for his alleged unauthorised absence. It was not done and we find that the respondents did level jumping straightaway to the stage of issue of charge sheet. Thus, in the first step of initiating disciplinary action itself, we find inadequacy in upholding the Principles of Natural Justice by the respondents.

III. Having decided to issue the charge sheet did the respondents deliver the charge sheet to the deceased employee?

Respondents displayed the charge sheet in the public notice board and after 10 days, the Station Superintendent returned the charge sheet to the disciplinary authority. It is on record that the applicant was referred to health unit Samalkot and thereon to the Railway Hospital Vijayawada on 29.4.2008. Charge sheet was issued for unauthorised absence for the period 27.3.2008 to 18.3.2009. The period of unauthorised absence includes the period for which the respondents directed the deceased employee for medical check up and kept on sick list. A cursory reference to the concerned medical wing of the respondents organization would have revealed as to the medical status of the applicant and as to where he was. Even otherwise also, the respondents had the address of the deceased employee to which the respondents had sent the communication in regard to the compassionate appointment on 31.7.2002. Mother-in-law of the applicant has, in fact, had written to the respondents on 24.9.2008 indicating their residential address. Even a perfunctory glance at the personal file of the deceased employee would have let out the address to

which the charge sheet has to be sent. Ironically, when they were repeatedly claiming that they were not knowing the address of the applicant, it is not known as to how TI/RJY, who incidentally was the Inquiry Officer, discovered the address to deliver the penalty order dt. 28.12.2010 to the deceased employee on 11.1.2011 when he was on the death bed. After the alleged service of the penalty order of removal on 11.01.2011, applicant's husband passed away on 14.7.2011 due to chronic illness. Maybe, it would be harsh to say that the penalty order did cut short the life of the applicant. However, the reality is what it is. Tragically, I.O. i.e. TI/RJY, who could not deliver the notices for the Inquiry sittings, delivered the penalty order to the deceased employee. At least, at the alleged stage of delivering the penalty order, it should have dawned upon the respondents that the applicant was not able to attend duty due to compelling circumstances of ill-health and accordingly, viewed the matter appropriately in terms of rules and law. However, here too, there was no such initiative on behalf of the respondents as is called upon them, as per the tenets of law.

After, traversing the facts as stated above, it is evident that there were no dutiful efforts on part of the respondents to serve the charge sheet on the deceased employee. Serving the charge sheet to the employee is a must in order to enable the charged employee to submit his reply and thereafter participate in the disciplinary process. Therefore, actual serving of the charge sheet has to be proved to make the charge sheet legally valid. In the instant case, it was not done given the background of the facts stated above. Having not served the charge sheet to the deceased employee, the entire disciplinary proceedings are vitiated. While stating so, we take support of

the Hon'ble Apex court observation in ***Union of India v. Dinanath Shantaram Karekar, (1998) 7 SCC 569*** as under:

> ***10.*** *Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "communication" cannot be invoked and "actual service" must be proved and established. It has already been found that neither the charge-sheet nor the show-cause notice were ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated.*

By applying the above legal principle to the case of the applicant, the entire disciplinary proceedings lack legal force for having not served the charge sheet on the deceased employee despite there being abundant scope to do so. Well, in a word, the seriousness in handling a charge sheet is woefully missing, with an army of personnel at the command of the respondents' organization.

IV. To prove the charges, did the I.O. make efforts to ensure attendance of the charged employee and conduct an impartial inquiry?

I.O. has conducted the inquiry sittings without getting the notices delivered to the applicant. He made it an open and shut case. An ex-parte inquiry was conducted without notices served to the applicant. Incidentally, the issue was about unauthorised absence and the respondents had information laid deep in the personal file of the deceased employee as was brought out in paras above, about the address where the notices could have been delivered. As cited in paras supra, paradoxically, the I.O. delivered

the penalty order but not the inquiry notices. The possibility to make such an effort while conducting the inquiry is a question which the respondents should ask themselves. It was possible but the lack of effort was evident. Further, Inquiry officer has to get to the truth and his role is to confine himself to the articles of charge and statement of imputations and not traverse beyond. In the instant case, the Inquiry officer amplifies the charge to what is not contained in the charge sheet. The charge is for unauthorised absence of 309 days whereas the I.O goes to the career details of the deceased employee and considers the absence of another 443 days to prove the charge laid. The I.O. has gone beyond his brief by not doing what he should do and doing what he should not. I.O. being a quasi judicial authority has to conduct himself as an independent adjudicator. He cannot act as a representative of the respondents. The oral evidence, introduction of documents and examining the witnesses with an opportunity to cross examine etc. are all well defined in an inquiry process so that no injustice is done. In particular, Principles of Natural justice have to be followed strictly. The objective of the rules of natural justice is to ensure that a government servant is treated fairly in disciplinary proceedings, which may culminate in imposition of punishment including dismissal/removal from service. The inquiry should not be taken up as a casual exercise and the inquiry officer should not conduct it with a closed mind. His responsibility is not only to deliver justice but ensure that it is manifestly done. We find that the I.O. has not lived up to any of the elements of inquiry process as expounded with facts as at above and therefore, his findings lack legal validity. While affirming as at above, we depend on the observation of the Hon'ble Supreme Court in ***Brij Bihari Singh vs Bihar State Financial***

Corporation & Ors on 20 November, 2015 in Civil Appeal No. 1217 of 2011 as under:

> *9. In the case of State of U.P. vs. Saroj Kumar Sinha, (2010) 2 SCC 772, this Court held:-*
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> > *"28. An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/ disciplinary authority/ Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*
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> > *29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the departmental enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.*
> >
> > *30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service."*

On telescoping the above judgement to the Inquiry report and the conduct of the inquiry officer, the findings of the Inquiry officer cannot be said to be that of an independent adjudicator and hence, fails the rigors of legal scrutiny.

V. The next logical question which emerges is as to whether the disciplinary authority could read through the efficacy of the inquiry report or did he toe the line of the inquiry officer?

The disciplinary authority did not apply his mind but simply followed the inquiry report and takes an additional step to hold that the applicant was unauthorisedly absent for 958 days though the charge sheet charges the deceased employee for unauthorised absence of only 309 days. Therefore, disciplinary authority has considered extraneous material in imposing the penalty. It is not that the disciplinary authority cannot bring in extraneous material to impose a penalty, he can, but should give an opportunity to the charged employee to explain himself in respect of the extraneous material being used against him. In the case on hand, the disciplinary authority did not do so. Not doing so, would mean that the charged employee has not been given a reasonable opportunity to rebut the extraneous material. We rely on the judgment of Hon'ble Supreme Court in ***State Bank of India & Ors v Mohammad Badruddin*** in Civil appeal Nos.5604 and 5605 of 2019 dtd 16.7.2019, as under, to assert what we have said

> ***14.*** *On the other hand, learned counsel for the delinquent relies upon the Constitution Bench judgment of this Court in* ***State of Mysore v. K. Manche Gowda (AIR 1964 SC 506)*** *to contend that before the past punishment is taken into consideration, the delinquent has to be made aware of such fact. The reliance is on the following:*
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> > *"8. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a government servant, if it is intended to be relied upon for imposing a punishment, should be made specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only recommendatory in nature and the final authority which scrutinizes it and imposes punishment is the authority empowered to impose the same. Whether a particular person has a reasonable opportunity or not depends, to some extent, upon the nature of the subject-matter of the enquiry. But it is not necessary in this case to decide whether such previous record can be made the*

> *subject matter of charge at the first stage of the enquiry. But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the government servant shall be given a reasonable opportunity to know that fact and meet the same."*

Therefore, the penalty of removal imposed by the disciplinary authority based on extraneous material without giving an opportunity to the deceased employee does not match the frequency of the observation of the Hon'ble Apex Court as at above.

VI. The next question that needs to be answered is as to whether the Disciplinary authority has examined the aspect of unauthorised absence to be wilful or otherwise?

Records indicate that the applicant was suffering from serious health issues for years on. The Station Superintendent took the initiative to send the deceased employee to Samalkot Health Unit and from thereon, he was sent to Railway Hospital, Vijayawada. The I.O. took additional pains, to deliver the penalty order to the deceased employee when he was on the death bed. After receipt of the penalty order the deceased employee passed away. Ld. Counsel for the respondents submitted that the applicant could have preferred an appeal/review petition. When an individual is on the death bed, the question that begs an answer, is whether saving of one's life is important or preferring an appeal! Which is more important is not a million dollar question. The answer is obvious, which requires no mention. It touches the raw nerve in a human being when such submissions are made. On the contrary, respondents knowing the deceased employee's health plight could have taken a step backward and pondered as to whether it was

proper to impose a shocking and harsh punishment of removal on an individual who was on his way to the other world. The least the respondents could have done was to depute a Welfare Inspector to ascertain as to the latest state of affairs of the employee, more so, when respondents knew that it was they who have send him for medical check-up. Even this was not done, in the context of respondents being aware that the deceased employee was suffering from poor health. The theme of the entire construction so far made is that the absence of the deceased employee was not willful in view of the compelling circumstances of poor health. Unauthorized absence by itself cannot be considered as continuance of service has come to an end. The associated drill has to be conducted as ordained under law to prove that the absence is willful by giving reasonable opportunity to the charged employee to defend himself. Respondents have to look at the compelling circumstances under which the employee could not attend duty. If the circumstances were that he could not attend duty, say for example ill health, which is true in the instant case, then such an absence cannot be construed as willful. If it is not willful then the conduct of the employee would not qualify to be termed as misconduct or failure of devotion to duty or conduct unbecoming of a Govt. servant. Respondents could not prove that the absence was willful in view of the medical history of the deceased employee compelling his absence and in such circumstances there has been a mistake committed by the disciplinary authority in accepting the charges as proved. We are supported by the observations of the superior judicial fora, as under, in asserting what we did in the above lines.

1. *Jeewanlal (1929) Limited Vs. The Workmen & Another, reported in 1962 (1) SCR 717, wherein the Hon'ble Supreme court has observed as under:*

> *"Continued absence by itself cannot be termed as continuance of service has come to an end."*

2. *Krushnakanth B Parmar and another Vs. Union of India reported in (2012) 3 SCC 178. On a reading of the judgment of the Hon'ble Supreme Court, it would make it vivid and its relevance to the present case, as presented below:*

> *"17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.*
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> *18. In a department proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in the absence of such finding, the absence will not amount to misconduct."*

3. *Further Hon'ble Delhi has deduced that misconduct is not a grave misconduct in a case where similarities can be drawn and quashed the penalty cut in pension.*

> *"Under the circumstances we hold that the misconduct, if any committed by the petitioner, is not a grave misconduct and thus we quash the penalty levied of 5% cut in pension for a period of six months." – Delhi High Court Judgment dated 26.03.2015 – N. Bhardwaja Vs. Union of India & Ors.*

Respondents' order of removal of deceased employee is thus not in agreement with the above observations of the superior judicial fora and hence would not be sustainable in the eyes of law.

VII. We also notice that the penalty was imposed by an authority higher than the disciplinary authority. Respondents have not indicated under which rule such a power was exercised. Unless there is a specific provision in the rules, higher authorities acting as disciplinary authority is impermissible

under law because of the likelihood of the appellate authority stepping into the shoes of the disciplinary authority. In a way, it is discrimination of the charged employee. The course of action available was to appoint an adhoc disciplinary action. It is not explained by the respondents as to why they did not invoke this provision provided under the rules. In regard to the penalty of being imposed by the higher authorities to the disciplinary authority, not being permitted under law, we rely on the observations of the Hon'ble Supreme Court in ***Govt. of A.P. v. N. Ramanaiah***, (2009) 7 SCC 165, as under:

> *(a) When concurrent powers have been vested with the disciplinary as well as higher authorities, to which the disciplinary authority is subordinate; and*
>
> *(b) when no appeal lies against such orders.*
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> *An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the power of the disciplinary authority in a given case, it results in discrimination against the employee concerned. see Surjit Ghosh vs UCO Bank (1995) 2 SCC 474.*

Therefore, as can be seen from the details stated supra the entire disciplinary process has been vitiated from its initiation and hence, invalid. The applicant has also contended that even the penalty order was not served and requested for an inquiry to be conducted to know the truth. If an inquiry was done there would have been some more light on the case for the respondents to take a balanced view. Albeit, applicant made several representations in this regard, they have gone a begging.

VII. Lastly, we come to the question of limitation raised by the Ld. Counsel for the respondents. In a one liner, we would respond in the words of

his Lordship, Justice Sri Krishna Iyer in Maneka Gandhi case, as under:

> *"Lawful illegality could become the rule, if lawless legislation be not removed" --- remark made in a pioneering judgment by Justice Krishna Iyer in Maneka Gandhi (1978)*

Respondents have committed a lawful illegality by ordering removal of the deceased employee. Therefore, it has to be removed and in that context, limitation would not come into play. Once an illegality is brought to the notice of the Tribunal, it cannot be a mute spectator to the same. Instead, it has to step in with all the force it can muster to eliminate injustice. Moreover, the right to livelihood is provided for under Article 21 of the Constitution of India and if such a right is being deprived of, then reasonable opportunity has to be given to the individual to safeguard the right provided under the Constitution. The job that was being done by the applicant was providing livelihood to him. Respondents have not provided the requisite opportunity to defend himself as explained in paras supra. In addition, as alleged by the applicant, when actions of the respondents were not known to the deceased employee or to his family, at least a preliminary inquiry to verify the veracity of their submissions was not done by the respondents. Applicant was representing but there was no legally valid response from the respondents comprehensively responding to the submission of the charge sheet/penalty order not being served on the deceased employee. The question raised by the applicant was that the respondents took care to get signatures of 2 witnesses while displaying the charge sheet in the public notice board whereas while delivering the penalty order to the deceased employee, signatures of witnesses were not taken,

leading to the question as to whether it was at all delivered and if so, whether the signature made acknowledging receipt was truly that of the deceased employee. These contentions of the applicant remain unanswered in the reply statement as they should be. Legal action will have a limitation to be adhered to but not when the action is illegal. Illegality has no time limit, whenever it is noticed it has to be set aside. It is as similar as to the virus infecting human body which is to be removed otherwise it will be life threatening, so to illegality, in an institution which is wedded to the laws of the land. Illegality committed in the instant case should not be allowed to be continued as a black scar to the respondents' organization, which is indeed a role model for others and has the legal role of a model employer to be enacted. Lastly, a limb of the relief sought is family pension, which is a continuous cause of action and hence, there can be no limitation to adjudicate the dispute in question.

VIII. To conclude, in view of the aforesaid circumstances, we declare that the decision of the respondents to remove the deceased employee from service as violative of rules, illegal, irregular and arbitrary. The OA fully succeeds. Consequently, impugned order dated 28.12.2010 is set aside. Applicant's husband is no more to remit the case to the disciplinary authority for further action. Taking this into cognizance, we direct the respondents to consider granting eligible family pension and consequential benefits thereof, from the date due, to the applicant and provide compassionate appointment to the applicant or to the eligible ward nominated by her, as per rules and in accordance with law. Time allowed

to implement the judgment is 3 months from the date of receipt of this order.

With the above direction, the OA is allowed with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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