

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 21st DAY OF JULY, 2009)

PRESENT :

**HON'BLE MR. A. K. GAUR, MEMBER-J
HON'BLE MR. D.C. LAKHA, MEMBER-A**

ORIGINAL APPLICATION NO.1560 OF 2004

(U/s, 19 Administrative Tribunal Act.1985)

Smt. Chameli Devi aged about 50 years, widow of Late
Prabhunath, Ex Helper Khalasi, under CEFO(P), N.C. Railway,
Allahabad R/o Village-Kareha P.O. Karchhana, District-Allahabad.

..... .Applicant

By Advocate : Shri Sudama Ram

Versus

1. Union of India, through the General Manager,
N.C. Railway, Allahabad.
2. Divisional Railway Manager, N.C. Railway, Allahabad.
3. Senior Divisional Electrical Engineer, (Genl.), N.C. Railway,
Allahabad.
4. Assistant Electrical Engineer, N.C. Railway, Allahabad.

..... . Respondents

By Advocate : Shri P. Mathur

ORDER

(DELIVERED BY: A. K. GAUR- MEMBER-JUDICIAL)

1. We have heard Shri Sudama Ram, learned counsel for the applicant and Shri P. Mathur, learned counsel for the respondents.
2. Learned counsel for the applicant submitted that earlier OA No.916 of 1995 was filed by the applicant challenging the removal

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order passed by the Disciplinary Authority and the Appellate Order dated 28.12.1994. After considering the parties case this Tribunal allowed the OA in part and the Appellate order dated 28.12.1999 was quashed and set aside. The Appellate Authority was directed to decide the appeal afresh in accordance with law and in the light of observations made in this judgment within a period of three months from the date of communication of this order. In strict compliance of the direction of the Tribunal dated 5.1.2004 the Competent Authority decided the appeal of the applicant vide order dated 29.3.2004/Annexure A-2. The appellate authority while deciding the appeal of the applicant took a lenient view and the order of removal from service has been set aside and converted to compulsory retirement of the applicant. The order of removal was converted into compulsory retirement with all consequential retirement benefits. The validity of the said order dated 29.3.2004 has been challenged before this Tribunal. Sri Sudama Ram, learned counsel for the applicant would contend that order passed by the Appellate authority is not sustainable in law on the ground that after the death of the husband of the applicant the entire proceedings should have been closed in pursuance of the Railway Board circular and the decision rendered by the Tribunal in OA No.166 of 2007, Smt. Rama Singh Versus Union of India and Others decided on 17.03.2008. It would be apposite to quote relevant paragraph 5 of the said judgment in extenso:-

"It is an admitted position that late Shri Sanjay Singh had preferred revision under Rule 25 of the Rules of 1968 to Operating Manager, Western Railway, Headquarters' Office, copy of which is Annexure A-5. There is further no dispute that the Revising Authority had fixed 11.2.2005 for personal hearing of late Shri Sanjay Singh, but unfortunately he died on 10.7.2005, a day before. As admitted in reply the revision was

pending before the Authority concerned and was not disposed of up to the date this O.A. was filed. We warranted to know from the parties counsel as to what would be the legal fate of such statutory revision on death of delinquent officials. We put a pointed query to both the counsels as to whether on death of employees concerned during the course of revision, revision itself will stand abated or will survive for decision on merits. Shri S.K. Pandey, learned counsel for the applicant has placed before us copy of one Circular dated 19.6.2000, which says that on death of charged employee during the pendency of 'Disciplinary case' under the Rules of 1968, proceedings shall be closed. It is not clear from this Circular as to what would happen, if such employees dies during the pendency of revision under Rule 25 of the Rules of 1968. A close reading of rule 25 of the rules of 1968 makes it clear that Revising authority may confirm, modify or set aside the orders or confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed or remit the case to the Authority which made the orders or to any other authority directing such authority to make such further inquiry as it may consider proper in the circumstances of the case and also to pass such other orders as it may deem fit. What we want to say is that power of the Revising Authority under Rule 25 extends to setting aside the order of the punishment or any order confirming that punishment in appeal. We do not know what would have happened to the fate of the revision of Late Shri Sanjay Singh, had the same been heard and disposed of under the above Rule of Rule 25. So in our humble opinion, revision under Rule 25 will also be included in the expression "disciplinary case" or "disciplinary proceedings" referred to in the said Circular dated 19.6.2000. In that view of the matter on death of the revisionist during the pendency of the revision under Rule 25, not only the revision but also entire proceedings including the punishment and appellate order will meet a legal death and will not remain alive. So it can be said that Late Shri Sanjay Singh died while still in service. His widow and family members shall be entitled to all terminal benefits as are admissible in the case of an employee dying in service.

3. It is also submitted that in view of Administrative Tribunal Full Bench Judgments reported in 1997-2001, Mrs. Chandra Kala Pradhan Versus Union of India and Ors. Tribunal has jurisdiction to entertain an application filed by legal heirs after the death of Govt. Servant. Learned counsel for the applicant submitted that

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he has already filed Special Appeal before D.R.M. on 9.4.2004.

Learned counsel for the applicant invited our attention to the provision of The Railway Servants (Discipline & Appeal) Rules 1968 contained in Rule 24(3). For convenience Rule 24(3) of The Railway Servants (Discipline & Appeal) Rules 1968 is reproduced here under:-

"3.A Group 'D' Railway Servant, who has been dismissed, removed or compulsorily retired from service may, after his appeal to the appropriate appellate authority has been disposed of and within 45 days thereafter, apply to the Divisional Railway Manager and where he is not under the control of any Divisional Railway Manager to the senior-most Administrative Grade Officer under whose control he may be working, for a revision of the penalty imposed on him. The Divisional Railway Manager or the senior-most Administrative Grade Officer, as the case may be, shall thereafter dispose of the revision application in accordance with the procedure laid down in Rule 25 and pass such orders as he may think fit:

Provided that the procedure mentioned in this sub-rule shall not apply where the Divisional Railway Manager or the Senior-most Administrative Officer or any higher authority, as the case may be, is the appellate authority;

Provided further that where a revision application has been disposed of by the Divisional Railway Manager or the Senior-most Administrative Officer under this sub-rule, no further revision shall lie under Rule 25."

4. Shri P. Mathur, learned counsel for the respondents vehemently argued and submitted that in strict compliance of the order and direction of the Tribunal, the appeal has been decided by the competent authority taking a lenient view in the matter by converting the punishment of removal to compulsory retirement. Learned counsel for the respondents would further contend that legal heir of the deceased employee cannot file a Special Appeal. Learned counsel for the respondents also invited our attention that under the provisions of Railway Servant (Discipline & Appeal)

Rules 1968, the appeal should have been preferred by the employee himself. Learned counsel for the applicant invited our attention to the decision rendered in OA No.830 of 1991 decided on 27.1.1995 wherein a similar and identical controversy was involved and the Tribunal has held that after the death of an employee his wife or legal heir may file appeal to the competent authority for redressal of his grievance.

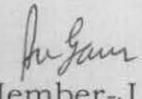
5. Having given our thoughtful considerations to the pleas advanced by the parties counsel and after carefully perusing the provisions and the Case laws relied upon by the learned counsel for the applicant, we are fully satisfied that applicant's grievance can be redressed if direction is given to the competent authority to consider and decide the Special Appeal filed by the applicant under the provisions of Rule 24(3) of Railway Servants (Discipline & Appeal) Rules, 1968 on 9.4.2004/Annexure-15.

6. In view of the facts enumerated above, we hereby direct the competent authority to decide the Special Appeal of the applicant filed under Rule 24(3). While deciding the Special appeal of the applicant respondents shall take into account the Railway Board Circular dated 19.6.2000, and the grounds taken in the OA. We further direct the applicant to file Circular, Case Laws in support of his contention before the competent authority, within three weeks from the date of receipt of copy of this order and thereafter the competent authority shall decide the same within a period of three months from the date of receipt of a certified copy of this order.

7. With the above directions, the OA stands disposed of with no order as to costs.



Member-A



Member-J

/ns/