

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1103 OF 1998 Alongwith  
ORIGINAL APPLICATION NO. 336 OF 1997  
Allahabad this the 12th Day of May, 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A  
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

Gokaran Nath Dwivedi,  
aged about 54 years,  
son of Late Ram Chandrika Prasad,  
resident of 65 Y3, Railway Traffic Colony,  
7th Avenue, Nawab Yusuf Road, Allahabad.

.....Applicant

( By Advocate Sri S.S. Sharma & Sri J.N. Tiwari)

Versus

1. Union of India,  
through the Secretary,  
Ministry of Railways, Rail Bhawan,  
New Delhi.
2. The General Manager, Northern Railway,  
Baroda House, New Delhi.
3. The Divisional Railway Manager,  
Northern Railway, Nawab Yusuf Road,  
Allahabad.
4. The Addl. Divisional Railway Manager,  
Northern Railway, D.R.M's Office,  
Nawab Yusuf Road, Allahabad.
5. The Senior Divisional Operating Manager,  
Northern Railway, D.R.M.'s Office,  
Nawab Yusuf Road, Allahabad.
6. The Divisional Operating Manager (M),  
Northern Railway, D.R.M's Office,  
Allahabad.
7. Shri Uma Shankar Dwivedi, S/o Late

Doodh Nath Dwivedi, Resident of Village-  
Saroan, P.O. Meja Road, Tehsil-Meja Road,  
District-Allahabad. .... Respondents  
( By Advocate Sri A.V. Srivastava, & Sri R.S. Saxena)

Alongwith

Original Application No.336 Of 1997

Gakaran Nath Dwivedi,  
Son of Late Sri Ramchandrika Dwivedi,  
alias late Shri Chandrika Prasad,  
resident of village Saroan, Tehsil Meja,  
District Allahabad,  
present residing in Quarter No.65 Y3  
Railway Traffic Colony, 7 Avenue, Nawab Yusuf Road,  
District- Allahabad. .... Applicant

( By Advocate Sri Vijendra Singh )

Versus

1. Union of India,  
through Secretary, Ministry of Railways, Rail Bhawan,  
New Delhi.
2. The Railway Board, Rail Bhawan,  
New Delhi through Dy. Director Estt.(R).
3. General Manager(N.R.),  
Baroda House, New Delhi.
4. The Divisional Railway Manager,  
Nawab Yusuf Road, Allahabad (U.P.).
5. The Divisional Operating Manager(M),  
Northern Railway, D.R.M. Office, Nawab Yusuf Road,  
Allahabad.
6. Uma Shankar Dwivedi,  
Son of Late Shri Doodh Nath Dwivedi,  
Resident of village Saroan.

Post Office Meja Road, Tehsil Meja,  
District Allahabad. .... Respondents  
( By Advocate Shri A. V. Srivastava )

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In O.A. No.336/97 the applicant has prayed for quashing the punishment order dated 14.2.1997 by which the applicant has been dismissed and also direction to the respondents to reinstate him and hold respondent no.6 Sri Uma Shankar Dwivedi who is respondent no.7 in O.A. No.1103/98 not entitled for appointment on compassionate grounds. Since the facts of both the O.As are same and the relief claimed in O.A. No.336/97 is fully covered by relief claimed in O.A. No.1103/98, we pass the following order in O.A. No.1103/98.

2. In O.A. No.1103/98 filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for quashing the impugned punishment order dated 14.2.1997 (Annexure A-1) awarding the punishment of dismissal from service, appellate order dated 16.7.1997 rejecting the appeal of the applicant and revisionary order dated 18.11.1997 modifying the punishment of dismissal from service to compulsory retirement.

3. The facts, in short, are that the father of the applicant Late Shri Chandrika Prasad Dwivedi alias Ram Chandrika and father of respondent no.7 Late Shri Doodh Nath Dwivedi were real brothers i.e. sons of Late Rampati. They were in the service of Railways as Switchman and Fireman respectively. Shri Doodh Nath Dwivedi father of respondent no.7 died in harness on 20.01.1968 leaving behind his widow Smt. Manrawati Devi and two minor daughters. After few months of the death of Shri Doodh Nath Dwivedi the widow gave birth to respondent no.7. She gave birth to another son about 10 years after the death of her husband as result of illicit relation. The applicant was appointed on compassionate ground by order dated 23.12.1970. The widow, who is the mother of respondent no.7, approached the respondents for compassionate appointment of her son i.e. respondent no.7 on the ground that he had attained majority and the applicant is not

looking after her. The applicant was served with a chargesheet dated 24.04.1996. An enquiry was held and after completion of disciplinary proceedings the impugned punishment order dated 14.2.1997 was passed awarding the punishment of dismissal from service. The applicant challenged the disciplinary authority order referred to above by filing appeal dated 4.4.1997. The appellate authority dismissed the appeal of the applicant by impugned order dated 16.07.1997 (Annexure A-2). The applicant filed a revision petition and the revisionary authority by impugned order dated 18.11.1997 reduced the punishment of dismissal from service to that of compulsory retirement. Aggrieved by the same the applicant has filed this D.A. which has been contested by the respondents by filing CA.

3. Heard Shri S.S. Sharma, learned counsel for the applicant and Shri A.V. Srivastava, learned counsel for the respondents at length. We have also perused records and the pleadings.

4. It is an admitted fact that the applicant was appointed on compassionate appointment by order dated 23.12.1970 and he joined the respondent's establishment on 08.04.1971 pursuant to the notice dated 7.4.1971 (Annexure A-6). The applicant was appointed as Temporary Assistant Goods Clerk and in due course of time he was promoted as Guard -A. The contention of the applicant is that respondent no.7 i.e. Uma Shankar Dwivedi for the first time on 27.10.1990 i.e. about 23 years after the death of his father made representation for his appointment on compassionate grounds. Since the applicant was working as PA to the then Railway Minister Shri Janshwar Mishra, the Hon'ble Minister sent a note to Director Establishment for immediate appointment of respondent no.7 on compassionate grounds. In <sup>to</sup> pursuance / the letter of the Hon'ble Minister the Director

Establishment Railway Board addressed GM(P) Northern Railway New Delhi on 30.04.1991 (Annexure A-10) for examining the case of respondent no.7 for compassionate appointment. The D.R.M. Northern Railway Allahabad vide letter dated 27.5.1992 (Annexure A-11) informed the mother of respondent no.7 that respondent no.7 could not be given appointment on compassionate grounds because his nephew Shri Gokharan Nath Dwivedi i.e. the applicant had already been given compassionate appointment and as per Rule only one person can be given the appointment on compassionate grounds on the death of an employee in harness. In fact the controversy in this D.A. started then.

5. The mother of respondent no.7 made allegations against the applicant that though he had obtained appointment on compassionate grounds by submitting false documents, he was not looking after her. She also prayed to the respondents that her son respondent no.7 should be given the compassionate appointment.

6. What is surprising to us is that the mother of respondent no.7 did not make any complaint for more than two decades that she was not being looked after by the applicant which establishes that she had no grievance against the applicant. It appears that she changed her loyalties and finding, that respondent no.7 could be appointed, she started <sup>to achieve her objective</sup> making complaints against the applicant and pursued the matter of compassionate appointment for her son i.e. respondent no.7.

7. The applicant was served with a major penalty chargesheet dated 24.4.1996. Basically the charge was that the applicant absented himself <sup>unauthorisedly</sup>, evaded to attend the confronted enquiry in connection /his appointment on compassionate grounds

as per Directive of Central Administrative Tribunal Allahabad and also that he obtained service on compassionate grounds by concealing the facts and falsely representing himself as near relative of Late Doodh Nath Dwivedi, the deceased employee and thus, the applicant did not keep integrity and failed to maintain absolute devotion to duty and acted in a manner which is unbecoming on the part of Railway Servant thereby contravened Rule 3 (1) (i) (ii) (iii) of Railway Service Conduct Rules 1956. The Enquiry Officer vide his enquiry report dated 13.1.1997(Ann-A33) recorded the following findings:-

- (i) Absenting himself from duty w.e.f. 6.3.1996 to 24.4.1996 is proved.
- (ii) Evaded confronted enquiry in connection with his appointment on compassionate grounds is proved.
- (iii) Obtained the service on compassionate grounds by concealing the facts and falsely representing himself as near relative to Late Doodh Nath Dwivedi is not proved.

8. In order to appreciate the controversy we would like to go into each of the findings of the enquiry officer (Annexure A-33). The enquiry officer has held that unauthorised absence of the applicant w.e.f. 06.03.1996 to 24.04.1996 is proved. We find that the applicant filed a detailed representation before the disciplinary authority on 14.02.1997 (Annexure A-34) and we observe that the disciplinary authority has given no consideration to the points raised therein. The second finding of the enquiry officer is that the applicant evaded confronting enquiry in connection with his appointment on compassionate grounds is proved. <sup>Besides</sup> in para 7 of the CA the respondents have stated that applicant obtained service in the Railways by false representation of facts and submission of fraud documents as was evident from the report of the confronted enquiry dated 26.03.1996. We fail to understand as to how it was presumed by the enquiry officer that the applicant evaded confronting enquiry specially when the applicant alongwith his Defence Assistant has been attending the

enquiry on number of days earlier to 23.06.1996, The counsel for the applicant submitted that the information of the confronting enquiry was not given to the applicant and since the applicant's wife was sick, he applied for the treatment of his wife in Railway hospital. The respondents in this connection have only stated that the leave of the applicant was not sanctioned, and this in-alia does not establish that the applicant evaded confronting enquiry. We shall deal with the points raised by the respondents in Para 7 of the counter in the next para.

9. As regards the third finding of the enquiry officer that the applicant obtained the service on compassionate grounds by concealing the facts and falsely representing himself as near relative of Late Doodh Nath Dwivedi as 'not proved' is concerned it does not require any discussion. It is unfortunate for the applicant that the respondents have given weightage to it. We would also like to observe that the joint enquiry in its report annexed as Annexure A-16 has not done its job properly. How could they rely upon the statement of Gram Pradhan that there is no family relationship between respondent no.7 and the applicant. In fact the matter required deeper probe than just relying upon the statements of Smt. Munirah mother of respondent no.7 and the Gram Pradhan. It cannot be deduced from the fact that residence of both the families are separate and both the families were never residing jointly in the same house. The applicant and respondent no.7 are not close relations. The respondents have certainly committed manifest error of law in holding that the applicant is not near relative of Late Shri Doodh Nath Dwivedi. If the sons of real brothers are not treated as close relation, we wonder then who would be treated as close relation. The respondents have not considered this aspect and have gone mechanically on the finding of the joint enquiry

in this regard and pass the punishment order.

10. In this connection it would be relevant to mention that respondent no.7 filed O.A. No.415/93 which was disposed of by order and judgment of this Tribunal dated 25.08.1995 (Annexure A-13). The Tribunal did observe that further investigation in the matter was required by confronting enquiry but before that it was necessary for the respondents to have looked into as to what documents/papers were submitted by the applicant at the time for seeking compassionate appointment in the year 1971. The respondents have pleaded that the papers pertaining to the compassionate appointment of the applicant are not available is not acceptable to us. It appears that the respondents for the sake of justifying their stand, have not cared to trace the original documents/papers which are most relevant. Such documents cannot be weeded out till the person is in service. It was expedient on the part of the respondents to have referred to those papers and only then a proper confronting enquiry could be made. Unfortunately the applicant who worked in the respondents establishment for about 26 years has been compulsorily retired from the Railway Service on the grounds which are not conclusively proved in absence of documents submitted by the applicant at the time of his initial appointment. Such an action of the respondents cannot be justified in the eyes of law specially when the original relevant records are not available with the respondents as stated by them. It also appears to us that the grievance of the mother of respondent no.7 i.e. widow of Late Doodh Nath Dwivedi raised after 23 years after the death of her husband is nothing but an after-thought so that she could succeed in getting the job for her son i.e. respondent no.7.

11. We also find substance in the submission of the learned counsel for the applicant that enquiry proceedings were held under pressure of the then Railway Minister and with sole

intention and motive to terminate the services of the applicant to comply with the Hon'ble Railway Minister's order in whatsoever way possible so that respondent no.7 could be appointed in his place. We have no hesitation to hold that the impugned orders are unfair, illegal, perverse and motivated.

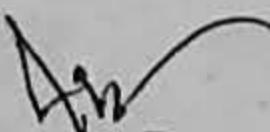
12. We have closely perused the impugned orders. In the punishment order the disciplinary authority has only dwelt with the behaviour of the applicant in not attending the confronted enquiry, evading the enquiry and using delaying tactics besides holding that the applicant did not adduce any material evidence of any authorisation by the wife of Late Shri D.N. Dwivedi and thereby holding that employee mis-represented himself as close relative and obtained job by conceal and fraud and thus he awarded the extreme punishment of dismissal. We ask a question to ourselves that was it required of the applicant to produce the evidence of any authorisation by the wife of Late Shri D.N. Dwivedi at this belated stage or was it for respondents to have referred to the original papers filed by the applicant at the time of obtaining the appointment in 1971? Our answer is that the respondents have very conveniently and illegally put the onus on the applicant. Besides we would also like to observe that in the punishment order the disciplinary authority has recorded his dis-agreement with the enquiry officer in regard to para 3 of Enquiry officers findings. If that be so the disciplinary authority should have issued dis-agreement memo earlier than passing the impugned order dated 14.2.1997. In view of the law laid down by the Hon'ble Supreme Court in the case of Punjab National Bank and Ors. Vs. Kunj Behari Mishra 1998 SCC(L&S) 1983 and Yogenath O. Bagde Vs. State of Maharashtra & Another 1999-SCC(L&S) 1385 the impugned punishment order cannot stand the test of law and, therefore, the same is liable to be set aside. The perusal of impugned appellate order dated 16.07.1997 leaves no doubt in our mind that the same is

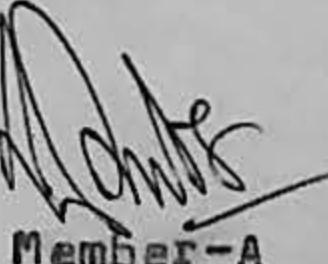
non-speaking because the points raised by the applicant in his appeal dated 04.04.1997 have not been addressed at all by the appellate authority in the appellate order so impugned. As regards the revisionary authority order dated 18.11.1997 we find that the revisionary authority had reduced the punishment of dismissal from service to compulsory retirement on humanitarian grounds but the same also cannot sustain in the eyes of law. In fact it would have been appropriate for the revisionary authority to have looked into the various points raised by the applicant in his revision petition. Simply modifying the punishment does not meet the ends of justice. The learned counsel for the applicant has cited number of case law of Hon'ble Supreme Court and this Tribunal in regard to departmental enquiry and also violation of Principles of natural justice. However, in our opinion, they are not required to be dealt with specially in view of our observations above.

13. In the facts and circumstances and our aforesaid discussions, we are of the view that the action of the respondents is arbitrary and illegal and the same cannot stand in the eyes of law. The O.A. is allowed. The impugned punishment order dated 14.2.1997 and appellate order dated 16.7.1997 and revisionary authority order dated 18.11.1997 are quashed. The applicant shall be reinstated in service immediately on filing of this order before respondents and he shall be entitled for all consequential benefits. We leave it for respondents to take or not to take any decision in respect of service of respondent no.7.

14. In view of the above the O.A. No.336/97 stands disposed of.

15. There shall be no order as to costs.

  
Member-J

  
Member-A