Reserved on: 21.06.2021

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 15th day of July 2021

Hon'ble Mrs. Justice Vijay Lakshmi, Member-J
Hon'ble Mr. Devendra Chaudhry, Member-A

Original Application No. 330/00601/2014
(U/S 19, Administrative Tribunal Act, 1985)

Anjana Devi W/o Late Dharmendra Kumar, Ex. Khalasi, T/No. S/250, Resident of Village and Post Office LalpurTeekar, NaduanChawni, Police Station Khorabar, District Gorakhpur.

Applicant

By Advocate: Shri Sanjay Kumar Om

Vs.

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.

2. The Assistant Material Manager (Depot.), N.E. Railway, Gorakhpur.

3. The Senior Material Manager (Depot.), N.E. Railway, Gorakhpur.

4. The Dy. Chief Material Manager (Depot.), N.E. Railway, Gorakhpur.

Respondents

By Advocate: Shri Sanjay Kumar Ray

O R D E R

Delivered by Hon'ble Devendra Chaudhry, Member (A)

By the present Original Application, the applicant has sought quashing of the order of removal from service of her demised husband along with directions to the respondents to provide all service benefits to her deceased husband. Additionally, relief has been sought by way of prayer for

compassionate appointment as her husband had demised while still in service.

2. *Per* applicant the facts in brief are that, (i) her husband was appointed to a Group 'D' post in 1999 whereafter after his services were confirmed (Annexure A-6), (ii) that on account of an accident in the year 2009 about 90% of the body of the applicant herself was damaged on account of which her husband - the employee under the respondents was not able to attend office and perform duties for which her husband had informed the concerned authorities by postal communication in 2009, 2010, 2011 and 2012 (Annexure A-7/8), (iii) that when her husband finally joined office a charge sheet was issued vide 08.03.2011 for the alleged unauthorised absence from duty as from 07.12.2009. That an enquiry on the said charge sheet was held in an arbitrary and *malafide* manner by forcibly recording the signature of a husband on a fabricated statement (Annexure A-10) on the basis of which the enquiry officer submitted a biased enquiry vide 18.10.2007 (Annexure A-11/12)without giving any opportunity for filing additional documents or engaging defence help for appropriate cross examination of the prosecution witnesses as required under Rule 9(19) of The Railway Servants (Discipline and Appeal)Rules, 1968 (hereinafter referred to a 'Rules').

2.1 Therefore, the enquiry has been conducted against prescribed procedure and therefore liable to be held as unlawful. That her husband had allegedly admitted the charge of being absent on duty as from 07.12.2009 which was done only as per a leading question during enquiry and cannot be therefore construed as an admission of guilt under law because this is a factual admission/statement. Notwithstanding above discrepancies in the course of the enquiry, her husband was punished by removal from service vide the impugned order 30.03.2012 against which her husband filed an appeal on 03.05.2012 (Annexure A-13). That during the course of enquiry her husband fell ill and since her husband was seriously ill, the applicant informed the concerned authorities by letter dated 24.07.2012, regarding the serious illness of her husband, who was the subject of enquiry. In fact, her husband demised on account of the serious illness on 27.05.2012. Notwithstanding the said appeal was decided vide 04.08.2012 by an absolutely non speaking order (Annexure A-2) and hence the applicant preferred a revision petition against the order before the revisional authority (AnnexureA-16) on which it was informed by the Deputy Chief material manager Depot N.E. Railway Gorakhpur vide letter dated 09.11.2012 that there is no provision for revision under the Rules (AnnexureA-3).

Following this, the applicant submitted a representation to the Assistant Material Manager N.E.Railway Gorakhpur requesting for compassionate appointment under Rule 65 of the Railway Service Pension Rules1993. However, this request was rejected vide letter/ order dated 12.12.2013 on the ground that compassionate appointment requires 10 years regular service of the concerned employee on whose behalf the compassionate appointment is being sought. That this rejection is arbitrary as the applicant's husband was appointed in the year 1999 and was removed only in 2012 implying thereby that her husband had completed 13 years of service and so the rejection of the prayer for compassionate appointment by the concerned authority it is against the provisions. That the applicant has also preferred a review petition before the Hon'ble President of India on which it was informed as being not admissible vide letter order dated 16.01.2014 by the Deputy Chief Material Manager N.E. Railway Gorakhpur (Annexure A-5). That the action of the respondents in awarding the punishment of removal against the said absence from office which was for genuine reasons is extremely harsh and arbitrary. Further that entire enquiry process has been done in an arbitrary and biased manner. In fact, the appellate order is also a fully non-speaking non-reasoned order which needs to be quashed simply on this ground itself. Further as the original punishment order also has been passed in an

arbitrary manner and without prescribed procedure hence the same also deserves to be quashed. That accordingly as a consequence, the applicant is entitled to compassionate appointment and hence the prayer for the reliefs made in the O.A. be allowed.

3. *Per contra* the respondents have submitted in the counter affidavit that the applicant's husband (hereinafter referred to as 'employee') was absent from duty for a long period of time on account of which a Charge Sheet was issued to him vide 08.03.2011 and a subsequent decision regarding imposition of punishment vide date 30.03.2012 (Annexure CR-1) was communicated. Further that there is no office record of so-called accident/illness of the applicant (employee's wife) on account of which the employee had to remain on long unexplained leave and that the stated application dated 19.08.2011 by the employee purportedly intimating about his wife's illness and treatment in a private hospital was not received or any proof of receipt has been shown with respect to the office as alleged by the applicant. That notwithstanding, any proper application etc., the employee was allowed to join office vide 09.10.2009 when he presented himself at the office with the medical certificate showing treatment of his wife for the period 23.05.2009 to 06.10.2009. That however, inspite of this the employee again abstained from duty since

07.12.2009 and so a letter dated 28.02.2011 was sent to the applicant regarding the same by the Assistant Material Manager directing him to be present in the office. Consequently, the employee was given a Charge Sheet for major punishment vide 08.03.2011. That he was again directed to present himself in office vide letter dated 31.03.2011 but he did not turn up in the office up to 11.04.2011 and so the matter was also published in the newspapers as per procedure prescribed in the Rules. That during course of inquiry as per charge sheet, the Inquiry Officer (IO) sent 07 letters such as on 23/05/2011, 07/06/2011, 17/06/2011, etc., to the employee directing him to be present himself for participation in the enquiry process as per Rules and as a last opportunity vide letter dated 01.09.2011 for appearing for the purposes of inquiry on 08.09.2011.

3.1 Thereafter, the enquiry report was submitted by the IO and a copy of the same sent to the employee vide 28.11.2011 by the disciplinary authority with directions to appear as one last opportunity in the matter being proceeded against him. That all procedures with respect to the enquiry such as witnesses etc., were complied with and based on the facts and the process undertaken as per the Rules punishment of removal from service was imposed vide letter dated 30.03.2012 a copy of which was sent to

the employee. The employee filed an appeal vide 07.05.2012 against this punishment order on which the competent appellate authority passed a reasoned order concurring with the order of the disciplinary authority and this order in the appeal was also communicated to the employee vide 22.08.2012. That meanwhile the employee expired on 25.07.2012. Also, separately an application for compassionate appointment was moved by applicant (demised employee's wife) vide application dated 24.07.2012. Now the applicant herself being wife of employee has filed revision application dated 24.09.2012 against the appellate order and against the order of punishment. That this revision application has been decided vide order dated 09.11.2012 as per Rules. That it needs to be noted that as per Rules there is no provision for filing any appeal/revision by anyone once the employee concerned himself/herself is dead as the dead person cannot file any review or appeal against a punishment order under the Rules and so the matter has been accordingly informed to the applicant-revisionist. That as regards claim of compassionate appointment filed by the applicant the same is not maintainable because the applicant's husband died after retirement and did not retire during the course of service and that the employee had not completed ten years of minimum service to qualify for claim to compassionate appointment by an appropriate

successor. Hence the entire O.A. is misconceived and has no merits and therefore liable to be dismissed.

4. We have heard the ld. counsels for both the parties at length and perused the pleadings filed carefully.

5. There are two key issues:first, that whether the impugned revision order dated 04.08.2012, the punishment order of 30.03.2012and appellate order dated 09.11.2012 are valid as per law; second that whether relief for compassionate appointment claimed by the applicant can be provided or not.

6. As regards the first issue it would be well that we take up the order of the revision authority dated 09.11.2012 (Annexure A-3). In the revision order the respondents have observed that under the Rules there is no provision for consideration of revision petition submitted by a family member of the demised employee. That since the employee concerned has expired before the date of filing of the revision application, therefore the case cannot be taken up by the revisionary authority. The facts of the case w.r.t death of the applicant's husband, viz the employee (25/07/2012)is admittedly prior to the filing of the revision petition on 24/09/2012, hence this contention of the respondent is under well-established law and any

contention of the applicant on this is not legally tenable because in disciplinary punishment matters, the government servant has to be alive to represent with respect to any punishment order affecting his/her conditions of service. Accordingly, we find no lacunae in the order of the revision authority dated 09/11/2012 and the part of the issue concerning the revision order is dismissed against the applicant.

7. As regards the order of the appellate authority dated 04/08/2012, it is apparent by the mere face of it that it is an extremely perfunctory non-speaking non-reasoned order. Relevant extracts of same are reproduced below:

"..... lnHk&vki dk vihyifronu l[;k "kU; fnukd

03-05-2012

vki d mijkDr lnfHkrifronu d ifji{; efMLiUljh ,FkkVhvu"kkl fudvf/kdkjh u tkfu.k; fn;kg v/kkgLrk{kjhm l li.kr;k lgergA

,- d- jk;

0fj0 lk0i0@fMik viyh;

vf/kdkjh...."

As may be seen above, the appellate authority has issued the order in a summary manner which is legally unjustifiable and erroneous as per established law. It is no longer *res integra* that orders on appeal have to be reasoned and speaking and not perfunctory indicating mere bald acceptance of the order by the disciplinary authority.This is because the appellate authority has to

apply his or her mind as laid down in the Rules and so we do not have an iota of doubt that the appellate order as presented before us is erroneous in law being totally non-speaking and non-reasoned. A number of citations have been filed by the ld. applicant counsel and the same are below:

i. Order of Hon' High Court dated 31.01.2012 in the matter of UoI through Divisional Railway Manager & Another vs CAT & Another.
ii. Order of Hon' High Court dated 18/08/2007 in the matter of Syed Madadgar Hussain Rizvi and Another vs State of UP and Ors.
iii. Order of the Hon Apex Court dated 01/11/2006 in the matter of Mathura Prasad vs UoI&Ors.

We are therefore, unable to accept the view of the ld. respondent counsel that the appellate order of 04.08.2012 is a reasoned order as per established law. Therefore, this part of the contention of the respondent is rejected and the appellate order dated 04.08.2012 is set aside with direction to the respondents to pass a reasoned and speaking order.

8. The applicant has also challenged the punishment order dated 08.03.2012. An examination of the same reveals that the applicant's husband was awarded the punishment of 'removal from service' for being absent for some time on the grounds of being forced to attend to his

ailing wife. A key point in this connection is that whether the punishment of removal from service is warranted for this indiscipline or misconduct. Hon'ble Apex Court has been quite clear on the issue of the 'proportionality' of punishment wherein a balance is to be maintained in the crime/misconduct and the punishment awarded for the misconduct. This is because sometimes the superiors on the spot tend to be unduly harsh on an employee particularly when he/she is a lowly employee of the bottom most level of employment. Power tends to become distorted in its use and tends to be more severe than necessary. In fact, the **Doctrine of proportionality** in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the Disciplinary Authority or the appellate authority shocks the conscience of the court. In Chairman-cum-Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and others, the Court, after analyzing the doctrine of proportionality at length, ruled in their judgement of 24/08/2009 AIR 2010 SC 75 thus: -

> *"19. The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.*
>
> *20. One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have*

imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

21. In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reason for his absence by stating that he did not have intention nor desired to disobey the order of higher authority or violate any of the Company's rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations."

30. After so stating the two-Judge Bench proceeded to say that one of the tests to be applied while dealing with the question of quantum of punishment is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the major, magnitude and degree of misconduct and all other relevant circumstances after excluding irrelevant matters before imposing punishment. It is apt to note here that in the said case the respondent had remained unauthorisedly absent from duty for six months and admitted his guilt and explained the reasons for his absence by stating that he neither had any intention nor desire to disobey the order of superior authority or violated any of the rules or regulations but the reason was purely personal and beyond his control. Regard being had to the obtaining factual matrix, the Court interfered with the punishment on the ground of proportionality…."

9. Then the Hon'ble Apex Court again in the matter of **S.R.Tewari vs Union Of India &Anr on 28 May, 2013 in judgement authored by Hon' Justice** B Chauhan J. in a **Bench of Hon; Justices B.S. Chauhan J and Dipak Misra J.** held that:

"……18. The question of interference on the quantum of punishment, has been considered by this Court in a catena of judgments, and it was held that if the punishment awarded is disproportionate to the gravity of the misconduct, it would be arbitrary, and thus, would violate the mandate of Article 14 of the Constitution.

In Ranjit Thakur v. Union of India &Ors., AIR 1987 SC 2386, this Court observed as under:

"But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on the aspect, which is otherwise, within the exclusive province

of the Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. In the present case, the punishment is so stringently disproportionate as to call for and justify interference. It cannot be allowed to remain uncorrected in judicial review." (Emphasis added) (See also: Union of India &Anr. v. G. Ganayutham (dead by Lrs.), AIR 1997 SC 3387; State of Uttar Pradesh &Ors. v. J.P. Saraswat, (2011) 4 SCC 545; Chandra Kumar Chopra v. Union of India &Ors., (2012) 6 SCC 369; and Registrar General, Patna High Court v. Pandey Gajendra Prasad &Ors., AIR 2012 SC 2319).

19. In B.C. Chaturvedi v. Union of India &Ors., AIR 1996 SC 484, this Court after examining various its earlier decisions observed that in exercise of the powers of judicial review, the court cannot "normally" substitute its own conclusion or penalty. However, if the penalty imposed by an authority "shocks the conscience" of the court, it would appropriately mould the relief either directing the authority to reconsider the penalty imposed and in exceptional and rare cases, in order to shorten the litigation, itself, impose appropriate punishment with cogent reasons in support thereof. While examining the issue of proportionality, court can also consider the circumstances under which the misconduct was committed. In a given case, the prevailing circumstances might have forced the accused to act in a certain manner though he had not intended to do so. The court may further examine the effect, if the order is set aside or substituted by some other penalty. However, it is only in very rare cases that the court might, to shorten the litigation, think of substituting its own view as to the quantum of punishment in place of punishment awarded by the Competent Authority.

20. In V. Ramana v. A.P.S.R.T.C. &Ors., AIR 2005 SC 3417, this Court considered the scope of judicial review as to the quantum of punishment is permissible only if it is found that it is not commensurate with the gravity of the charges and if the court comes to the conclusion that the scope of judicial review as to the quantum of punishment is permissible only if it is found to be "shocking to the conscience of the Court, in the sense that it was in defiance of logic or moral standards." In a normal course, if the punishment imposed is shockingly disproportionate, it would be appropriate to direct the Disciplinary Authority to reconsider the penalty imposed. However, in order to shorten the litigation, in exceptional and rare cases, the Court itself can impose appropriate punishment by recording cogent reasons in support thereof.

21. In State of Meghalaya &Ors. v. Mecken Singh N. Marak, AIR 2008 SC 2862, this Court observed that a Court or a Tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocks the conscience of the court, cannot be subjected to judicial review. (See also: Depot Manager, A.P.S.R.T.C. v. P. Jayaram Reddy, (2009) 2 SCC 681).

22. The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice. (Vide: Union of India &Ors. v.

BodupalliGopalaswami, (2011) 13 SCC 553; and Sanjay Kumar Singh v. Union of India &Ors., AIR 2012 SC 1783).

23. In Union of India &Ors. v. R.K. Sharma, AIR 2001 SC 3053, this Court explained the observations made in Ranjit Thakur (supra) observing that if the charge was ridiculous, the punishment was harsh or strikingly disproportionate it would warrant interference. However, the said observations in Ranjit Thakur (supra) are not to be taken to mean that a court can, while exercising the power of judicial review, interfere with the punishment merely because it considers the punishment to be disproportionate. It was held that only in extreme cases, which on their face, show perversity or irrationality, there could be judicial review and courts should not interfere merely on compassionate grounds.

24. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. The finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse. But if there is some evidence on record which is acceptable and which could be relied upon, the conclusions would not be treated as perverse and the findings would not be interfered with. (Vide: Rajinder Kumar Kindra v. Delhi Administration, AIR 1984 SC 1805; Kuldeep Singh v. Commissioner of Police &Ors., AIR 1999 SC 677; Gamini BalaKoteswara Rao &Ors. v. State of Andhra Pradesh thr. Secretary, AIR 2010 SC 589; and Babu v. State of Kerala, (2010) 9 SCC 189)……."

10. We may also do well to examine the relevant Rule 6 with regards to the Penalties imposable on a Railway employee. The two provisions to the Rule states that:

> ***".....Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of the Railway trains, one of the penalties specified in Clauses (viii) and (ix) shall ordinarily, be imposed...."***
>
> ***".....Provided further that in cases of persons found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, one of the penalties specified in Clauses (viii) or (ix) shall ordinarily be imposed...."***

The point to be appreciated is that the Railway Rules themselves provide for a proportionality of punishment embedded in the Rules themselves and are sensitive to the

crime and the proportionate punishment. Now in the present case we see that the employee was absent for a period of about 15 months (07/12/2009 onwards till the charge sheet was issued vide 08.03.2011) and meanwhile reportedly took ill and expired on 27.05.2012. The merits and adequacy of grounds for being absent in this period are matters of appreciating evidence which may well be existing in terms of records of absence and lack of appropriate intimation to superior authorities in a timely and effective manner with regards to the absence. However, the key point is the test of **proportionality with respect to the misconduct.** The Rules provide for removal, dismissal, compulsory retirement and other major punishments apart from minor punishments. The reason why such a wide spectrum of punishments is provided actually is because, the Disciplinary Authority is expected to award a punishment which is in proportion to the crime or the misconduct under question. Just because capital punishment is prescribed under the IPC does not mean that death sentence should be awarded for all crimes.

11. What we need to understand in the above context is that removal from service is the second harshest punishment possible after dismissal. Does unauthorised absence on a purported ground of illness and later even death of the employee due to sickness justify such

harshness? We are inclined to answer this question in favour of the employee. We would be failing in justice if we do not juxtapose the crime and the punishment together and see if they are in proportion. Given the circumstances of earlier the illness of the applicant herself being wife of the applicant and later the applicant's husband due to illness points out to us quite loud and clear that 'removal from service' is disproportionate a punishment for the crime of being absent on account of illness even if unauthorised particularly in the context of the stated illness resulting ultimately in the death of the employee concerned.

12. Hence, we are inclined to conclude that the award of punishment of removal from service is disproportionate with respect to the offence of mere absence of duty in the context of later death of the concerned employee on account of the plea of illness taken in the first instance. Hence the punishment of removal from service is excessive and fails the test of proportionality. The respondents are directed to consider any other punishment less harsh than removal from service. With this conclusion we take leave of this issue.

13. As regards the issue of compassionate appointment, first of all the said relief would fall under the category of

Plural remedies which are not maintainable under the CAT Procedure Rules 1987, whereby it is clearly laid down that an application shall be based upon a single cause of action and more than one relief can be sought if they are consequential in nature. The consideration of compassionate appointment is not a consequential relief to the decision of setting aside the appellate order with an added direction of remanding the set aside order for being passed afresh in a reasoned and speaking manner. Further, the relief by itself concerns operation and examination of different set and nature rules, guidelines and laws. Since, in any case while we are dismissing the appellate order as passed and remanding it for passing of fresh orders as per law in a reasoned and speaking manner, therefore there is no occasion immediately to decide the issue of compassionate appointment. In the event therefore the relief sought for compassionate appointment is dismissed as both premature and plural in nature and so non-maintainable with this O.A.

14. In sum therefore, it is directed that:

i. The punishment order dated 30.03.2012 of 'removal from service' is set aside.

ii. Appellate order dated 04.08.2012 is set aside.

iii. The competent authority is directed to pass a fresh reasoned as well as speaking order with regards to

punishment which may be in proportion to the misconduct in question other than removal from service or dismissal from service.

iv. Such order as required in (iii) above shall be passed within three months of receipt of a certified copy of this order.

With these directions the O.A. is disposed of finally.

15. No costs.

(Devendra Chaudhry)
Member-A

(Justice Vijay Lakshmi)
Member – J

/Shakuntala/