

Central Administrative Tribunal
Madras Bench

OA/310/00745/2019

Dated 2nd day of June Two Thousand Twenty One

P R E S E N T

Hon'ble Mr.T.Jacob, Member(A)

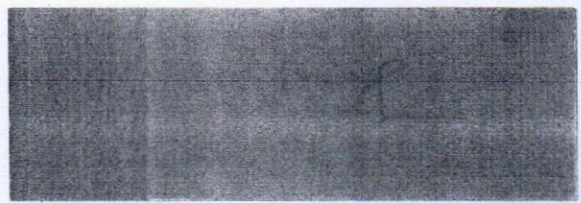
1. Kavati Prasannakumari,
W/o late K.Jayarao,
Ch.Office Supdt.,
Shop-20/Shell, ICF,
Emp.No.785291.
 2. Kavati Ajayakumar,
S/o late K.Jayarao,
Ch. Office Supdt.,
Shop-20/Shell, ICF,
Emp.No.785291.
- By Advocate **Dr.P.S.Vijayakumar** ..Applicants

Vs.

1. The General Manager,
Integral Coach Factory,
I.C.F., Chennai;
2. The Principal Chief Personnel Officer,
Integral Integral Coach Factory,
I.C.F., Chennai;
3. The Chief Works Engineer(Shell),
Integral Coach Factory,
I.C.F., Chennai.

By Advocate **Ms. R. Sathyabama**

.. Respondents



ORDER

[Pronounced by Hon'ble Mr. T. Jacob, Member(A)]

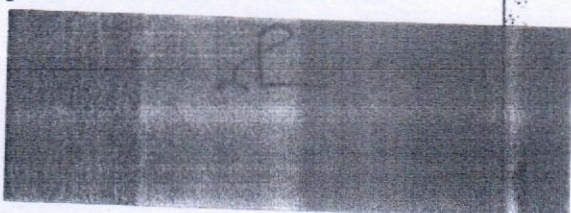
The applicant has filed this OA seeking the following relief:-

"a) To quash/set-aside the orders, issued by the respondents under (1) Lr.No.PB/S/DAR/785291/UA, dated 17.01.2018 (2) Lr.No.PB/S/DAR/785291/UA, dated 25.07.2018, (3) Lr. No. PB/S/DAR/785291 dated 08.12.2018 and (4) Lr. .No.PB/S/DAR/785291/UA dated 20.04.2019, thereby release all the terminal benefits of late K.Jayarao, husband and father of the 1st and 2nd applicants respectively with interest @12% per annum including family pension with effect from 16.05.2018 to the first applicant as late K.Jayarao died in harness, keeping in view of Railway Board Circular R.B.E.115/2000, dt. 19.06.2000 and consequently direct the respondents to appoint the second applicant on compassionate grounds in a suitable post at Integral Coach Factory as the applicants are living under penurious circumstances.

b) To allow the OA with costs and

c) To pass such further or other orders as may be deemed fit and proper in the facts and circumstances of the case and thus render justice."

2. The facts of the case as stated by the applicants are that the first applicant is the wife and the second applicant is the son of K. Jayarao, who died on 16.5.2018 in harness while working as Chief Office Superintendent in I.C.F., Chennai. While working in the said capacity, the deceased absented himself from duty during the period from 10.5.2017 to 28.6.2017 unauthorisedly, for which a major charge memo dt. 24.7.2017 was issued. Subsequently, the Disciplinary Authority imposed penalty of "Removal from Service" w.e.f. 17.1.2018. Aggrieved by the said order of the Disciplinary Authority, the deceased preferred an Appeal to the Appellate Authority dt. 01.2.2018. During the pendency of the said Appeal, he died in harness on 16.5.2018.



3. Thereafter, the Appellate Authority by order dt. 25.7.2018 modified the 'penalty of removal' to that of 'compulsory retirement' from service. Aggrieved by the said order of 'compulsory retirement', the first applicant made a representation dt. 16.8.2018 to the respondents for dropping of disciplinary proceedings and for grant of terminal benefits etc.,. The same was rejected by the respondents by order dt. 08.12.2018. Aggrieved by the said rejection order, the first applicant filed OA 80/2019 and MA 47/2019 seeking to quash/set-aside the order dt. 25.7.2018 and 08.12.2018 and to release all the terminal benefits of the deceased with interest @ 12% including family pension w.e.f. 16.5.2018 and to consequently appoint the second applicant on compassionate grounds in a suitable post at ICF, Chennai. This Tribunal, by order dt. 28.1.2019 directed the first applicant to submit a representation within two weeks and the same to be disposed of by the respondents within two months. Thereafter, the first applicant made a detailed representation dt. 17.2.2019 along-with judicial precedents to the 1st respondent. But, the 1st respondent by impugned order dt. 20.4.2019 rejected the same. Aggrieved by the said rejection order, the applicant has filed this OA seeking the aforementioned relief.

4. The applicants seek the relief on the following grounds:-

(i) As per RBE No.115/2000 and Railway Servants (Discipline & Appeal) Rules, 1968, if the charged employee expired during the pendency of the disciplinary proceedings, the disciplinary proceedings stand abated and it should be closed immediately on the death of the charged railway servant. But the respondents failed to do so and the statement of the respondents that the disciplinary proceedings have attained finality during the pendency of



the appeal before the Appellate Authority is unacceptable and violative of rules.

(ii) The respondents ought to have released the terminal benefits including family pension of the deceased to the first applicant and compassionate appointment to the second applicant on humanitarian grounds as the family has lost the bread-winner and are living in penurious circumstances.

(iii) If the Appeal had been disposed of in time as enunciated in the Railway Servants (Discipline & Appeal) Rules, 1968, when the deceased was alive, the deceased would have preferred a Revision and Review Petition before the General Manager and President as per Special Provisions Rule 25 and 25-A. But belatedly after a period of five months and that too after the death of the deceased the Appeal was disposed of which is not maintainable.

(iv) The applicants also relied on various judicial precedents in support of their claim. But the respondents were silent and have not considered the same.

5. Learned counsel for the applicants has relied upon the following judgments:-

- i. Judgment dt. 24.07.1985 of the Hon'ble Madras High Court in K.P. Marimuth (deceased) Vs. Superintendent of Police,
- ii. Judgment of Hon'ble Apex Court in Girijanandini Vs. Bijendra Narain,
- iii. Judgment of Hon'ble Jharkhand High Court in WP (S) No. 5987 of 2008 in the case of Prema Marandi Vs. State of Jharkhand & Ors,
- iv. Judgment of Basudev Tiwary Vs. Sido Kanhu University and others (1998) SCC 194,
- v. Judgment of Hon'ble Allahabad High Court in CMWP



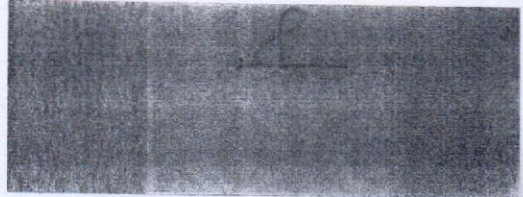
No. 33394 of 2009 in the case of Union of India & Ors Vs. Ram Pal & Ors.,

vi. Order of Central Administrative Tribunal, Madras Bench dt. 08.01.2011 in OA No. 1128 of 2011,

vii. Order dt. 10.05.2018 of the Central Administrative Tribunal, Allahabad Bench in OA No. 468 of 2010 in the case of Jokhani Devi & anr Vs. UoI & Ors.,

viii. Order dt. 20.10.1993 of Central Administrative Tribunal, Principal Bench in CP 212 of 1993 in OA 157 of 1992.

6. The respondents have filed a detailed reply contesting the claim of the applicant. It is stated that in the appeal dt. 01.2.2018, the deceased had stated that he was unauthorisedly absent from duty for 50 days due to his deteriorating health condition. The ex-employee was a habitual absentee even in the past and had been imposed with many minor and major penalties right from the year 2000. Initially, during the year 2000, a major charge memo was issued for his cumulative absence from duty for 55 days and, however, the same was dropped. In 2001, he was imposed with a minor penalty of 'Censure' for 42 days of continuous absence from duty. Later, he was imposed with the minor penalty of "withholding of one set of Pass and PTO" for 26 days of cumulative absence during the year 2004. In the year 2006, his pay was reduced to lower stage for a period of 2 years without recurring effect, as penalty for his cumulative unauthorised absence of 135 days. Again in 2015, one set of Pass was withheld as he remained absent for 92 days cumulatively. Lastly, in the year 2018, he was imposed with the major penalty of 'Removal from Service' w.e.f. 17.1.2018 for 50 days of continuous unauthorised absence from duty during the year 2017. Therefore, though the ex-employee was a repeated offender with his habitual absenteeism, the Administration was imposing only penalties of lesser severity over



the years from 2000 before finally imposing the terminal penalty of 'removal from service'. However, considering the demise of the employee on 16.5.2018, the Appellate Authority had disposed of the appeal on humanitarian grounds by modifying the penalty of 'Removal from Service' imposed on 17.1.2018 into 'Compulsory Retirement' by order dt. 25.7.2018. Subsequently, the first applicant submitted a representation dt. 16.8.18 requesting to drop the disciplinary proceedings since the deceased expired during the pendency of his appeal and extend all the settlement benefits, by treating the case as death while in service. In response to the same, the respondent by letter dt. 8.12.18 had replied that the disciplinary proceedings against the deceased had already reached finality with the imposition of the penalty of 'Removal from Service' and he died on 16.5.18 i.e., only during the pendency of his appeal. Hence, the request of the applicant for grant of terminal benefits and compassionate appointment could not be considered. In terms of extant orders of Railway Board, pending appeal/revision petition has to be necessarily disposed off on merits by the concerned authorities, although the petitioner concerned may have died in the meanwhile. Accordingly, the Appellate Authority had disposed off the appeal on humanitarian grounds after the death of the delinquent ex-employee on 16.5.2018 by modifying the penalty of 'Removal from Service' imposed on 17.1.18 into 'Compulsory Retirement'. Hence, the disposal of appeal is very much legal and sustainable and not unlawful as baselessly alleged by the applicant.

7. To the averment of the applicants that as per RBE 115/2000 dt. 19.6.2000 issued by Railway Board the disciplinary proceedings should be closed immediately on the death of the charged railway servant, it is stated that in the instant case, the



○ deceased received the penalty of 'Removal from Service' imposed by orders dt.17.1.2018 by the Disciplinary Authority on 19.1.18 at his work spot as well as at his residence by RPAD on 20.1.18. After that, he submitted an Appeal dt. 01.2.18 and during the pendency of the Appeal, he passed away on 16.5.18. The Appellate Authority has already taken the death of the deceased into account and modified the penalty as 'Compulsory Retirement' by taking a lenient view on humanitarian grounds. Further, the Appellate Authority has also sanctioned full pension and full gratuity on his compulsory retirement. The submission of NOC by the first applicant in favour of the second applicant for claiming compassionate grounds appointment has no relevance since the respondent had already replied that this case could not be treated as death while in service.

8. Further, it is submitted that the first applicant, in spite of explaining the rule position by the Staff and Welfare Inspector of the Administration for claiming the settlement benefits, she has not submitted the required documents to process the settlement dues. Later, she refused to submit the required settlement forms stating that she has taken steps to seek remedy in the court of law which clearly goes to prove that the family is not in real financial distress. Hence, it is submitted that the OA is devoid of merits and prayed for dismissal of the OA.

9. The applicant has filed rejoinder reiterating the stand taken in the OA.

10. Heard the learned counsel for the rival parties, perused the pleadings and documents on record.

11. Admittedly, this is the second round of litigation. OA 80/2019 and MA 47/2019 was filed by the applicants seeking to quash/set-aside the order dt. 25.7.2018




and 08.12.2018 and to release all the terminal benefits of the deceased with interest @ 12% including family pension w.e.f. 16.5.2018 and to consequently appoint the second applicant on compassionate grounds in a suitable post at ICF, Chennai. This Tribunal, by order dt. 28.1.2019 directed the first applicant to submit a representation within two weeks and the same to be disposed of by the respondents within two months. Thereafter, the first applicant made a detailed representation dt. 17.2.2019 along with judicial precedents to the 1st respondent. But, the 1st respondent by impugned order dt. 20.4.2019 rejected the same. Aggrieved by the said rejection order, the applicants have filed this OA.

12. The disciplinary authority had imposed a penalty of 'removal from service' with effect from 17.01.2018 on the Railway servant, late K. Jayarao, who preferred an appeal to the appellate authority on 1.2.2018. During the pendency of the appeal, the Railway Servant died on 16.05.2018. However, by an order dated 25.07.2018, the competent authority modified the penalty of 'removal from service' into one of 'compulsory retirement from service'.

13. Learned counsel for the applicants would argue that since the appeal filed by the deceased government employee was pending at the time of his death, the order of the disciplinary authority removing him from service would not be deemed to have attained finality and, as such, he should have been deemed to be in service and died in harness on 16.05.2018. Accordingly, his family should be held to be entitled to terminal benefits of a person who died in harness as also the benefit of compassionate appointment to a dependant member of the family.

14. I have gone through the judgments referred to above and also perused Railway



- Board Circular dated 19.06.2000, which reads as under -

“R.B.E. No. 115/2000

Subject : Status of the disciplinary case in the event of death of the charged official. [No. E(D & A) 99 RG6-26 dated 19.06.2000]

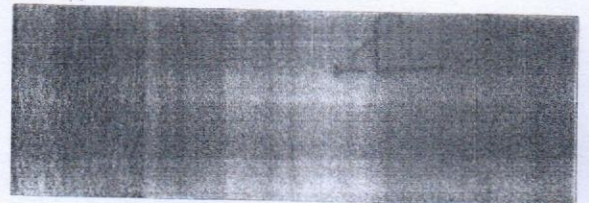
The question whether the disciplinary case initiated against a Railway servant under the Railway Servants (Discipline and Appeal) Rules, 1968 could be closed in the event of death of the charged official during the pendency of the proceedings, has come up for consideration of this Ministry on quite a few occasions in the recent past. It is clarified that the disciplinary proceedings should be closed immediately on the death of the charged Railway servant.”

From the aforesaid RBE No. 115 of 2000, it is clear that disciplinary proceedings should be closed immediately after the death of the charged Railway servant that Railway Board has clarified to the position to the effect that “disciplinary proceedings should be closed”. Since appeal is a continuous disciplinary proceedings, it ought to have been closed at the stage of death of deceased, Mr. Jayarao.

15. Such a provision does exist even in respect of other Ministries, for which, the Nodal Ministry is the Ministry of Personnel which authors the policy statutory provisions and is the custodian of all the service Rules and regulations. And, in respect of the subject matter as herein, the DoPT has passed the following order vide Government of India Instructions under Rule 35 of the CCS (C&A) Rules, 1965 :-

(2) Procedure regarding closing of disciplinary cases in the event of death of the charged official

This Department has been receiving references seeking clarification whether disciplinary cases initiated against the Government servant under CCS (CCA) Rules, 1965, would be closed in the event of death or the charged officer during pendency of the proceedings. After careful consideration of



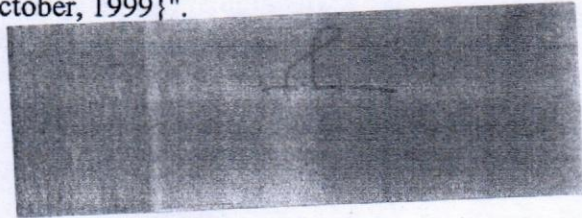
all the aspects, it has been decided that where a Government servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS (CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government servant.

[Deptt. Of Personnel & Training OM No. 11012/7/99-Estt. (A) dated 20th October, 1999]

16. The spinal question for consideration is what is the logic of this provision as also the provisions as in RBE 115/2000, which is posterior to the DoPT OM and what is the correct interpretation of the term, "during the pendency of the proceedings". The said order was referred to in the judgment of the Patna High Court in the case of Civil Writ Jurisdiction Case No.8484 of 2017 (Rima Devi Wife of Late Uday Pratap Singh Versus The State of Bihar through the Chief Secretary, Government of Bihar, Patna and others) wherein, the Hon'ble High Court has held in its judgment dated 18-05-2018 as under:-

The Respondent No. 4, in the counter affidavit, has also annexed the clarification dated 18.07.2017 issued by the Additional Secretary to the Government, General Administration Department, Bihar, Patna, addressed to the relevant authorities whereunder OM No. 11012 /7/99-Estt. (A) dated 20.10.1999 has been referred to and the relevant portion thereof has been reproduced, which is as follows:-

Patna High Court CWJC No.8484 of 2017 dt.18-05-2018 4/10 "After careful consideration of all the aspects, it has been decided that where Government Servant dies during the pendency of the inquiry i.e. without charges being proved against him, imposition of any of the penalties prescribed under the CCS(CCA) Rules, 1965, would not be justifiable. Therefore, disciplinary proceedings should be closed immediately on the death of the alleged Government Servant. {Deptt. Of Personnel & Training OM No. 11012/7/99-Estt. (A) dated 20th October, 1999}".



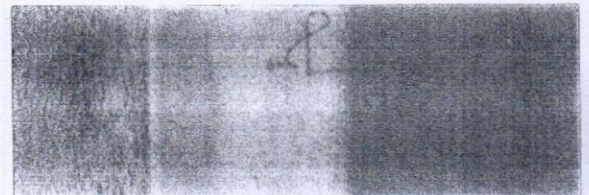
In the said letter dated 18.07.2017, it has been thus concluded that in case, the delinquent Government servant dies during the course of pendency of the departmental proceeding, the said departmental proceeding shall stand abated automatically.

The learned counsel for the petitioner has argued that even according to the stand of the respondent and the OM dated 20.10.1999, once a Government servant dies during the pendency of the inquiry, the departmental proceedings should be closed immediately upon the death of the alleged Government servant and the proceedings would stand abated. It is submitted that the husband of the petitioner had died in the intervening night of 4 / 5. 03.2012 whereas the impugned order of punishment, dismissing the petitioner from services with effect from the date of his death, has been passed on 22.04.2017 i.e. much after the death of the husband of the petitioner, hence, the said order of punishment is null and void in view of the fact that the departmental proceeding stood abated immediately upon the death of the petitioner on 05.03.2012. It has also been pointed out that the Superintendent of Police, Kaimur (Bhabhua), realizing his mistake, has passed an order subsequently on 29.07.2017 stating that though the departmental proceeding has stood abated and the departmental proceeding is being consigned, the husband of the petitioner would get nothing else other than what has been paid to him during his service period.

I have heard the learned counsel for the parties and gone through the materials on record.

It is a trite law that if a departmental proceeding is pending against a delinquent and the said delinquent dies during the course of the pendency of such departmental proceeding, the departmental proceeding stands abated and no order of punishment can be passed against a dead person. In this regard, it would be relevant to refer to a judgment reported in 1986 LAB. I.C. 248 (Hirabai Deshmukh and another Vs. State of Maharashtra), rendered by the Hon'ble Bombay High Court (Nagpur Bench), paragraph No. 6 whereof is reproduced hereinbelow:-


"6. The provisions with regard to dismissal, removal and suspension of the civil servant do not permit holding of any further enquiry into the conduct of such a civil servant after his death. Such proceedings are intended to impose departmental penalty and would abate



by reason of the death of civil servant. The purpose of proceedings is to impose penalty, if misconduct is established against the civil servant. That can only be achieved if the civil servant continues to be in service. Upon broader view the proceedings are quasi- criminal in the sense it can result in fault finding and further imposition of penalty. The character of such proceedings has to be treated as quasi-judicial for this purpose. In the light of the character of the proceedings and the nature of penalty like dismissal or removal, or any other penalties, minor or major, it has nexus to the contract of service. Therefore, if the person who has undertaken that contract is not available, it should follow that no proceedings can continue. Thus when the proceedings are quite personal in relation to such a contract of service, the same should terminate upon death of the delinquent. By reason of death, such proceedings would terminate and abate. We think that such a result is also inferable from the provisions of Rule 152-B of the Bombay Civil Services Rules".

The DoP&T has to some extent explained the term in the above order - i.e. *without charges being proved against him, imposition of any of the penalties prescribed under the CCS (CCA) Rules, 1965*, whereas, the RBE circular extracted in paragraph 14 above, which was issued posterior to the above DoP&T orders, the term "during the pendency of the proceedings" has not been described. As such, it is appropriate that judicial pronouncements on the subject matter have to be relied upon to arrive at the correct interpretation.

17. In the Order dt. 10.05.2018 of the Central Administrative Tribunal, Allahabad Bench in OA No. 468 of 2010 in the case of *Jokhani Devi & anr Vs. UoI & Ors.*, it has been held that if the charged employee dies during the pendency of appeal or revision, the entire proceeding including the punishment or appeal order will meet a legal death and will not remain alive and it would be deemed that neither any

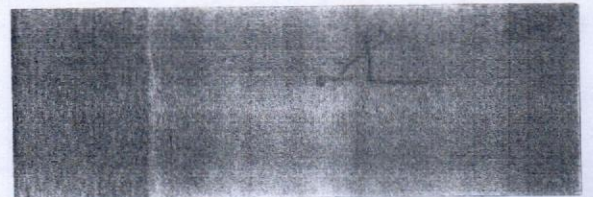


- disciplinary proceedings was pending nor any punishment was awarded against the deceased employee.

18. In CWMP No. 33394 of 2009 (UoI & Ors., Vs., Ram Pal and Ors), it was held by Hon'ble High Court of Judicature at Allahabad in para 7 that : *"Thus in my opinion the order of removal against Shri Baboo Lal was not finalized in the absence of disposal of his statutory appeal and therefore, he is entitled to the benefits of Railway Board's Circular dated 19.06.2000 according to which any incomplete DAR Proceeding against a Railway Employee should be dropped at the time of death of the railway employee"*. In the same para, it was also held that : *"From the aforesaid R.B.E. No. 115 of 2000, it is clear that the disciplinary proceedings should be closed immediately on the death of the charged railway servant that Railway Board has clarified the position to the effect that the disciplinary proceedings should be closed. Since appeal is a continuous disciplinary proceedings, it ought to have been closed at the stage on the death of the deceased Babu Lal."*

19. In the case of Prema Marandi Vs. State of Jharkhand & Ors., WP (S) No. 5987 of 2008, the Hon'ble Jharkhand High Court said on 19 August, 2011 as follows:

"In the instant case the right of appeal which is substantive right is taken away and unfortunately the husband of the petitioner (delinquent) died without availing recourse of appeal proceedings. In AIR 1963 SC 395 (Bachhittar Singh Vs. State of Punjab and Another), it has been held by the Hon'ble Apex Court that the "Departmental proceedings taken against a Government servant are not divisible in the sense in which the High Court understands them to be. There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established". Of course this is in context with inquiry report by the inquiry



officer and order passed by the Disciplinary Authority regarding imposition of penalty. But the same analogy will apply till the appellate proceedings concludes; as the appellate proceedings are considered to be continuous proceedings. The Hon'ble Supreme Court observed and directed in the case of Basudeo Tiwary Vs. Sido Kanhu University and Others reported in (1998)8 SCC 194 that "Since the appellant has expired during pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. It is therefore declared that the appellant's termination is invalid. Consequently, it would be deemed that the appellant had died in harness. The appellant would become entitled to payment of arrears of salary from the date of termination of his services up to the date of his death on the basis of last pay drawn by him. The payment is to be made to the appellant's legal representative". Under the circumstances, this is a fit case wherein the State Government ought to have considered the case of the petitioner in light of the factual scenario emerged out of this petition and ought to take a decision whether the proceeding abates in view of the statutory provisions of appeal provided under Rules 1935, as the departmental proceedings are considered to be continuous proceedings till the out come of appeal. But it appears that the respondent-State Government failed to take such decision. Therefore, considering the facts and circumstances emerged out of this petition and considering the proposition of law and rules applicable in the instant case and also considering the ratio laid down by the Hon'ble Apex Court referred in the above cases, the order of dismissal dated 2.11.2006 requires to be declared invalid mainly on two counts; (i) that the order of dismissal dated 2.11.2006 passed by the Secretary, Cooperative Department, Government of Jharkhand, which is an appellate authority, under the relevant rules and thereby, the right to appeal which is valuable and substantive right of delinquent is taken away, and (ii) the factum of death of the deceased- employee and its consequential effect. Having regards to the aforementioned position of law and looking to the peculiar facts and circumstances of the case and more particularly looking to the plight of the widow and children of the deceased, the order of dismissal of the husband of the petitioner dated 2.11.2006 declared invalid. Consequently, it would be just and proper to direct the respondents authorities to make payment of dues available to the deceased employee on the basis of last salary drawn by him. The family pension be

also fixed the earliest and the same shall be paid regularly to the widow. The payment be made in favour of the widow-petitioner.”

20. In the instant case, it has been admitted that appeal of late Jayarao was pending before the Appellate Authority against the punishment order at the time of his death and thus in view of Railway Board Circular dated 19.06.2000 and judgments of various courts, this Tribunal is of the considered view that whole disciplinary proceedings shall abate and it will be deemed that no punishment was awarded against late Jayarao.

21. The following decisions of the High Court/ Apex Court also would manifest the settled law that appeal is continuation of the proceedings:-

Of the High Court: vide Bindanath vs State of Assam (AIR 1959 Assam 112) it has been held that the proceedings before an appellate authority are a continuation of the proceedings before the enquiry officer and both these proceedings taken together point to the conclusion. That the guarantee under Article 311 is satisfied and the failure to give a personal hearing to the petitioner in appeal by itself will not render proceedings illegal.

Of the Apex Court:

(a) *Shiv Shakti Coop. Housing Society v. Swaraj Developers, (2003) 6 SCC 659,*

An appeal is continuation of the proceedings; in effect the entire proceedings are before the Appellate Authority and it has the power to review the evidence subject to statutory limitations prescribed.

(b) *Chandi Prasad v. Jagdish Prasad, (2004) 8 SCC 724,*

10. Where a statutory appeal is provided for, subject, of course to the restrictions which may be imposed, it is a continuation of suit. It is also not in dispute that when a higher forum entertains an appeal and passes an order on merit, the doctrine of merger applies.

.....



28. However, when an appeal is dismissed on the ground that delay in filing the same is not condoned, the doctrine of merger shall not apply. [See *Raja Mechanical Co. (P) Ltd. v. CCE-*]

(c) *State of H.P. v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499,*

In a given case even the declaration forms can be filed before the Appellate Authority as an appeal is continuation of the assessment proceedings. In a given case, if the Appellate Authority is satisfied that the assessee was prevented by reasonable and sufficient cause which disabled him to file the forms in time, it can be accepted. It can also be accepted as additional evidence in support of the claim for deduction.

(d) *Narinder Mohan Arya v. United India Insurance Co. Ltd., (2006) 4 SCC 713,*

46. The matter may be considered from another angle. The order of the disciplinary authority, in view of the statutory provisions, merged with the order of the Appellate Authority as also that of the Chairman-cum-Managing Director as the appellate proceedings are in continuation of the original proceedings and, thus, the doctrine of merger shall apply.

(e) *Kunhayammed v. State of Kerala, (2000) 6 SCC 359,*

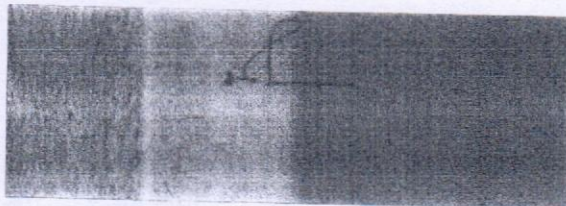
7. The doctrine of merger is neither a doctrine of constitutional law nor a doctrine statutorily recognised. It is a common law doctrine founded on principles of propriety in the hierarchy of justice delivery system. On more occasions than one this Court had an opportunity of dealing with the doctrine of merger. It would be advisable to trace and set out the judicial opinion of this Court as it has progressed through the times.

(f) *Kamla Devi v. Kushal Kanwar, (2006) 13 SCC 295, at page 299 :*

An appeal is continuation of the proceedings; in effect the entire proceedings are before the Appellate Authority and it has the power to review the evidence subject to statutory limitations prescribed.

(g) *Bongaigaon Refinery & Petrochemicals Ltd. v. Girish Chandra Sarma, (2007) 7 SCC 206, at page 214 :*

Since the writ appeal is in continuation of the original order passed in the writ jurisdiction by the learned Single Judge, it cannot operate as an estoppel against learned counsel for the respondent to press the same. If the finding recorded by the



inquiring officer is not sound and it relates to perversity then the appellate court in writ appeal cannot estop the counsel from raising the same.

(h) P.K. Palanisamy v. N. Arumugham, (2009) 9 SCC 173 : (2009) 3 SCC (Civ) 649,

It may be so, but it is well known that the appeal is continuation of the suit

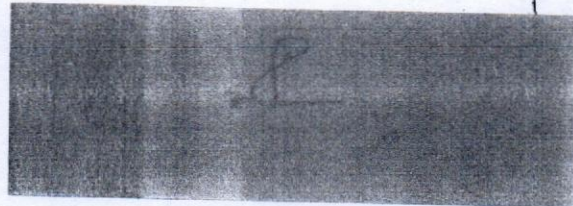
i) Tajender Singh Ghambhir v. Gurpreet Singh, (2014) 10 SCC 702

In this regard, the High Court, overlooked the well-known legal position that an appeal is continuation of the suit and the power of the appellate court is coextensive with that of the trial court. It failed to bear in mind that what could be done by the trial court in the proceeding of the suit, can always be done by the appellate court in the interest of justice.

(j) Hindustan Petroleum Corpn. Ltd. v. Dilbahar Singh, (2014) 9 SCC 78 : (2014) 4 SCC (Civ) 723

An appeal is continuation of suit or original proceeding, as the case may be. The power of the appellate court is coextensive with that of the trial court. Ordinarily, appellate jurisdiction involves rehearing on facts and law but such jurisdiction may be limited by the statute itself that provides for the appellate jurisdiction.

22. In view of the above, OA succeeds and impugned orders dated 17.01.2018, 25.07.2018, 08.12.2018 and 20.04.2019 are hereby quashed and set aside. It is declared that the applicant is entitled to the entire retiral benefits as also the family pension. The respondents are directed to consider to release the retiral benefits as well as family pension treating the disciplinary proceeding abated and no punishment was ever awarded to the deceased employee. The said exercise should be completed within a period of 3 months from the date of receipt of this order. The applicant shall not, however, be entitled to get any interest on the delayed payment of retiral dues and family pension, if it is made within the stipulated period of three months



otherwise, the applicant shall also get simple interest @ 8% per annum from the date of order till the actual payment is made. Respondents are also directed to consider and dispose of the application for compassionate appointment as per the existing rules and guidelines, if the same is filed by the applicants within one month from the date of receipt of a copy of this order.

23. With the above directions, the OA is allowed. There is no order as to costs.