

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1678/91
~~Decided~~

DATE OF DECISION 04.02.1993

Smt. Lakshmi Devi

Petitioner

Shri R.K. Relan

Advocate for the Petitioner(s)

Versus

Union of India and Others

Respondents

Shri R.L. Dhawan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.C. Jain, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *YB*
2. To be referred to the Reporter or not ? *YB*
3. Whether their Lordships wish to see the fair copy of the Judgement ?

to me
(J.P. SHARMA)
MEMBER (J)

Clerk
(P.C. JAIN)
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

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O.A. NO. 1673/91

DATE OF DECISION : 04.02.1993

Smt. Lakshmi Devi

...Applicant

Vs.

Union of India & Ors.

...Respondents

CORAM

Hon'ble Shri P.C. Jain, Member (A)

Hon'ble Shri J.P. Sharma, Member (J)

For the Applicant

...Shri R.K. Belan

For the Respondents

...Shri R.L. Dhawan

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

Late Shri Shyam Dayal, husband of the applicant joined as Fitter Khallasi in the Northern Railway and in the course of the time got promotion as SS Fitter. He was allotted the Railway quarter No. L-36 F Sarai Rohilla, Delhi, which is still in occupation of the applicant by an interim direction dt. 26.7.1991. Interim direction is to the effect that the applicant be not dispossessed from the said quarter. Shri Shyam Lal, aforesaid died on 10.11.1987 as a case of burning in Lok Nayak Jai Prakash Narayan Hospital, New Delhi. The applicant filed OA on 24.7.1991 and this application was subsequently got amended and the amended application was filed on 13.4.1992. Shri Shyam Lal, employee died leaving behind the applicant, widow and four sons, namely, Rakesh Kumar, Mukesh Kumar, Manoj Kumar and Sunil Kumar aged about

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22 years, 21 years, 7 years and 5 years respectively on the date of the application. The grievance of the applicant is that the applicant has not been given compassionate appointment and further the settlement dues such as Provident Fund, gratuity or even family pension of her late husband has not been paid. She has also the grievance of a threat of eviction from the Railway accommodation in the possession of the family since the time of the Railway employee, which was allotted to her late husband. In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought for grant of the following reliefs :-

- (a) That this Hon'ble Tribunal may be pleased to quash the impugned order dt. Annexure A-1 issued by respondent No.3.
- (b) That the Hon'ble Tribunal may be pleased to direct the respondent to offer appointment to the applicant to a suitable post in Delhi area, even by creating a supernumerary post if the vacancy be not available, in keeping with the dictum of Supreme Court in the cases of Sushma Gosain and Ors. Versus Union of India and Phoolwati Vs. Union of India.
- (c) That the settlement dues of the late husband of the applicant be released forthwith.
- (d) That the normal assessed rent of the quarter be made applicable and recovered from the applicant and quarter be regularised in accordance with the extant rules and orders applicable in such similar cases of compassionate appointments.
- (e) That the impugned order Annexure A-11 purporting applicant's husband removal from service being void ab initio be quashed and her late husband be deemed to continue in service until his death on 10.11.87.
- (f) That as a consequence to the appointment of applicant or her son on compassionate appointment into Railway service, the Railway accommodation may be regularised in favour of Compassionate Appointee.
- (g) That the cost of the suit including exemplary cost may be awarded in favour of the applicant as against the respondents.
- (h) Any other or further consequential relief as this honourable Tribunal may deem fit and proper in the circumstances of the case may also be granted.

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2. The brief facts of the case are that the deceased employee Shri Shyam Lal, husband of the applicant was transferred to Loco shed, Hanuman Garh, Bikaner division by the order dt. 3.9.1975 and he resumed his duties there on 6.11.1975. He was proceeded with a departmental enquiry and memorandum of chargesheet in standard form No. 5 under Rule 9 of the Railway Servants (Discipline and Appeal) Rules, 1968 was issued on 22.6.1975 with a statement of article of charge that Shri Shyam Lal, Fitter remained unauthorisedly absent from 1.4.1976 to 22.5.1976, he committed a breach of Rule 3(1)(2) of the Railway Servants (Conduct) Rules, 1966 which amounts to serious misconduct. In the imputation of misconduct annexed to the memo of chargesheet it is stated that he remained absenting himself from 12.12.1975 to 22.5.1976. In the list of documents to be relied against him was a complaint of Loco Foreman, Hanuman Garh dt. 23.5.1976 and the list of witnesses included Loco Foreman and his dealing clerk. On the findings of ex parte enquiry, said Shri Shyam Lal was removed from service w.e.f. 2.10.1977 vide order dt. 3/8 September, 1977. It appears from the record that the delinquent deceased employee, Shri Shyam Lal did not participate in the enquiry nor he filed any reply to the memorandum of chargesheet issued against him. He was also issued a show-cause notice for imposing proposed punishment dt. 28.12.1976 to which no reply was filed. Deceased Shri Shyam Lal had also not preferred any appeal against the said order. After his

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removal from service, the payment of PF dues amounting to Rs.843 was arranged vide CO-7No.0304694 dt.22.12.1977, but the deceased refused to receive the payment. The bonus amount of Rs.3,263 was withheld for realisation of Government dues on account of rent, electricity charges etc. for the Railway quarter in occupation since 26.1.1976. Even after his removal from service, the deceased employee did not vacate the Railway quarter and he expired on 10.11.1987. The quarter, as said above, is still in the occupation of the applicant and her family.

3. The case of the applicant is that the applicant was never informed about any disciplinary proceedings against him during his life time nor he was served by any order of removal from service and also he has not been paid any retirement settlement dues after his death. On the basis of this, the applicant has prayed for the grant of the reliefs aforesaid.

4. The respondents contested this application and took the plea that the present application is hopelessly barred by time. Further it is stated that the applicant in her original unamended application has concealed many facts and has not come with clean hands. The order impugned in the earlier application

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is dated 4.6.1989 (Annexure A1) which was issued to the applicant for vacatior of the quarter No. L-36 F Loco Sarai Rohilla Colony and she was asked to vacate the quarter within 15 days otherwise proceedings under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 will be drawn against her. A sum of Rs.15518.75 as arrear of rent/damages w.e.f. 26.1.1976 to 31.5.1989 was also ordered to be deposited by the applicant. The unamended application was filed in July, 1991 and thus it was beyond the period of limitation provided under Section 21 of the Administrative Tribunals Act, 1985. After amendment of the OA, the respondents have also contested the application on the ground that after removal from service w.e.f. 2.10.1977 by the order dt. 3/8 September, 1977 (Annexure R1), the applicant has no case either for compassionate appointment of one of her sons or for retention of the Railway quarter. It is further stated that no settlement dues are due to be paid to the deceased employee. It is further stated that the applicant has no right to challenge the order of removal in the amended OA after such a long time. Thus it is stated that the applicant is not entitled to any relief.

5. We have heard the learned counsel for both the parties at length and have also seen the departmental file of the

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enquiry proceedings against the applicant, as said above.

The first contention of the learned counsel for the

applicant is that the deceased employee was not proceeded

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against any departmental enquiry which is not correct. We

have seen the departmental file and also seen the chargesheet

which was sent by registered post to the applicant. The

enquiry was conducted by the Enquiry Officer. The Enquiry

Officer was appointed by the letter dt.15.10.1976. The

Enquiry Officer also sent a registered acknowledgement due

letter to the delinquent, but that was returned back having

the endorsement that the said employee is not traceable at his

residence. The Enquiry Officer recorded the statement and

gave the finding in the enquiry report dt.2.12.1976. The

finding of the Enquiry Officer is as follows :-

"After having careful consideration of the evidence on record, I hereby find that the charges framed by AME/BKN vide his No. PI/727 E/SL/F dt.22.6.1976 proved. Not only this, but he is again unauthorisedly absent since 23.6.1976 to up-to-date. Hence it is suggested that he may please be taken up under DAR."

This Enquiry Officer's report dt.2.12.1976 was accepted by

DME and further ordered that a show cause notice may be

given to the party for removal from service. The show-cause

notice was issued on 22.12.1976 and sent by the registered post.

Thus the proceedings of the enquiry cannot be faulted with

or any material particulars. A challenge to the removal

order in the amended OA filed in 1992 is not only hopelessly

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barred by time, but also it is not open to the applicant to challenge the same as the applicant has not even preferred an appeal nor himself assailed the same order before his death on 10.11.1987. Here it may be pointed out that in the death certificate filed by the applicant herself (Annexure A3, p-32), the occupation of the applicant is shown as business. In view of this fact, we find that there is no occasion now open to the applicant to assail the said order of removal from service. The applicant has concealed all these facts in her application. The applicant also has not come with clean hands. The fact of removal from service is further established by the fact that the delinquent employee was issued a payment order of Rs.832 through a cheque which he refused to accept and to substantiate this fact, the respondents have filed the document along with the counter to show the refusal by the applicant (Annexure R5, p-13 to the counter to the amended application). Besides this, the Accounts Officer has also given the details of the dues of PF account available to the applicant in the prescribed form in the Memo dt.17.6.1980 (Annexure R4). There is another document of intimation of Provident Fund deposited, which is dated 1.12.1977, showing the amount of bonus of Rs.3,263 and the subscription of the applicant in the PF Account as Rs.863 (Annexure R3). All these documents go to show that the deceased employee was duly removed from service and

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his settlement dues were prepared according to the rules and it is the fault of the deceased employee himself that he has not accepted the due amount at proper time. The contention of the learned counsel for the applicant, therefore, that the settlement dues have not been paid is not at all substantiated and stands fully rebutted.

6. The learned counsel for the applicant, however, argued that had the applicant been removed from service, then the applicant would not have been issued the pass for medical check-up at Delhi which he filed as Annexure A14 at p-96 of the paper book. The date of journey in this is shown as 3.11.1977 and return therein is also shown as 3.11.1977. The learned counsel for the applicant also argued that since the applicant was removed w.e.f. 2.10.1977 and according to the rules when the applicant has reported sick, then it was the Medical Officer Incharge, Lal Garh, Bikaner who has issued Railway pass to the applicant for his check-up at New Delhi hospital on medical ground. This argument, therefore, does not show that the applicant was still in service on that date. Even if for the sake of argument, it is accepted, there is nothing on record to show that the applicant has worked anywhere from 1977 to November 1987 when he expired. Thus this fact is fully established that the applicant was charge sheeted under Rule 9 of Discipline and Appeal Rules, 1968 and an order of his removal from service was passed against him.

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7. The applicant, therefore, has no case for appointment on compassionate ground on the basis of the Railway Board's circular No.112/85 dt.18.4.1985 (Annexure A10). A compassionate appointment to the ward of a Railway employee can only be granted when such Railway employee dies in harness. That is not the case here. The applicant died his own death and so it cannot be said that the applicant died in harness while in service because he had already been removed from service w.e.f. 2.10.1977.

8. The learned counsel for the applicant also argued on magnanimity and mercy that the deceased employee has committed suicide and needs a sympathetic consideration and in this connection, the learned counsel has referred to a decision of the Principal Bench in OA 1132/91 decided on 5.12.1991 (Mrs.Kamla & Ors. Vs. UOI). The facts of that case are totally different. In that case, the Bench has held that there was no *ex parte* enquiry held against the deceased employee, while in the present case the departmental file goes a long way to show that every attempt was made to serve the applicant with the charge sheet and also another time by the show cause notice dt.22.12.1976 before passing the order of removal from service. The communication was addressed to the applicant under registered A.D. which was returned unserved.

9. Even taking a broader view of the matter, the applicant

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has lived for 10 years after this removal order and at no point of time he has made any representation either before administration or assailed the same before the competent court and in fact the death certificate filed by the applicant which is duly signed by the applicant herself shows that the deceased employee had ^{at the time of his death} the occupation of business and not of service and the address of the deceased is shown L-36 F Loco shed, i.e., the present quarter occupied by the applicant. The applicant cannot resile what ~~she~~ has already stated at the time of the death of her husband on 10.11.1987.

10. The learned counsel for the respondents has relied on the authority of State of Punjab Vs. Gurdev Singh, reported in Judgement Today 1991 Part-3 SC p-465 as well as on the case of S.S.Rathore Vs. State of M.P., AIR 1990 SC p-10 that the limitation has to be seen even in service matters. In the facts of this case, the challenge to the order of removal is hopelessly barred by limitation as given under Section 21(1) of the Administrative Tribunals Act, 1985.

11. The learned counsel for the applicant on the question of limitation has also referred to the decision of the Apex Court in the case of State of Kerala Vs. Kuppuswamy Gowder, reported in AIR 1987 SC 1353 and referred to the observation made by the Lordship in para-4, "When substantial justice and technical ^{considerations} instructions are fitted against each other

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Because of substantial justice deserves to be preferred, for the other side claim to have vested right in injustice being done because of non deliberate delay." It is further argued by the learned counsel that their Lordships also observed, "That there is no presumption that the delay is occasioned deliberately or on account of culpable negligence or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds, but because it is capable of removing injustice and is expected to do so." The reference to the aforesaid judgement is totally out of context. In the present case, the widow of the deceased employee has assailed his removal from service in 1977 and she has come with total ignorance of such order though the evidence filed by the respondents documentary as well as by way of reply to the OA that the deceased employee very well knew in his life time that he is no more on the rolls of the respondents, i.e., in service, and his final settlement dues-CPF etc. were not only calculated, but they were offered to be paid to the deceased employee, though he refused to accept the same. In such a situation, the authority cited by the learned counsel has no application to the present case. The learned counsel for the applicant also referred to the authority of Om Prakash Sharma Vs. State of MP, reported in AIR 1991 SC p-424 where the Hon'ble

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Supreme Court observed, "Having heard the counsel of both the sides and perused the records, we are of the view that despite delay, this is a matter which requires investigation." The authority also does not apply to the facts of the present case at all. For the reasons already stated above, there is no right available to the applicant, i.e., the widow of the deceased employee to assail an order of removal of her husband after 10 years when her husband in his own life time did not assail the same. The applicant has utterly failed to explain as to where her husband remained after his transfer to Hanuman Garh in Bikaner Division from 1975 onwards and in the death certificate, the vocation of the deceased employee is recorded as business. The contention of the learned counsel for the applicant that the Railway administration was mentally torturing the deceased employee and ultimately he committed suicide is not borne out from the facts on record and it is clear afterthought by way of amending the application in 1992 on the basis of the authority of the case of Mrs. Kamla & Ors. Vs. UOI (OA 1132/91) decided on 5.12.1991. The applicant, therefore, has no case for assailing the order of removal of her husband and also there is no case of condonation of delay in the particular circumstances of the case.

12. The learned counsel has also referred to the decision of Phoolwati Vs. UOI, AIR 1991 SC 469 and on the case of

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Shushma Gosai Vs. Union of India, AIR 1989 SC 1976 which
lays down the law on the appointment on compassionate grounds
to mitigate the hardship of the family on account of the
death of the employee in harness. The applicant has no case
of compassionate appointment at all as the deceased employee
did not die in harness.

13. Taking all these facts into account and in the
circumstances of the case, we are of the considered view that
the present application is totally devoid of merit and is
dismissed leaving the parties to bear their own costs.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J) 4. 2. 93

C. C. 4/2/93
(P.C. JAIN)
MEMBER (A)