

Reserved
(28.03.2014)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

Dated: This the 15th day of May 2014

Original Application No. 1121 of 2005

Hon'ble Mr. Shashi Prakash, Member (A)
Hon'ble Dr. Murtaza Ali, Member - J

Smt. Manju Lata Srivastava, Widow of Late Shanker Saran Srivastava, Ex. Khalasi, Ticket No. 450 under controller of Stores, N. Railway, Lucknow, R/o House No. 193-A, Malviya Nagar, Allahabad.

By Adv: Sri S.S. Sharma and Shri R. Sharma . . . Applicant

V E R S U S

1. Union of India, through - The General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Chief Material Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
3. The Dy. Chief Material Manager, Northern Railway, Alambagh, Lucknow.
4. The Divisional Material Manager, Northern Railway, Alambagh, Lucknow.
5. Assistant Divisional Engineer, Northern Railway, Varanasi.
6. The Assistant Controller of Stores, Northern Railway, Alambagh, Lucknow.

. . . Respondents

By Adv: Shri P. Mathur

O R D E R

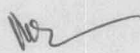
By Hon'ble Dr. Murtaza Ali, Member (J)

Through this OA, filed under Section 19 of the Administrative Tribunals Act, 1985 the applicant has sought the following reliefs:

VS

- "i. That the Hon'ble Tribunal may graciously be pleased to set aside penalty order dated 14.05.2002 issued by the Assistant Controller of stores, N. Railway, Lucknow imposing penalty of removal from service to set-aside appellate order dated 03.02.2005 and reversionary order dated 02.05.2005 rejecting appeal and revision petition of the applicant.
- ii. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to allow family pension to the applicant after death of her husband the deceased employee on 30.07.2002 and also may kindly be directed to consider request of the applicant for appointment on compassionate grounds.
- iii. That the Hon'ble Tribunal may graciously be pleased to direct the respondents to make payment of all the dues of the deceased employee i.e. gratuity, leave encashment and provident fund etc. to the applicant with interest as decided by the Hon'ble Tribunal."

2. The brief facts of the case are that the applicant is the widow of late Shankar Saran Srivastava who was working as Permanent Khalasi under the Controller of Stores, Northern Railway, Alambagh, Lucknow. It has been stated that the deceased Shankar Saran Srivastava was earlier transferred from Allahabad to Lucknow and he was mentally disturbed due to the critical family circumstances and he tried his best for his stay at Allahabad, but the railway authority did not pay any attention to his request and ultimately he was killed on 30.07.2002 by some miscreants. The applicant sent an application dated 02.09.2002 and reminder dated 22.10.2002 to the



Assistant Controller of Stores, Northern Railway, Alambagh, Lucknow for payment of her husband's dues and for her appointment on compassionate ground. It has been intimated to her vide letter dated 02.12.2002 that her husband was removed from service on 14.05.2002 and there is no provision for appointment on compassionate ground in such cases. The applicant came to know that her husband was served with a memorandum of charges dated 08.05.2002 for major penalty on the allegations of unauthorised absence from duty from 25.01.1999 to the date of issue of charge sheet without any due intimation. She also came to know that an inquiry was conducted and an exparte report dated 02.04.2002 was filed in which her husband was held responsible for unauthorised absence and he was imposed penalty of removal from service on 14.05.2002. It has been stated that her husband made an appeal dated 12.06.2002 under Rule 22 (2) of the Railway Servants (Discipline and Appeal) Rules, 1968 against the penalty order dated 14.05.2002 and requested to exonerate him from the charges, which was pending and in the meantime he was killed on 30.07.2002. The applicant made representations dated 31.01.2003, 28.03.2003 and 16.04.2004 and it was requested to drop the disciplinary proceedings against her husband, but the same was rejected vide letter dated 21.09.2004.

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3. In the counter reply submitted on behalf of the respondents it has been admitted that the husband of the applicant late Shankar Saran Srivastava was removed from service due to unauthorised absence vide order dated 14.05.2003 but submitted that no appeal was received in his office within stipulated time i.e. 45 days. It has also been submitted that the employee was working under Deputy Controller of Stores, Alambagh, Lucknow and not under the Controller of Stores as stated in the OA. It has also been stated that the said appeal dated 12.06.2002 was wrongly addressed to DYCOS instead of DCOS and this could also be one of the reason for there being no decision on the alleged appeal. It has been submitted that they received an application dated 22.10.2002 of the applicant in which an application dated 12.06.2002 of the deceased employee was annexed (Annexure A-7). The same was not in the nature of appeal but in the said letter a request was made by him for his transfer to Allahabad. It has been stated that the deceased employee worked as casual labour and subsequently granted temporary status on 24.01.1984 and he was offered fresh appointment on decasualization on 25.05.1994. He was irregular during his total service period of 07 years, 11 months and 19 days and he remained on unauthorised absence for a period of 05 years, 10 months and 19 days excluding the period of sanctioned leave. It has been stated that




compassionate appointment could not be given to the applicant as the deceased employee was removed from service on 14.05.2002 and later killed on 30.07.2002. It has also been submitted that no reply to the charge sheet dated 08.05.2000 was received from deceased employee and the deceased employee did not attend the inquiry proceedings and the inquiry officer was compelled to proceed exparte. It has also been submitted that the revision filed by the applicant has rightly been rejected by the Competent Authority.

4. Heard Shri S.S. Sharma, learned counsel for the applicant and Shri P. Mathur, learned counsel for the respondents.

5. Learned counsel for the applicant has submitted that against the penalty order dated 14.5.2002 the husband of the applicant Late Shanker Saran Srivastava preferred an appeal dated 12.6.2002 and during the pendency of such appeal he died on 30.07.2002. It has been argued that the impugned order dated 14.5.2002 is not sustainable as the disciplinary proceeding is to be closed immediately on the death of Shanker Saran Srivastava.

6. It has also been submitted that the widow of the deceased employee could challenge the disciplinary proceeding pending against his husband during his life



time and this Tribunal has the jurisdiction to entertain an application filed by his widow. It is settled law that during the pendency of appeal or revision if the charged employee dies the entire proceedings including the punishment of appellate order will meet a legal death and will not remain alive and it would be deemed that neither any disciplinary proceeding was pending nor any punishment was awarded against the deceased employee. In view of the matter it is very much clear that if an appeal was filed by the deceased employee against the punishment order and during the pendency of such appeal the charged employee dies, the whole disciplinary proceeding shall abate.

7. The main dispute in this case is that whether employee had filed an appeal dated 12.6.2002 against the punishment order dated 14.5.2002.


8. A copy of the said appeal dated 12.6.2002 has been filed by the applicant as Annexure-A-7 to the OA and a copy of U.P.C. has also been filed alongwith said appeal and it has been contended that the said appeal has been signed by Late Shanker Saran Srivastava and it was addressed to Deputy Chief Material Manager, Northern Railway, Alambagh, Lucknow. On the insistence of this Tribunal, the applicant has also submitted the original copy of U.P.C. which shows

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that there is an stamp of Post Office Udaheh Bozarg, Allahabad dated 12.6.2002 which is also the date of said appeal. The service record was also produced by respondents in which the deceased employee had put his signature on may places. The writing of deceased employee on service record and on the appeal dated 12.6.2002 also appears to be almost identical.

9. Learned counsel for the applicant has also invited our attention to para 31 of the Counter Affidavit wherein it has been stated that the disciplinary authority of the deceased employee was D.C.O.S. and according to the applicant the appeal was addressed to D.Y.C.O.S. instead of D.C.O.S. and this could also be one of the reason for there being no decision on the alleged appeal. It has also been stated in para 29 of the counter affidavit that the said appeal dated 12.6.2002 was wrongly addressed and was not received in due course of time.

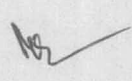
10. Learned counsel for the applicant has contended that the averments made in para 29 and 31 in the counter affidavit filed on behalf of the respondents show that the said appeal dated 12.6.2002 was actually received in the office of respondents and there may be some delay or error in the designation of appellate authority for which learned counsel for the applicant has drawn our attention towards the letter dated



14.6.1963 of the General Manager, Northern Railway in which it has been stated that a benevolent attitude should be taken and the employee concerned should be advised immediately to correct the address etc. if necessary, the employee may be either called in office or service or Welfare Inspector utilized for getting necessary corrections made.

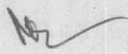
11. On the basis of averments made in para 29 and 31 in the counter affidavit and also in the light of General Manger's letter dated 14.6.1963 we are of the view that if there was any mistake in the name of the Appellate Authority, then it was the duty of the department to have be got the mistake corrected. However, the respondents kept the appeal dated 12.6.2002 filed by Late Shanker Saran Srivastava pending in their office and during the pendency of said appeal the applicant died. A review application, which was filed by the widow of late Shanker Saran Srivastava, was also dismissed by the respondents vide order dated 2.5.2005 (Annexure-A-3) on the ground that any revision or appeal against the punishment imposed retrospectively can only be preferred from live delinquent employee within the stipulated period.

12. Learned counsel for the respondents has also contended that the said appeal dated 12.6.2002 was not in the form of appeal but it was only a request of the



deceased delinquent employee for transfer from Lucknow to Allahabad. From the perusal of the said appeal dated 12.6.2002 it appears that it was preferred after receipt of punishment order dated 14.5.2002 in which it has been stated the conditions of the deceased delinquent employee and it was stated that his economic and mental condition was not good and he prayed for exoneration from the charges and requested to take him on duty. As there is no prescribed form for filing the appeal in the Railway, we are of the opinion that the letter dated 12.6.2002 should have been treated as an appeal in which all the family and economic conditions have been described and it was prayed that he should be exonerated from the charges levelled against him but the department kept this appeal pending on the pretext that it was not correctly addressed or it was sent after lapse of prescribed period.

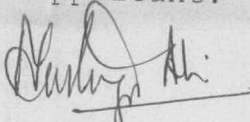
13. Considering all the facts and circumstances of the case, we are of the opinion that an appeal dated 12.6.2002 was filed against the punishment order dated 14.5.2002 by Shanker Saran Srivastava and during pendency of said appeal he died and in such circumstances the whole disciplinary proceedings stood abated and it would be not incorrect to presume~~ed~~ that no such proceeding was pending against the Shanker

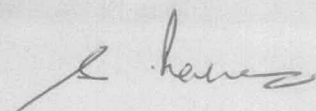


Saran Srivastava and he would be deemed in service on the date of death i.e. on 30.07.2002.

14. Accordingly, the OA is allowed. The impugned orders dated 14.5.2002, 03.2.2005 and 02.5.2005 passed by respondents are hereby quashed. The applicant shall be granted all terminal benefits and family pension as per Rules, as if her husband late Shanker Saran Srivastava died while still in service of the respondents and was never removed from service. She will be allowed to make a request for considering her or any of her son or daughter, for compassionate appointment and any such application, shall be considered on merits as per Rules and the Guidelines issued in this behalf from time to time and shall be treated in time if preferred within three months from the date of receipt of this order. The respondents shall pass suitable orders as regards the terminals benefits and arrears of salary if any for the period he actually worked, within a period of three months. No order as to costs.

15. Service Book of the applicant be returned to the respondents and copy of the original U.P.C. be also returned to the applicant.


Member-J


Member-A

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