

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1132/91
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1991

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DATE OF DECISION 5.12.91

<u>Mrs. Kamla & Ors.</u>	Petitioner
<u>Sh. B.B. Raval</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & ors.</u>	Respondent
<u>Sh. P.S. Mahendru</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman(J).

The Hon'ble Mr. I.K. Rasgotra, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *
4. Whether it needs to be circulated to other Benches of the Tribunal ? *

J U D G E M E N T

(Delivered by Hon'ble Sh. Justice Ram Pal Singh, Vice Chairman(J)).

Applicant No.1, Smt. Kamla is a widow and applicant No.2 Km. Meenakshi is a teanaged daughter of the deceased railway employee, Sh. Ram Lal Supra who committed suicide and left the applicants without any means of livelihood. Late Sh. Ram Lal Supra was appointed in the year 1945 and was working as a Clerk in the Electrical Branch in the office of Divisional Superintendent (D.R.M.) New Delhi. He was living in an allotted Railway quarter No.10/4, Railway Colony, Sarojini Nagar, New Delhi which had a rent of 11.3 + 25% service charges. According to the applicants the deceased, Ram Lal Supra was being harassed in the office by the Head Clerk and she represented this harassment to the Minister of Railways and also to the respondents. The representations filed by the applicants are numerous. Meanwhile late Sh. Ram Lal Supra was transferred from Electrical Branch (D.S.) office to Delhi main. The applicants represented to the Divisional Electrical Engineer, Northern

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Railways, New Delhi, against the transfer of the deceased and also prayed that he was ill and he should be brought back to his original posting.

According to the applicants the constant mental torture of the deceased led him to desperation and at last he committed suicide by throwing himself beneath the train of the respondents, in the night of 18.12.90 and in consequence applicant No.1 became a widow and applicant No.2, an orphan. According to this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicants pray for the following reliefs:

- i) To quash the impugned order, Annexure A, including alleged notification dated 4.9.80, which is concocted and forged.
- ii) To direct the respondents to pay them the Provident Fund, Gratuity and other supernuatory benefits and also the family pension to applicant No.1 from the date of the death of the deceased employee i.e. 18.12.90.
- iii) To direct the respondents to provide to applicant No.2 a suitable employment on compassionate grounds.
- iv) To regular^{ise} the quarter No. 10/4 Railway Colony, Sarojini Nagar, New Delhi, in the name of applicant No.2.

They also pray for an exemplary cost of this application. This Tribunal by order dated 3.6.91 granted ad-interim relief to the applicants and directed the respondents not to evict the applicants from the quarter which they are occupying. This interim order continued since then.

2. Respondents, on notice appeared and filed their return. Their preliminary objection is that the O.A. is barred by limitation as the deceased, Shri Ram Lal Sapra, was removed from service in July, 1980. They further contend that a departmental enquiry was held against the deceased, Shri Ram Lal, and a chargesheet dated 25.7.76 was served upon him.

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3. The respondents have filed Annexure R-4, the charge sheet (under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred as 'Rules') and also Annexure R-8, an order of removal of the deceased employee from service. The respondents contended that the inquiry proceeded ex-parte because the deceased in spite of notice served upon him, failed to appear and did not submit any written statement in defence. Hence, ex-parte order of removal from service was passed by the disciplinary authority.

4. Rule 9 of the Rules provides for imposition of major penalties upon the delinquent employees. When a delinquent employee fails to appear in a departmental inquiry, then sub-rule (23) of Rule 9 provides that the inquiring authority may proceed with the inquiry ex-parte against the delinquent. From the record produced by the respondents in Annexure R-4 and Annexure R-8, it does not appear that the provisions of the Rules were followed by the disciplinary authority while conducting the departmental inquiry. Sub-rule (23) of Rule 9 provides that if the railway servant, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear before the inquiring authority or otherwise fails or refuses to comply with the provisions of this rule, the inquiring authority may hold inquiry ex-parte. Thus, when a charged memorandum was sent by registered post by the respondents, the proof thereof should have been brought on record by the respondents in these proceedings. If the registered post by which the charged memorandum was sent by the respondents to the delinquent railway servant, and if it returned unanswered, then it would be taken that the memorandum was not served upon him. When an ex-parte inquiry is held against the delinquent servant, then the requirements are that a copy of the day to day proceedings should be sent to the delinquent. In an ex-parte inquiry the inquiring officer should proceed on the basis of the material available to him in the absence of the delinquent. If at any stage, the inquiry officer comes to the conclusion that further inquiry is necessary, it is open to him to do so. The principles of natural justice and provisions of rules

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cannot be shortened or subverted. Even in an ex-parte inquiry, all the formalities of normal inquiry e.g. (a) an Inquiry Officer must be appointed, (b) he must fix the date and place of enquiry (c) call the witnesses and documents, (d) get the documents proved and evidence recorded, (e) if the delinquent does not turn up, then the notice of intention to hold ex-parte enquiry should be given, (f) findings of inquiry must be drawn, (g) enquiry report be submitted to the disciplinary authority and (h) a copy of the Enquiry Report be supplied to the delinquent for making his representation against the proposed punishment and he should also be heard. All formalities are to be observed in an ex-parte inquiry as if the delinquent is participating. The record produced by the respondents does not show that in the ex-parte inquiry any document was produced, any witnesses were examined and what was the basis of the Inquiry Officer to come to the conclusion that the deceased employee was guilty of misconduct resulting in imposition of the major penalty. The documents filed by the respondents also do not show that the day to day proceedings were sent to the delinquent or a copy of the inquiry report was sent to the delinquent when the Inquiry Officer forwarded the report to the disciplinary authority. There is complete absence of the material produced by the respondents that the disciplinary authority again afforded an opportunity to the delinquent employee in accordance with the principles of natural justice or in accordance with the provisions of Article 311 (2) of the Constitution of India. We are constrained to observe, therefore, that there was no ex-parte inquiry held against the deceased employee and hence the imposition of the major penalty upon him in contravention of the rules and the principles of natural justice was illegal and arbitrary. Thus, the deceased employee Shri Ram (Lal) was illegally removed from service. A copy of the inquiry report should have been sent to him before the imposition of the penalty by the disciplinary authority. This mandatory provision cannot be permitted to be subverted by the disciplinary authority because the deceased employee was not afforded an opportunity of being heard before the penalty was imposed upon him. But this alleged order of removal is said to have been passed on 4.9.80 as mentioned in Annex.A, the prayer for quashing the order of removal from service of late Shri Ram Lal Sapra cannot be interfered with in view of the provisions

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contained in Sec. 21 of the Act. This prayer is hopelessly barred by limitation. Long 10 years have elapsed when the cause of action arose to the deceased employee, Ram Lal. He could have challenged his removal from service by way of filing Writ Petition under Article 226 of the Constitution or by filing a civil suit before coming into force of the Act. After the Act came into force in 1985, the late Shri Ram Lal could challenge his removal by filing an O.A in this Tribunal after exhausting departmental remedies. The prayer for quashing the removal from service of late Shri Ram Lal is hopelessly barred by limitation and is also stale. No application has been filed for condonation of delay. We, therefore, reject this part of the prayer as barred by limitation.

5. Applicant No.2, who is of 20 years of age and said to have passed her Sr. Secondary examination, prays for compassionate appointment to a suitable post in the department of the respondents. The respondents have rejected the prayer for appointment of applicant No.2 on compassionate grounds in spite of several representations. In the case of Smt. Sushma Gusain (AIR 1989 S.C. 1976), the apex court has observed:

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in the appointment. The purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to relieve the family in distress. It is improper to keep such cases pending for years. If there is no suitable post for appointment, supernumery post should be created to accommodate the applicant." (emphasis supplied by us)

In this case the deceased employee has committed suicide while in service of the respondents. He was removed from service by the respondents not in accordance with the Rules though we have negated the prayer for setting it aside as the same was barred by limitation. Yet, it becomes all the more necessary for the respondents to show more compassion towards the unfortunate daughter of the deceased Shri Ram Lal, applicant No.2, and provide her suitable compassionate appointment and the residence so that she and her widowed mother may not lead the


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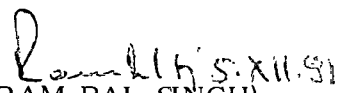
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life in destitution. By giving compassionate appointment to applicant No.2, the respondents can also atone their lapses in not conducting the departmental inquiry in accordance with law by which her late sick father was removed from service. This unfortunate family which consists of only two is facing insurmountable financial difficulties in these days of inflation. Under such a situation, it is the bounden duty of the respondents to consider the appointment of applicant No.2 on compassionate grounds in a suitable post with utmost consideration. This Tribunal has been of consistent view that after the death of the bread-earned in harness, the employers should strive hard to mitigate the financial hardship of the dependents of the deceased employee who are left in indigent circumstances.

6. We, therefore, partly allow this O.A. and direct (1) respondents to pay to Applicant No. 1 all the dues of provident fund, gratuity and other benefits within a period of three months from the date of receipt of a copy of this judgment. (2) Respondents are further directed to consider providing suitable appointment to Applicant No.2 sympathetically on compassionate grounds within a period of three months from the date of the receipt of a copy of this judgment. (3) We further direct respondents not to evict the applicants from quarter No. 10/4, Railway Colony, Sarojini Nagar, New Delhi, till the payments of provident fund, gratuity and other due benefits of late Shri Ram Lal Sapra are paid to the applicants and till applicant No.2 is considered sympathetically for suitable compassionate employment. The applicants shall be liable to pay only the normal licence fee according to rules. (4) We also direct the respondents to allot this accommodation to Applicant No. 2 on her appointment.

There will be no order as to costs.


(L.K. RASGOTRA) 12/91
MEMBER (A)


(RAM PAL SINGH)
VICE-CHAIRMAN (J)