

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Registration T.A. No. 473/87

(O.S. 419/83)

Sri. Jagannath after his death

Smt. Radha Devi ..... Applicant

versus

Union of India and Others ..... Respondent

Hon'ble Mr. K.Obayya, A.M.

Hon'ble Mr. J.P.Sharma, J.M

(By Hon'ble Mr. J.P.Sharma )

The original suit was filed by the deceased employee, employed at that time as Electric Driver Grade 'C', Northern Railway, Tundla. The plaintiff was removed from service with effect from 27.1.1982 by the order dt. 19.1.82 passed by Sr.D.E.E/R.S.O. The deceased employee filed the ~~original~~ suit in October 1983 for the following relief :

A declaration that the order dt. 19.1.82 is illegal, invalid and in-operative in law and therefore the plaintiff continued to be in service.

The suit stood transferred to the Central Administrative Tribunal, Allahabad Bench, under section 29 of the Act (A.T.Act 1985) for disposal and numbered as T.A. 473/87.

Sri. Jagannath died during the pendency of the proceedings and his wife Smt. Radha Devi was impleaded in his place.

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The Applicant filed misc. application 138/90 for amending the plaint to incorporate in the relief clause that the appellate order dt. 20.8.82 be set aside and quashed. This amendment application has been allowed and necessary amendment <sup>has been</sup> carried out in the plaint.

The facts, as given out in the plaint are as follows :

Jagannath, Electric Driver Grade 'C', Northern Railway Tundla filed an earlier suit 357 of 1978 in the court of Munsif Fatehabad, Agra, for back wages. It is said that on account of the aforesaid suit the local superiors at Tundla were not happy with him. The Traction Foreman Operating (T.F.O) did not allow him to join duty and so he was forced to sit idle. The said Jagannath made representation to higher authorities but to no effect. The services of said Jagannath were terminated by the order dt. 19.1.1982. It is said in the plaint, that the employee did not file the appeal against the termination order but it is not a fact. (The appeal has been decided by the Addl. D.R.M., Allahabad who passed the following order " I have gone through the case. The charge levelled against the Jagannath ~~is~~ are approved and the appeal is rejected"). Thereafter this present suit was filed for the reliefs as said above.

The respondent filed the written statement before the Tribunal. It is stated that Shri Jagannath was transferred several times but he did not carry out the transfer order and did not join the duty for which he himself is responsible. On 29th December 1980 he was given a

disposal memo to go spare from Tundla to Khurja, but he refused to take the notice and so he was marked absent, he did not also submit any explanation and absented himself from duty. He was informed by the letter dated 24.7.1987 to join his duties but he failed to attend the office. He was marked absent from 16.8.1981.

8. It is further stated by the respondent that Jagannath was removed from the service after strictly complying with the provisions of natural justice and serving a charge sheet on 6.10.1981 for his absence from duty. The charge sheet was tried to be served on 16th or 18th of July 1981 on him but he, after reading over the charges refused to accept the charge sheet. He, however, subsequently on 29.9.1981 acknowledged the receipt of the charge sheet. After the receipt of the charge sheet it is said that he did not appear before the enquiry officer. The enquiry officer submitted his report to disciplinary authority Senior D.E.E. (R.S.O.) Allahabad, who after going through the enquiry report removed the plaintiff from service. An appeal was preferred which was rejected by A.D.R.M. It is said that the applicant is not entitled to any relief.

9. We heard the learned counsel of the parties at length. Annexure No. I to Annexure No. 14 are the various representations filed by the employee before the authorities. Annexure No. 15 is the order dated 19.1.1982 by which the services of the employee Jagannath II have been terminated and penalty of removal from service has been imposed. In the appeal (Annexure-16) it is stated that "my services were removed arbitrarily by Sr. D.E.E. (R.S.O.) N.Rly Allahabad vide his above letter from 19.1.1982 without giving him charge sheet or conducting any D.A.R. enquiry". By the order dated 20.8.1982 the Additional Divisional Rly. Manager rejected the appeal with the following order— "I have gone through the case, the charges levelled against Sri Jagannath II are proved and his appeal is rejected (Annexure 17)."

10. The learned counsel for the applicant argued that the services of Jagannath, Electric Driver Grade 'C' were terminated without proceedings under D.A.R. 1968. The respondents were directed to file the proceedings of the disciplinary authority as well as, of enquiry officer, but the same have not been filed. The learned counsel for the Railways Sri G.P. Agrawal gave a statement at the Bar that the record is not traceable. On 23.1.1990 we directed the respondent to produce the file of the disciplinary authority or else, an affidavit of a responsible officer, stating on oath that the said file is not traceable. An affidavit has been filed of one Sri V.K. Tripathi (DERSO) of D.R.M. office Allahabad that he is looking after the case and that the file relating to disciplinary proceedings

and appeal of the above employee, is not traceable, as the said file has been lost some where from the office of Tundla. In fact the enquiry officer or any other responsible person of that time when enquiry against the deceased employee proceeded should have filed the affidavit. In the absence of any cogent evidence the respondents, could not satisfy that there was a disciplinary enquiry against said Jagannath II for unauthorised absence from duty. If the file was not available with the respondent then now in para 7 or written statement the respondents have stated about the charge sheet having been served on 6.10.1981 on the deceased plaintiff. How the contents of the charge sheet has been stated remains unexplained? No charge sheet or its Annexures which are required to be served on the charged official has been filed. It is not clear who was the enquiry officer? What was the evidence against the deceased employee and what was the findings on the charges have not come before the court. The order of removal of the disciplinary authority dated 19.1.1982 runs as follows:

"I have carefully considered your representations. I did not find your representations to be satisfied and you are not fit to be retained in service specifically as a driver. I, therefore, hold you guilty of the charges very(remaining) absconding unauthorisedly from 29.12.1990 to still and I have decided to impose with you the penalty of removal from service. You are therefore, removed from service w.e.f. 27.1.1982."

The order of the disciplinary authority does not mention a word about the report of the enquiry officer or of any evidence oral or documentary.

11. Even the order of the appellate authority is not a speaking order. There is nothing discussed about the grounds taken by the official in his memo of appeal. It has been stated in the memo of appeal that no enquiry was held under D.A.R. However the appellate order of 29.8.1982 is silent about this. As held by Supreme Court in *Ramchandra Vs. Union of India* 1986 (II) S.L.J. page 249, the appellate authority must give a speaking order. In the case of *Sri Shanker K. Damle Vs. Union of India* reported in Full Bench Judgment (Bahri Brothers 1986-89) it has been held "It would thus be clear, that when the merits of the various contentions of the delinquent are to be gone into, and if the appeal has been decided by a cryptic order, without affording a reasonable opportunity to the delinquent, fairness and justice would demand, that the delinquent should not be denied the necessary opportunity to vindicate his innocence before the appellate authority. The appellate authority in such circumstances would be able to analyse and appreciate the evidence in all its aspects, to arrive at a proper conclusion, as to whether the evidence is adequate to prove the guilt or is wanting or tenuous,

soas to warrant exoneration. Thus when the matter comes before the Tribunal and the merits of the order based upon appreciation of evidence are attacked, the course indicated by the Supreme Court could have to be adopted. In such cases, the mere fact that considerable time has elapsed since the original order of dismissal was passed, would not by itself be always decisive. It is material to note, that in Ram Chandra's case (Supra) mentioned above, the Supreme Court had in 1986 passed an order remanding the appeal against the initial dismissal order, dated as far back as 1971.

12. In view of the above the removal of the deceased employee cannot be said to be according to law and the provisions of article 311(2) of the constitution of India are attracted. The arguments of the learned counsel of the respondents that the enquiry was held has not at all been substantiated. In fact the order of the Disciplinary Authority as well as the appellate authority do not show that there was any enquiry against the deceased employee. In such a circumstances when the respondent are not filing the original or secondary evidence of the proceedings of the disciplinary authority before the court then the benefit has got to go to the deceased employee. This fact has been conceded by the learned counsel for respondent Sri G.P.Agrawal.

13. The contention of the learned counsel for the respondents is that the deceased plaintiff has not performed his duties while there are representations on various dates annexure No. I to annexure No. 14 that the EFR is not allowing him to join his duties and he has also written letters to D.R.M. Allahabad. The employee has been reporting for duty but it was the employee of respondent not allowing him to join the duties and neither reporting that he did not perform the duty. In these circumstances the removal of the applicant by the order dated 19.1.1982 is valid. The appellate order also of August 82 suffers from being a cryptic order. Such orders cannot stand.

14. The employee Jagannath is since dead. His wife Radha Devi has been substituted in his place. There is no question of reinstatement of the employee on the original post but notionally it has to be done till his death.

15. We are, therefore, of the opinion that the order dated 19.1.1982 as well as of 20 August 1982 are illegal orders and are therefore, quashed and the suit of the plaintiff is decreed.

16. As a consequence we issue the following directions to the respondents:

- (1) The deceased employee Jagannath ~~✓~~ shall be deemed to have been reinstated in service w.e.f. 27.1.1982
- (2) The legal representations of deceased employee shall be entitled to wages which the deceased was getting before 27.1.1982. till his death with all consequential benefits of increment etc.
- (3) Regarding the wages earlier to 27.1.1982 the respondent will find out the actual no. of days the deceased employee has worked and only for that period the wages have to be paid to the L.R. of the deceased and of no other period.

In the circumstances the parties to bear their own costs.

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Member (J)

(SS)

Rubenzal  
Member (A) 27/2/91.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

XXXXXX. Restoration Application No. of 1986

IN

T.A. No. 419 of 1986(T)

Sri Jagannath ..... Applicant  
Versus  
Union of India & others.... Respondents.

Hon'ble D.S. Misra- AM  
Hon.G.S.Sharma - JM

(Delivered by Hon.G.S.Sharma-JM)

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This is an application for the restoration of T.A. No. 419 of 1983 dismissed in default of the plaintiff by the Trial Court on 12.1.84. Restoration application was moved on 8-2-1984 with the allegation that ~~the~~ due to misunderstanding regarding the date, steps could not be taken in time and the case was dismissed. The application is supported by an affidavit. We have heard the learned counsel for the parties. The cause shown appears to be sufficient. The case is restored to its original number. Let a copy of the plaint be given to the respondents's counsel who shall file his written statement within a month. The case be registered & transferred to afresh as a regular suit.

Shahid  
A.M.

Shahid  
1/7/87  
J.M.

Dt/-1.7.1987/  
Shahid.