

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 21 Day Of July, 2011)

Hon'ble Mr. Justice S.C. Sharma-JM
Hon'ble Mr. D.C. Lakha, AM

Original Application No. 1141 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

Khaleel Ahmad, Aged about 60 years, S/o Late Shri Munwar Bux,
R/o 39 Bada Kunwa, Pulia No.9, Jhansi.

..... Applicant

By Advocate: Shri Rakesh Verma
Versus

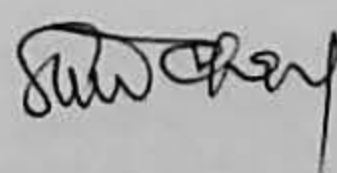
1. Union of India through General Manger, North Central Railway Allahabad.
2. Chief Works Manager, North Central Railway, Jhansi.
3. Deputy Chief Mechanical Engineer (M), North Central Railway, Jhansi.
4. Works Manager (Plant) (Workshop), North Central Railway, Jhansi.

..... Respondents

By Advocate: Shri Bashist Tiwari

ORDER

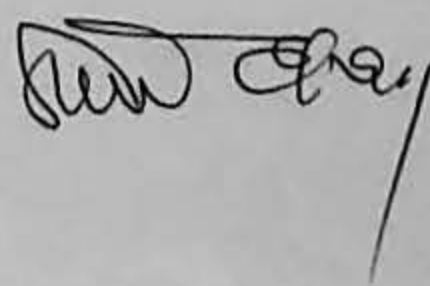
Under challenge in this O.A. is the order dated 08.10.2004
passed by the Respondent No.4 imposing punishment of reduction



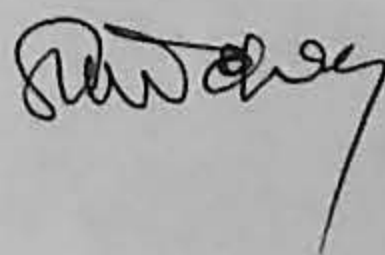
in rank from the post of Technician Grade-I Rs.4500-7000 to Technical Grade-II Rs.4000-6000 fixing basic pay at Rs.5000/- P.M. w.e.f. 08.10.2004 and the Appellate Order dated 02.12.2004 passed by the Respondent No.3 rejecting the Appeal, confirming the punishment order dated 20.05.2005 and the order passed by the Respondent No.2 rejecting the Revision Petition filed by the applicant against the order of Appellate Authority and Disciplinary Authority (Annexure A-1, A-2 and A-3). Further prayer has also been made for giving a direction to the respondents to restore the applicant at his original stage at the basic pay of Rs.5,375/- P.M. in the Pay Scale of Rs.4500-7000 as Technician Grade-I with all consequential benefits thereof as if no such punishment order would have ever been passed. Further prayer has also been made for giving a direction to the respondents to fix the monthly pension of the applicant and to pay the arrears thereof with effect from 01.11.2004 with interest @ 18% per annum.

2. The facts of the case are summarized as follows:-

It has been alleged by the applicant that while working as Technician Grade-I was charge-sheeted vide Memo dated 09.07.2004; copy attached Annexure A-IV. Reply was submitted by the applicant and denying the charges levelled against him, but

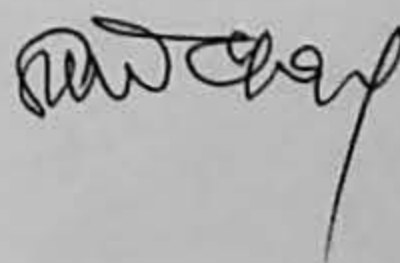


even then Departmental Inquiry was initiated against the applicant by appointing an Inquiry Officer as well as Presiding Officer. The Inquiry Officer submitted his report on 15.09.2004. In response to the Inquiry Report, the Disciplinary Authority directed the applicant to submit a representation within 15 days and the applicant submitted his representation. The first wife of the applicant Smt. Firoj Bano died on 16.06.1996 and the applicant furnished information to the Railway Administration on 15.11.1996. The applicant remarried on 03.09.1997 with one Smt. Rehana Bano aged about 39 years. The Inquiry Officer submitted the report to the effect that the applicant submitted information about the death of his wife on 15.11.1996 as per Rules but the employee concerned has been negligent in not making the entry in the relevant record. It has been alleged by the respondents that the applicant had been negligent in receiving the privilege pass in the name of his wife in spite of that his wife has already died. The privilege pass ought not to have been issued by Shri Shameer Chakravorty and Shri Pradeep Kumar Jain to the effect that information was supplied about the death of his wife on 15.11.1996, whereas the privilege pass was issued afterwards. These persons issued privilege pass fully knowing the fact that his wife has died. The Inquiry Officer arrived at conclusion that it is



the case of negligence on the part of the Railway Employee, the charges against the applicant has been held to be proved. After receiving the representation of the applicant the Disciplinary Authority awarded the punishment of reduction of rank to the applicant. The applicant had been working on the post of Technician Grade-I (Rs.4500-7000/-) and he was reverted to the post of Technician Grade-II (Rs.4000-6000/-) and fixing Pay scale of Rs.5000/- P.M. w.e.f. 08.10.200. The Appeal and Revision filed by the applicant were also rejected. There was no misconduct on the part of the applicant; rather Inquiry Officer was of the opinion that the Railway Employees were negligent in issuing the Railway Pass to the applicant.

3. The respondents have contested the O.A. and filed Counter Reply. They have denied the contentions of the applicant that the orders passed by the respondents for imposing punishment on the applicant are legal, just and proper and these orders requires no interference by the Tribunal. The wife of the applicant died on 16.06.1996 but in spite of this fact the applicant moved an application on 13.11.1996 for issuing a pass in favour of his deceased wife. On 18.11.1996, the applicant received privilege pass in favour of his wife that the applicant wilfully and deliberately got the pass

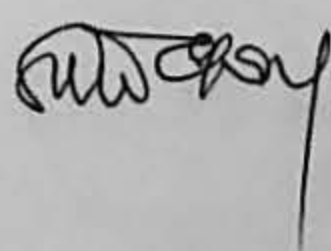


prepared in favour of his deceased wife and received the same fully knowing the fact that his wife has already died. The applicant himself informed the respondents that his wife died on 15.11.1996, but in a pre-planned manner, in order to setup a defence, in the case of misconduct submitted an application for issuing pass in favour of his deceased wife and received the pass that the applicant was found guilty of misconduct and hence punishment order was passed. The application submitted by the applicant for issuing the pass has also been filed.

4. In response to the Counter Reply, the applicant filed Rejoinder Affidavit and reiterating the facts as stated earlier.

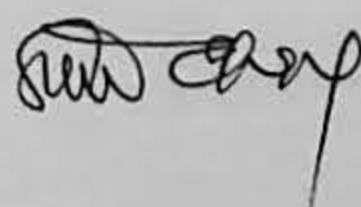
5. We have heard Shri Rakesh Verma, Advocate for the applicant and Shri Bashist Tiwari, Advocate for the respondents and perused the entire facts of the case.

6. From the perusal of the entire records, it is evidence that the applicant was served a charge sheet with the allegations that his wife had died on 16.06.1996 and information to this effect was submitted to the respondent on 15.11.1996 but earlier to that on 13.11.1996, the applicant submitted an application for issuing privilege pass in



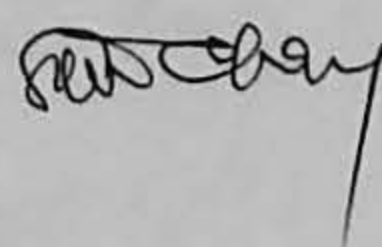
favour of his deceased wife and on 18.11.1996, applicant received privilege pass of his deceased wife. It was a fact that the wife of the applicant had already died but in spite of this fact the applicant received the privilege pass from the respondents and hence he committed the misconduct. It is undisputed fact that the wife of the applicant, namely, Firoj Bano died on 16.06.1996 and it is also undisputed fact that information was given by the applicant to the Railway Administration about his wife's death on 15.11.1996.

7. Learned counsel for the applicant argued that the Official concerned, prepared the privilege pass in the name of deceased wife of the applicant and delivered it to the applicant. It was a mistake and negligent act on the part of the applicant that he received the privilege pass in the name of his wife on 18.11.1996. Learned counsel for the applicant also argued that the Inquiry Officer has held in his Inquiry Report that it was a negligent act on the part of the applicant and as well as the on the part of the Railway Employees for issuing the privilege pass. The report of the Inquiry Officer is on record (Annexure A-V) and from the perusal of the report of the Inquiry Officer, it is evident that according to statement of Shri S.K. Saxena, in case entry might have been made regarding the family of the applicant by Shri Shameer Chakravorty and Shri Pradeep Kumar



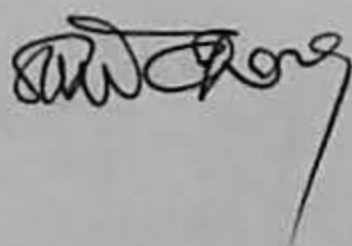
Jain then the privilege pass might have not been prepared on 16.11.1996 in the name of wife of the applicant. That the application was given by the applicant about the death of his wife on 15.11.1996 and he followed the Rules by giving information of this fact. But the applicant had been negligent in receiving the privilege pass of his deceased wife. The passes were inadvertently prepared by Shri Shameer Chakravorty and Shri Pradeep Kumar Jain. If the matter might have been examined minutely then it may be possible that privilege pass could not be prepared. From the perusal of the entire facts, it is apparent that there had been negligent act on the part of the applicant.

8. From the perusal of the Inquiry Officer's report it is evident that the applicant alone was not responsible and guilty for negligence but other concerned employees were equally responsible for the same. It has not been held by the Inquiry Officer that the applicant alone was negligent but the Inquiry Officer was of the opinion that Shri Shameer Chakravorty and Shri Pradeep Kumar Jain dealing clerks were also negligent. If they might have examined the entire record then the mistake might have not been committed. The Inquiry Officer is not of the opinion that it was deliberate action on the part of the applicant to commit the misconduct, but the Inquiry



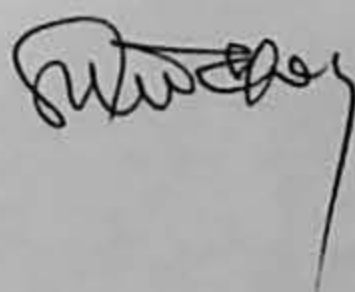
Officer arrived at conclusion that it was a negligent act on the part of the applicant for receiving the privilege pass in the name of his deceased wife.

9. In our opinion, in such circumstances when it was not a deliberate act on the part of the applicant rather it was a negligent act on the part of the applicant and not only the applicant but other concerned Railway employees, namely, Shri Shameer Chakravorty and Shri Pradeep Kumar Jain were equally responsible. In our opinion, the fault of these employees is more than the fault of the applicant. Admittedly, the intimation was given by the applicant regarding the death of his wife on 15.11.1996, whereas the privilege pass of the applicant's wife was prepared on 16.11.1996 and delivered to the applicant on 18.11.1996. If these employees might have observed due precaution and care in discharging their duties for examining the record then there was no possibility of preparing the privilege pass in the name of deceased wife of the applicant. If the intention of the applicant might have been dishonest and *mala fide* then he was not bound to inform the respondents on 15.11.1996 prior to preparation of the privilege pass. The applicant should have concealed this fact but the intention of the applicant was not dishonest, hence he informed the respondents on 15.11.1996 and



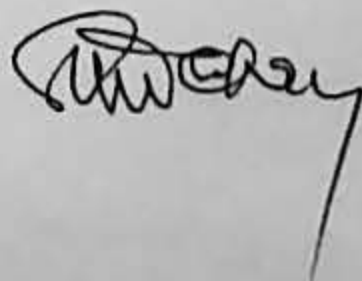
the responsible employees Shri Shameer Chakravorty and Shri Pradeep Kumar Jain without examining the record prepared the privilege pass of the deceased wife of the applicant. The Inquiry Officer is also of the opinion that it was a negligent act of the applicant and not a deliberate and dishonest act of the applicant and in our opinion, punishment ought not to have been awarded rather a warning might have been sufficient in the circumstances of the case. Moreover, it has not been shown that the privilege pass issued in favour of the applicant's wife was misused by the applicant.

10. Learned counsel for the respondents produced relevant Rules of the Railway regarding issue of privilege pass and it has also been provided in the Rules that the employee is required to furnish the information to the Issuing Authority at least once in five years about the details of the family members, dependants, relatives and that in case of change in the same should also be intimated as and when the same takes place. Prior to issuing the pass the applicant informed the respondents regarding the death of his wife, hence it cannot be said that the applicant has not complied this Rule prior to issuing of pass. Although, if the pass might have been issued by concealment of the fact and the same was issued then it amounts to misconduct but when it is a negligent act not of the applicant but of the other



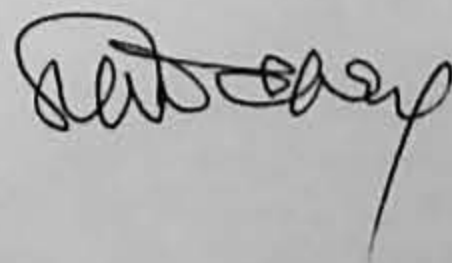
concerned employees of the Railways also then it cannot be treated that the applicant is guilty of misconduct because it is not deliberate act on the part of the applicant, rather it is a negligent act. The Inquiry Officer arrived at conclusion that it was only negligent act on the part of the applicant and other employees are equally responsible for this negligent act.

11. Learned counsel for the respondents also supplied the judgment reported in 1925 OUDH 479: **Ram Dayal v. King Emperor.** In the said judgment it has been provided that in case, a Railway Employee obtained a free pass for wife and mother and giving it to another woman, who used it, then the Railway servant is guilty under relevant Law. But in the present case, this is not a fact. It has not been alleged by the respondents that the applicant delivered the privilege pass issued in the name of his wife to some other lady and another lady misused the same. It is a fact that the applicant received the privilege pass in the name of his deceased wife but it was a negligent act as has been reported by the Inquiry Officer and it cannot be presumed that it is a deliberate act, hence the judgment is not applicable to the fact of the present case.

A handwritten signature in black ink, appearing to be 'S. M. Chakravarty', is located at the bottom center of the page. The signature is written in a cursive style with a long vertical stroke extending downwards from the end.

12. For the reasons mentioned above, we are of the opinion, that as the applicant has been found guilty by the Inquiry Officer as being negligent in receiving the privilege pass of the name of his deceased wife and the Inquiry Officer has not decided that it was an intentional, deliberate and dishonest act on the part of the applicant. Besides the applicant, the other concerned employees of the Railways were equally responsible for the negligent act. The intimation was given by the applicant about the death of his wife on 15.11.1996, whereas, the privilege pass was issued afterwards. If these concerned employees might have examined thoroughly the record, then there was no possibility of preparing the privilege pass in the name of deceased wife of the applicant and no question arises of receiving the privilege pass of the name of the deceased employee.

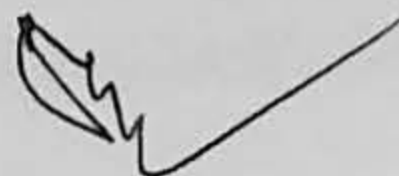
13. In our opinion, the punishment awarded by the respondents due to this negligent act of the applicant is too harsh. In that circumstance of the case, in our opinion, only warning might have been sufficient. Hence, we are of the opinion, that the order of punishment passed by the respondents for reduction in the rank from the post of Technician Grade-I (Rs.4500-7000/-) to that of Technician Grade-II (Rs.4000 - 6000/-) and fixing basic pay at Rs.5000/- P.M. is unjustified. Considering the act of the applicant the punishment was inadequate and too harsh. Appellate and

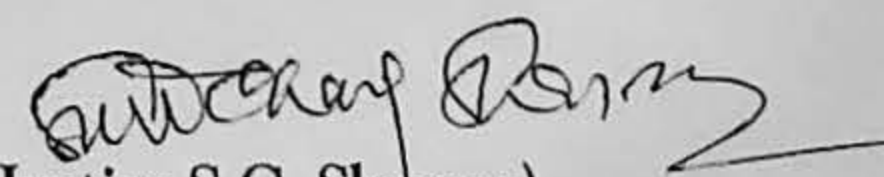


Revisional Authorities have failed to consider this aspect of the case.

In our opinion, O.A. deserves to be allowed and the orders are liable to be quashed and set aside.

14. Accordingly, the O.A. is allowed. The orders passed dated 08.10.2004 and 02.12.2004 passed by the respondent No.3 on the departmental appeal of the applicant and order dated 20.05.2002 passed by the respondent No.2 on the Revision Petition of the applicant are quashed and set aside. The applicant is entitled to be restored to the original stage of the basic pay of Rs.5375/- P.M. in the pay scale of Rs.4500 - 7000/- as Technician Grade-I with all consequential benefits and the applicant is entitled for fixation of his pension. Let, the compliance of the order be made within a period three months from the date when a copy of this order is produced before them. The applicant shall produce the copy of this order before the respondents at the earliest. No costs.


(D.C. Lakha)
Member-A


(Justice S.C. Sharma)
Member-J

Sushil