

(OPEN COURT)
**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 23rd day of March 2010

Original Application Number. 367 OF 2005
(U/S 19 of the Administrative Tribunal Act, 1985)

HON'BLE MR. A. K. GAUR , MEMBER (J)
HON'BLE MR. S. N. SHUKLA, MEMBER (A)

Smt. Vimla Devi widow of late Brahma Chandra, Mazdoor, G.E. (U) E/M, Meerut, Postal Address Village Kaliagarhi near clinic of Dr. Sewa Ram Post & P.S. medical college, Garh Road Meerut district Meerut.

.....Applicant.

V E R S U S

1. Union of India through Secretary, Ministry of Defence, New Delhi,
2. Chief Engineer, Head Quarters, Military Engineering Services, Bareilly Zone, sarvatra road Station Bareilly.
3. Commander, Works engineers, 29-J, The Mall Meerut cantt. Meerut.
4. Major Garrison, Engineer (U) E/M, Meerut Cantt. Meerut.

.....Respondents

Advocate for the Applicant: Sri P. N. Tripathi

Advocate for the Respondents: Sri S. Singh
Sri S. K. Mishra,
Sri Ajay Singh

O R D E R

DELIVER BY HON'BLE MR.A.K. GAUR , MEMBER (J).

We have heard Sri P. N. Tripathi learned counsel for the applicant and Sri Ajay Singh learned counsel for the Respondents.

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2. Learned counsel for the applicant argued that initially two charges were framed against the applicant which are as follows:-

"i. That the applicant was absent from 01 June 1997 to 31 May 1998 and from 01 Nov 1998 to 30 Nov 1998 left the station without proper leave application/prior permission.

ii. Second charge was that the applicant concealed the facts to the department regarding his arrest by Police in connection of a rape case on 12 December, 1987 and sent to the District Jail, Meerut on 14 March, 1988 and remained in remained in District Jail upto 21 March 1988 and further released on bail on 21 March, 1988."

3. Vide its order dated 20.10.2002 (Annexure 16) the disciplinary authority passed order of dismissal against the applicant, against punishment of dismissal the applicant has filed appeal to the Competent Authority.

4. It is argued by the learned counsel for the applicant that the appellate authority has gone beyond the scope of the charges mentioned in the charge sheet and has observed in its order dated 05.07.2004 as follows:-

"(a). MES-462311 Shri Brahm chand, Mazdoor was found guilty in a criminal case 9under section 363/366/376 of IPC) and sentenced for 10 years Rigorous Imprisonment by district Session Judge, Meerut on 16 May 1991"

5. Learned counsel for the applicant has vehemently argued that no such charge was ever framed against the applicant vide memo dated 12.09.2010 as has been observed by the Appellate Authority in its order dated 05.07.2004.

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6. It is also pointed out that against the order of conviction dated 16.03.1991 passed by learned Session Judge, Meerut, the applicant has already preferred criminal appeal No. 1205 of 1991 wherein, the Hon'ble High Court has stayed the operation of judgment and order passed Learned Session Judge, Meerut.

7. It is also pointed out that during the pendency of the criminal appeal before Hon'ble High Court the husband of the applicant expired on 06.12.2003. In view of the aforesaid fact the said criminal appeal will be deemed to be abated.

8. Learned counsel for the applicant would further contend that the husband of the applicant died on 06.12.2003, whereas, the appeal has been decided by the Appellate Authority vide order dated 05.07.2004, thus, it is evident that the day on which the appeal of the employee was decided, he was not alive.

9. Learned counsel for the applicant also argued that as the husband of the applicant died during the pendency of statutory appeal filed by him, it would be expedient in the interest of justice and circumstances of the case that the appellate authority must take a lenient view in the matter. It appears that the appellate authority has passed its order dated 05.07.2004, in ignorance of the fact of death of the husband of the applicant.

10. It is also settled law that 'the jurisdiction of the Tribunal is limited'. The appellate authority while deciding the appeal of the applicant has taken into consideration the fact of conviction and sentence passed by the Sessions Judge, which was not a subject matter of charge before the Appellate Authority. It appears that the Appellate Authority has given his reasoning on the basis of conjectures and surmises.

11. In our considered view the appellate authority cannot enquire into the allegations with which the delinquent officer had not been charged with.

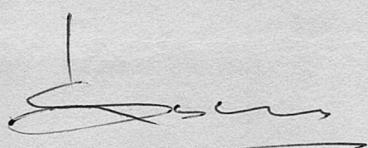
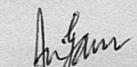
12. Having given our thoughtful consideration to the pleas advanced by the parties counsel, we are firmly of the view that the Appellate Authority has gone beyond the charges leveled against the husband of the applicant and the order passed by the Appellate Authority is without jurisdiction.

13. We accordingly, quash and set aside order of Appellate Authority dated 05.07.2004, and remit the matter back to the Appellate Authority for reconsideration of the appeal of the applicant afresh in accordance with provisions of Railway Rules and pass appropriate reasoned and speaking order within a period of three months from the date of receipt of copy of this order. While deciding the appeal of the applicant it

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would be open to Respondents to consider the question of quantum of punishment/proportionality of punishment as well as the fact of death of employee during the pendency on his appeal before the Appellate Authority, and after taking a lenient view in the matter, speaking order shall be passed by the Appellate Authority

14. With the aforesaid observation O.A. is disposed of. No costs.


Member-A
Member-J

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