

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 30th day of May, 2002.

Original Application No. 1086 of 01.

CORAM :-

Hon'ble Mr. C.S. Chadha, A.M.

1. Smt. Suresatiya Devi Wife of Late Sri Mohan, Resident of Garahi Mohalla, Rasada, District Ballia.
2. Sri Bhagwan Son of Late Sri Mohan, Resident of Garahi Mohalla, Rasada, District Ballia.
(Sri AK Pandey, Advocate)

.....Applicant

Versus

1. Union of India through its Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. Mandal Rail Prabandhak (Karmik), North Eastern Railway, Varanasi.
3. Assistant Engineer, North Eastern Railway, Ballia.

(Sri Anil Kumar, Advocate)

.....Respondents

O R D E R (O_r_a_l)

By Hon'ble Mr. C.S. Chadha, A.M.

The case of the applicant is for appointment on compassionate ground because of the death of the husband of the applicant allegedly while in service. The respondents have claimed that the applicant was removed from service vide order dated 10-12-1992 and the same was also received by the deceased on 16-1-1993, i.e. about four months before his death. The learned counsel for the applicant has

Chadha

challenged the validity of the said order stating further that it has been ante-dated deliberately and that no such order was served on the deceased during his life time. I find in para 6 of the short Counter affidavit that the respondents had averred that a chargesheet was served on the deceased (the husband of the applicant) for willful unauthorised absence. It has been mentioned therein that between 1998 and 31.3.1992 for a period of 1200 days, the applicant served for only 472 days. It has been further averred that a major penalty chargesheet had been served on him on 18.12.1972 and Sri V.P. Singh, IOW, Ballia, was appointed as the Enquiry Officer, but the deceased Sri Mohan did not participate in the enquiry and, therefore, vide order dated 10.12.1992 he was removed from service.

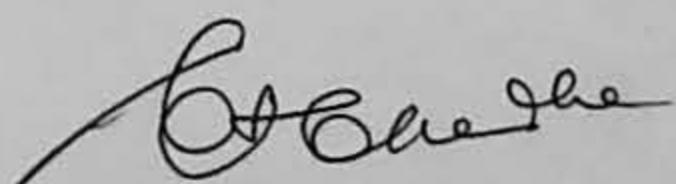
2. In the Rejoinder affidavit in para 17 thereof, the contents of para 6 of the Counter affidavit have been denied only in general terms. It has not been specifically denied that the IOW, Ballia had been appointed as Enquiry officer and that the deceased had not been appearing before him in the enquiry. In fact it is very difficult at this stage to find out the veracity of such statements including the date of serving of the chargesheet etc. given by a Government department. There is no reason shown by the applicant why the respondents would be prejudiced against the deceased and why they did not take necessary steps, because they did not have to pay any pension or pay any amount from their own pockets.

3. Learned counsel for the applicant also tried to stress the fact that the applicant's request for grant of pension etc. was forwarded to the senior authorities by the Asstt. Engineer, who would have been aware of the removal order, had it actually been passed. This has been mentioned in paras 10,11 and 12 of the Rejoinder affidavit. I fail to agree with this argument because a perusal of the said documents amply demonstrates that the application of Smt.

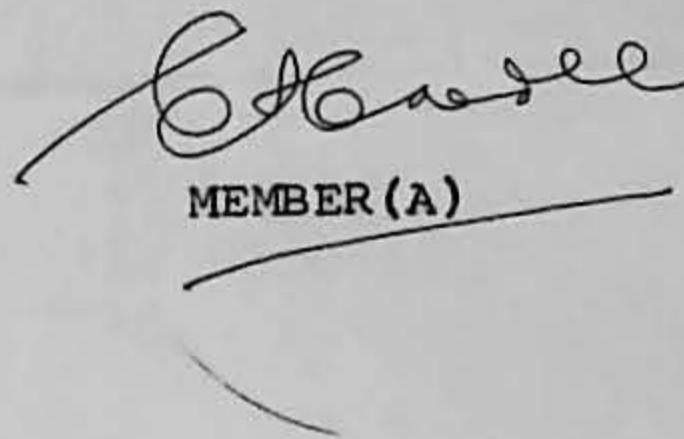
Ed Gaudle

Surasatiya Devi was merely forwarded for necessary action. It does not show that the Asstt. Engineer recommended grant of pension knowing well that the person had died without being removed from service. This argument cannot be considered to be a valid argument. In paras 10, 11 and 12 of the Rejoinder affidavit it has also been stated that no charge-sheet was served on the deceased. I am unable to agree with this because of the specific averments made in the Counter affidavit, which have not been satisfactorily controverted. In fact it has been mentioned by the applicant that the deceased had submitted a medical report dated 3.1.1992 (Annexure RA-6) along with an application for being taken on duty. This clearly proves the veracity of the argument of his unauthorised absence and his offer to join when he was made aware that he would be removed from service. Learned counsel for the applicant states that the medical certificate submitted only shows that he was willing to join duty and that the charge of unauthorised absence is incorrect. I am unable to agree with this argument. In fact the applicant's medical report supports the theory that he was on unauthorised absence and wanted to join after submission of such certificates.

4. The relief claimed by the applicant also includes quashing of the order of dismissal purportedly passed on 10.12.1992 and served on the deceased on 16.1.1993. In view of the discussion given above, first of all the action taken by the respondents is not at all doubtful. Further after passing of the removal order the applicant should have filed an appeal as it cannot be said that the applicant was not aware of the order. Since he did not avail of his statutory right to appeal before his death the order cannot be quashed at this stage.



5. In view of the facts and circumstances mentioned above and specifically the fact that filing of the chargesheet and appointing of the Enquiry Officer and action taken thereafter has not been controverted satisfactorily, the O.A. has no merits and is, therefore, dismissed. There shall be no order as to costs.


Etienne

MEMBER (A)

DUBE/-