

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This The 20 th Day Of May 2011)

Hon'ble Dr.K.B.S.Rajan, Member (J)
Hon'ble Mr. D.C. Lakha, Member (A)

Original Application No. 683 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Hari Shanker aged about 26 years son of late Janki Prasad.
2. Dharmendra Kumar aged about 20 years son of late Janki Prasad.
3. Hemant Kumar aged about 17 years Son of late Janki Prasad.
4. Km. Pushp Lata aged about 27 years D/o late Janki Prasad
5. Km. Rajkumari aged about 21 years D/o late Janki Prasad.

All are resident of Block No.170, Dhobhi Ghat, Linepar, Tundla, Direct Firozabad.

..... Applicants

By Advocate: Shri S. Dwivedi

Versus

1. Union of India through the General Manger, North Central Railway, Allahabad.
2. The Divisional Railway Manager (Engg.), North Central Railway, Allahabad Division, Allahabad.

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3. The Divisional Superintending Engineer (II), North Central Railway, Allahabad Division, Allahabad.
4. The Assistant Engineer (Track), North Central Railway, Tundla.

..... Respondents

By Advocate: Shri A.K. Pandey

ORDER

(Delivered by Hon'ble Dr.K.B.S.Rajan, Member (J)

1. The applicants herein are the legal heirs of one Shri Janki Prasad, who was employed in the Railways since 1971. The said Janki Prasad was removed from service, in the wake of a disciplinary proceeding, on 30.01.1995. It was only in 2003, after he had filed O.A. No.385 of 1995 that in pursuance of an order dated 24.05.2002 of this Tribunal in the afore said O.A., that his appeal was considered by the Department which dismissed the same on 26.03.2003. Meanwhile the applicant died on 11.07.2002. The legal heirs of the applicant made their representation. A revision petition was filed, which was pending when another O.A. No.975 of 2004 was filed and the said O.A. was disposed of with a direction to the respondents to decide the revision petition. Revision petition was dismissed on 03.03.2005 against which this O.A. has been filed seeking following relief/s:-\

"(a) That the order of removal from service dated 31.01.1995 (Annexure A-1 to the compilation I), order of appellate authority dated 26.03.2003 (Annexure A-2 to the Compilation I) and order dated 3.3.2005 of Revisional authority (Annexure A-3 to the compilation No.I) passed by respondent No.4, 3 and 2 respectively be declared illegal and the same may be quashed and further the respondents be directed to provide all the consequential benefits of

service of late Janki Prasad to applicants including appointment on compassionate ground to applicant no.2. ”

2. Respondents have contested the O.A.. According to them, the charge sheet was issued to the applicants' father on 27.05.1992 and the same was returned with the remarks of the postman 'refused'. Later on the matter of SF-5 was published in the local newspaper *Dainik Ujala* dated 30.11.1993. However, as the charge sheet was not responded by the said Janki Prasad, the order of removal was passed.

3. The Applicants have filed their Rejoinder Affidavit reiterating the contentions as contained in the original application.

4. Written Arguments were called for and the same has been filed by the counsel for the applicant.

5. The applicants have in Para-6 of the O.A. stated as under:-

“6. That in fact before passing order dated 31.01.1995 neither the father of applicants was given any opportunity to submit reply of charge-sheet nor any enquiry officer was appointed for conducting regular inquiry nor any enquiry was conducted by any authority nor the father of applicants was afforded any opportunity at any stage to have his say in the matter nor there was any legal evidence to prove the charges nor any charge as alleged was proved by the department against the father of applicants. ”

6. In response to the same the respondents has stated as under:-

“In fact the matter of SF-5 was published in the local newspaper dated 30.11.1993 and deceased employee was asked to attend the office of DEN/T/TDL. But he did not attend DEN/T/TDL, Disciplinary Authority. Therefore,

after waiting for sufficient time the available documents regarding unauthorized absence have been inquired upon by the disciplinary authority. The decision has been taken on SF- 5 dated 25.05.1992. In this case in spite of information given to the employee he did not attend to the disciplinary authority. There was no need to appoint any inquiry officer and disciplinary authority DEN/T/TDL himself conducted inquiry i.e. considered relied upon documents and other facts. After carefully examining final order of removal from service of Sri Janki Prasa Son of Sri Khamani, Gangman under PWI/2/TDL have been issued vide notice of imposition of penalty. ”

7. The applicants' father was proceeded ex parte as he refused to receive a copy of the SF-5 charge sheet. Non participation by the said Janki Prasad in the proceedings, had made the respondents to decide that there was no need to appoint any Inquiry Officer and the Disciplinary Authority himself conducted the inquiry, considered the relied upon documents and other facts and after carefully examining the file, passed the order of removal from service.

8. Appointment of inquiry officer is only to facilitate the Disciplinary Authority to have the full facts of the case, and where it is not necessary to appoint the Inquiry Officer, the Disciplinary Authority himself could conduct the inquiry. However, be it the inquiry conducted by an Inquiry Officer or an inquiry conducted by the Disciplinary Authority when the proceedings were conducted ex parte, the procedure as provided for holding such ex parte proceedings shall have to be strictly followed. In this regard, the decision by the Railway Boards order No. E(D & A) 69 RG 6 20 of 18-06-69 is relevant and the same is reproduced below:-

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"How to hold ex parte inquiry - For holding an ex parte inquiry the articles of charges must be properly served on the Railway employee either in person, or as per registered post, or by pasting at the working place, as the case may be. If the employee does not give the defence despite being served with the memorandum of charges; or after having given the defence, does not turn up, or having turned up, does not sit in the inquiry then the ex parte inquiry can be held. An ex parte inquiry demands all the formalities of the normal inquiry e.g. (a) if the inquiry must be appointed unless the disciplinary authority may decide to inquire himself; (b) he must fix the date and place for inquiry (c) he must hold the inquiry and call all the witnesses and call all the witnesses and documents as cited in the memorandum of charges; (d) get the documents duly proved and record the evidence of witnesses so as to prove the charge (e) where the delinquent had not turned up in the inquiry and adjournment has been given with a view to hold ex parte inquiry, if he does not turn up on the next occasion, then notice of intention to hold ex parte inquiry should be given; (f) findings of inquiry must be duly drawn.

Ex parte procedure - Ex parte proceeding does not mean than all the witnesses should be recorded strictly as per Evidence Act. This proceeding means that Inquiry Officer can proceed on the basis of the material available to him in absence of delinquent. If at any stage the Inquiry Officer comes to the conclusion that further inquiry is necessary, it is open to him to do so. But his discretion cannot be fettered by the Evidence Act, Article 311(2) principles cannot be interpreted to reduce the principles of natural justice to a ration ad absurdum. If the delinquent waves his right of hearing, he has to blame himself. He cannot be allowed, after the completion of enquiry, to turn round and say that the principles of natural justice have been infringed since no oral inquiry was held. He cannot be allowed to pay fast and loose with the Inquiry Officer.

Where he did not appear in inquiry which was decided without getting his written brief, no fault can be found on this Court. The question of filing a written brief in such a case does not arise and there is no need to ask the delinquent to file a written brief.

[E(D&A) 69 RG - 20 of 18.6.69 (SE 189/69/SC 152/69)]

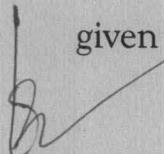
However, the record of day to day proceedings of the enquiry and notices of hearing should be sent to the delinquent regularly, this enables him to join proceedings at any stage.

[E(D&A) 90 RG 6-4 of 18-4-90]"

9. The order dated 18.04.1990 clearly provides that notice should be given to the delinquent official at each stage so that he may be able to participate in the proceedings at any stage.

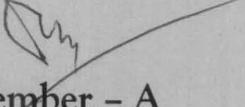
10. From the pleadings, it is seen that the above procedure has not been kept in view when the Disciplinary Authority had conducted the inquiry himself and arrived at a finding that the charge remained proved. This is certainly a serious legal lacuna. Consequently, the order of the Disciplinary Authority has to be held as invalid and not legally sustainable. Once the Disciplinary Authority's order is bad in law the other orders (order of Appellate Authority or Revisional Authority) also have to meet Waterloo! Had the Railway employee (Janki Prasad) been alive the Railway could have been in a position to conduct the inquiry from a particular stage, after giving due notice. The same is not possible since the said Janki Prasad had already expired.

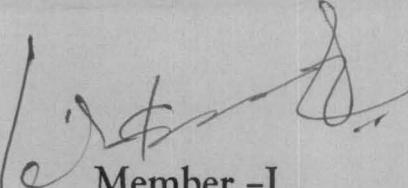
11. In view of the above, the only course left is to treat the said Janki Prasad, as if he had been in service till date of his superannuation or death whichever is earlier and his family be given necessary family pension.



12. In view of the above, O.A. is allowed. The impugned orders are hereby quashed and set aside. It is declared that the deceased Shri Janki Prasad shall be deemed to have been in service till attaining the age of superannuation/demise whichever is earlier. His notional pay shall be fixed accordingly and the last pay worked which should form the basis for working out the family pension and terminal benefit. Such dues shall be worked out on the basis of the aforesaid last pay drawn and disbursed to the legal heirs entitled to receive the terminal benefit. The family pension shall be disbursed according to the Rules. This part of the order shall be complied with, within a period of six months from the date of communication of this order.

13. Insofar as, the claim for Compassionate Appointment is concerned, in case any application has already been filed or if filed, the same shall be dealt with by the respondents in accordance with law within two months from the date of receipt of copy of this order. No costs.


Member - A


Member - J

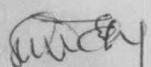
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28.11.2011

Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mr. Shashi Prakash, Member (A)

We have heard Shri Bashist Tewari, Advocate for applicant /respondents on the application moved for extension of time allowed by the Tribunal for compliance of the order. The learned counsel for the applicant/respondents attracted our attention towards the order passed by the Hon. High Court in writ petition No. 47553/2011 Union of India vs. Hari Shankar and others and argued that the Hon. Apex court held that the point noticed by Hon. High Court was never argued before the Tribunal and the order of the Tribunal is based on a circular letter issued by the Railway Board and it has been observed by the Hon. High Court that the circular letter relied upon by the Tribunal is not applicable to the facts of the case and after the order passed by the Hon. High Court, application has been moved for review of the order passed by the Tribunal in O.A. 683/2009 on 20th May, 2011.

We have perused the entire facts of the case. There is observation of the Hon. High Court to the effect that the Railway Board circulars are statutory in nature and have binding force. Rule appears to be of 1968 and the Board circular is of 1969 and this point was never argued before the Tribunal. The Tribunal required the respondents to comply with the order within a period of six months from the date of communication of the order. Respondents' Advocate stated that this period of six months is going to expire at the earliest, and in the near future and during the pendency of this application time has expired. The learned counsel for the respondents argued that the period of limitation will run after the order passed by the Hon. High Court. The order was passed on 26.8.2011 by the Hon. High Court. The respondents' Advocate also stated that the Review application has been moved on 19.10.2011. After considering all the facts as stated above, in our opinion it will be just and appropriate to allow the application and extend the time for compliance of the order of the Tribunal. M.A. 2912/2011 is allowed and further period of



six months is allowed for compliance of the order. The Application is disposed of finally.

s.a.

C. Khan
Member (A)

S. Khan
Member (J)