

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ADDITIONAL  
BENCH AT ALLAHABAD.

...

O.A. No. 1363 Of 1992

dated: 24 august, 1995.

Hon. Mr. S. Das Gupta, Member (A)  
Hon. Mr. T.L. Verma, Member (J)

Smt. Kamla Devi Widow of late Bansh  
Raj Sharma, Ex. T.T.E. N. Rly. Allahabad,  
R/o Care of Sri Shrinath Sharma, Lakshmi  
Talkies Campus, Katra Allahabad. .... APPLICANT.

(By Advocate Sri A.K. Sinha)

VERSUS

1. Union of India, through the G.M.  
Northern Railway, Baroda House,  
New Delhi.
2. D.R.M. N. Rly,  
Allahabad.
3. Sr. D.C.S. N. Rly,  
Allahabad.
4. D.C.S.N. Rly.  
Allahabad. ... .. RESPONDENTS.

( By Advocate Sri A.S.F. Naqvi )

O R D E R

( By Hon. Mr. S. Das Gupta, Member (A) )

This application has been filed under Section  
19 of the Administrative Tribunals Act, 1985 by the  
widow of late Bansh Raj Sharma, Ex-Railway Employee  
seeking the relief of quashing of the charge sheet  
dated 25.11.1986 , the inquiry report, the order  
dated 29.2.1988 removing the applicant's husband from  
service and the appellate order dated 19.5.1988 by  
which his appeal was rejected, with all consequential

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benefits. It has also been prayed that the respondents be directed to pay to the applicant all retiral benefits with interest at the rate of 18% per annum and also to give to one of the sons of the deceased employee appointment on compassionate ground. A further prayer is for a direction to the respondents to pay with interest salary and allowances of the deceased employee from 1.5.1986 till his death treating him to be on sanctioned leave.

2. The applicant's husband, who was a travelling ticket examination and was posted at Allahabad, was served with a major penalty charge-sheet and after an ex-parte inquiry, the disciplinary authority passed the impugned order dated 29.2.1988 removing him from service. The deceased employee submitted an appeal to the respondent no. 3 which was rejected by the impugned appellate order dated 19.5.1988. He submitted a revision petition dated 25.8.1988 to the respondent no.2 but no decision was taken on the same by the respondents. The deceased employee, thereafter, met with a train accident at Sultanpur station on 23.2.1989 and died on the spot. The respondents did not pay any retiral benefits to the widow of the deceased who is the applicant in this case and had allegedly held back even the <sup>provident</sup> present fund deposits <sup>of</sup> by the deceased employee.

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The applicant made two representations to the respondents for being granted retiral benefits and also ~~the~~ <sup>provident</sup> ~~present~~ fund deposits vide her representation dated 3.5.1989 and 10.9.1989. Since ~~these~~ evoked no response, she filed an O.A. at Lucknow Bench of the Tribunal. As, however, the applicant had started living at Allahabad and it was difficult for her to go to Lucknow to pursue the matter, she filed an application at the Lucknow Bench seeking permission to withdraw the case and to file a fresh petition at Allahabad. It is stated that ~~the~~ Lucknow Bench by an order dated 26.8.1992 allowed this application but the applicant has not been able to obtain the copy of the same. Thereafter, she filed the present application seeking the reliefs aforementioned.

3. The case which has been set up by ~~the~~ applicant is that her husband had developed serious difference with his cousins who had ~~usurped~~ ~~of~~ his landed property by unfair means and this developed into a family <sup>feud</sup> ~~feud~~. It is alleged that ~~the~~ ~~cousins~~ threatened to liquidate the applicant's husband and even hired professional killers to assassinate him. These persons had allegedly made at least two serious <sup>attempts</sup> ~~attacks~~ on his life but he escaped on both the occasions. Because of ~~the~~ threat to his life, the

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applicant's husband decided to leave Allahabad and, therefore, submitted an application to the respondents to transfer him to some other place far away from Allahabad, in Allahabad Division or in any other Division. A photo copy of the application dated 5.1.1985 has been annexed as Annexure-A 1. Not receiving any response to the said representation, he made another application dated 31.1.1985 for transfer to any place in Northern Railway. A photo copy of this application also has been annexed as Annexure-A 2. Thereafter, the deceased met the respondent Nos. 3 & 4 personally but to no avail. Meanwhile, the continuous tension told on his health and he fell seriously ill. Since he was living alone at Allahabad and there was none to look after <sup>him</sup> ~~her~~, his neighbours arranged to send him to his <sup>native</sup> village <sup>in</sup> ~~at~~ Faizabad on 1.5.1986. The Doctor attending on him advised him ~~for~~ complete rest. He sent a certificate from the private medical practitioner recommending leave from 2.5.1986 to 24.5.1986 and the same was received by the Chief Inspector of Tickets. As his condition did not improve, he was advised bed rest upto 31.8.1986. A certificate from ~~the~~ private Medical Practitioner was sent to the C.I.T. along with the leave application requesting extension of leave upto 31.8.1986 by registered post. A photo copy of the said

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application along with the receipt of the <sup>registered letter</sup> resignation ~~resignation~~ have been annexed as Annexure- A 3. Meanwhile, he had sent more representations to the respondents for his transfer from Allahabad and since the respondents did not pay any heed to these, out of frustration, the deceased sent a letter of resignation dated 25.7.1986 requesting that his resignation be accepted w.e.f. 1.9.1986. A copy of this letter is at Annexure-A4. The respondents allegedly did not pay any heed even to this letter and neither <sup>sanctioned</sup> sent his leave nor accepted or rejected the request for resignation. Instead, he was served a major penalty charge-memo dated 25.11.1986, which was sent ~~but~~ <sup>to</sup> his village address, for unauthorisedly absenting ~~him~~ from duty w.e.f. 1.9.1986. He replied to the charge-sheet stating that he had submitted ~~a~~ resignation to take effect from 1.9.1986 and there was no rejection of it even after <sup>a lapse</sup> ~~retax~~ of 6 months, the case may be closed and he may be allowed to retire with the pensionary benefits due to him. No action was taken on this letter and an inquiry officer was appointed. On receipt of the communication dated 20.5.1987 from the inquiry officer, the deceased replied that he was willing to participate in the inquiry and defend his case provided the sittings were arranged at any station away from Allahabad <sup>as</sup> and at Allahabad his life was threatened. A photo stat copy of the letter dated 25.9.1987 is at Annexure-A 7. The respondents paid no heed to this request and held the ex-parte inquiry. The inquiry officer submitted his report holding the deceased <sup>g</sup> guilty of unauthorised absence

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w.e.f. 25.7.1986. A copy of the inquiry report is at Annexure-A 8. This finding was accepted by the disciplinary authority and the penalty of removal was passed. The deceased submitted an appeal and the same was rejected allegedly by an unreasoned order. His revision petition was not acted upon.

4. In the ~~circum~~pectus of the above circumstances, the applicant has pleaded that the order removing the applicant's <sup>husband</sup> from service was wholly arbitrary and unjustified and should, therefore, be quashed. It has been contended that the respondents most arbitrarily and illegally did not consider the request of the deceased for transfer out of Allahabad; that the issuance of the charge-sheet was unwarranted as the period in dispute was fully covered by the certificate from ~~the~~ <sup>Dr. Rabi</sup> medical practitioner and that the applicant's ~~request~~ <sup>request</sup> to hold the disciplinary inquiry outside ~~the~~ Allahabad, was not considered arbitrarily and illegally. It has been further contended that the disciplinary authority did not consider the circumstances arising out of the predicament in which the deceased employee was placed due to threat to his life and passed the order of penalty in an arbitrary and illegal manner. Similarly, the appellate authority did not consider the various facts brought out in ~~the~~ appeal and passed an unreasoned order.

5. The respondents did not file any counter affidavit. The ordersheet ~~s~~ discloses that when the case came up for admission for the first time on 29.9.1992,

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Sri S.F.A.Naqvi, presenting officer on behalf of the Railways accepted notices on behalf of the Respondents. Thereafter, he had also filed his Vakalatnamaduly signed by an officer of the responding department. Since then number of opportunities were afforded to the respondents to file their counter affidavit and finally an order was passed on 12.8.1994 to the effect that incase no counter affidavit was filed within 4 weeks, the application shall be taken up for ex-parte hearing. Despite this order, no Counter Affidavit was filed nor anyone appeared on behalf of the respondents when ~~the~~ the case was camel up for hearing on 1.5.1995 .We, therefore, heard the learned counsel for the applicant and proceeded to decide this matter on the basis of the pleadings on record.

6. The averments made by the applicant, <sup>not</sup> having <sup>been</sup> rebutted by the respondents despite enough opportunity to file the counter reply, ~~In~~ these circumstances, we have to assume that the unrebutted averments of the applicant are admitted. In this regard we were fortified in our view by the rationale of the decision of the Apex court in the case of C.S.Roujee Vs. State of Andhra Pradesh, A.I.R. 1964 S.C., 692. ~~We quote the relevant portion of this decision.~~

56

7. The above decision was followed by the High Court of Calcutta in the case of Arbind Das Vs. State of West Bengal, 1983 (2) SLR612, in which it was held that in the absence of the counter affidavit, the averments made in the writ petition are to be taken as admitted. We are <sup>thus</sup> required to see <sup>only</sup> whether the averments made in the O.A. constitute sufficient ground for us to interfere in the disciplinary action taken by the respondents against the husband of the applicant.

8. The applicant had been repeatedly representing to the respondents that his life was in danger on account of some family <sup>feud</sup> and he requested for transfer out of Allahabad. If there was a danger to his life, his request was quite reasonable and the respondents should have seriously considered it. They could have at least made an inquiry into the truth or otherwise <sup>of</sup> his contention that his life was in danger and thereafter could have either accepted or rejected his representation. Apparently, they ~~did~~ not take any action whatsoever <sup>only</sup> on his representation. The certificates from the private Medical Practitioner indicate that the applicant had fallen ill and so <sup>was</sup> advised rest. Infact, though the charge levelled against him was for unauthorised absence from 1.5.1986, the inquiry officer took cognizance of the fact that Sri S. Prasad, the Chief Inspector ~~Inspector~~ of Tickets, had admitted that the charged employee had sent a certificate from Private Medical Practitioner covering the period from 2.5.1986 to 24.7.1986 and that he was absent since 25.7.1986 without any intimation. It is thus, amply clear that the

56

respondents were aware that the applicant was unwell and, therefore, if they had any doubt about the veracity of the medical certificate, he could have been directed to appear before the medical board or to submit medical certificate from authorised medical attendant. In spite of that, they chose to serve a charge-sheet on the deceased employee for unauthorised absence. The applicant had requested for holding the inquiry at a place outside Allahabad which cannot be considered an unreasonable request keeping in view the fact that he was apprehending danger to his life at Allahabad. The respondents should have had no difficulty in arranging the sittings of the inquiry at a place outside Allahabad. They, however, chose to proceed ex-parte against the applicant. There is no doubt that if a charged officer refused to participate in the inquiry on the ground which are unreasonable, the inquiry officer shall be free to proceed ex-parte. However, in the present case, the circumstances were such which would amply justify the refusal of the charged employee to participate in any inquiry which is held at Allahabad. In these circumstances, the holding of inquiry ex-parte, in our view, was unwarranted.

9. There is another factor which requires to be considered. It is that the applicant had submitted a letter of resignation. It is clear from the findings of the inquiry officer that the respondents were seized of the fact that he had submitted his resignation. This letter of resignation itself should have been sufficient cause for any responsive administration to enquire why an employee who had put in 25 years of service was <sup>submitting</sup> ~~submitting~~ resignation from service.

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An inquiry into this would have disclosed the circumstances which led the applicant to take this extreme step of submitting a letter of resignation and thus put at jeopardy the benefits accruing to him from his long period of service under the respondents.

10. It is a settled position of law that the courts/Tribunals have a limited jurisdiction with regard to the disciplinary action taken by the competent authority. It is not the action which is normally justiciable but the manner in which the action is taken. The manner in which the inquiry was held against the applicant bears eloquent testimony to the fact that the charged officer was not given adequate opportunity to defend himself. The ex-parte inquiry was not justified in the circumstances attending upon this case. There is, therefore, a gross violation of the Rules of natural justice vitiating the entire disciplinary proceedings against the charged officer. We have, therefore, no manner of hesitation in declaring that the impugned order of penalty was wholly arbitrary and illegal. Similarly, we find from the appellate order that the points which were made out in the appeal dated 25.8.1988 have not been considered by the appellate authority. The only point which has been considered is the one relating to the letter of resignation submitted by the charged employee. Under Rule-22(2) of the Railway Servant (D&A) Rule, 1968

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the appellate authority has a duty cast upon it to consider several aspects while disposing of an appeal, Unless all these aspects are <sup>properly</sup> perfectly considered, There is <sup>a</sup> failure to discharge statutory duty <sup>rendering</sup> ~~running~~ the appellate order liable to be quashed. In this regard, we are fortified by the view taken by ~~the~~ the apex court in the case of Ram Chandra Vs. Union of India, A.I.R. 1968, SC 1173.

11. In view of the foregoing, we find that both the impugned orders dated 29.2.1988 passed by the disciplinary authority and the appellate order dated 19.5.1988 are bad in law and cannot be sustained. We, accordingly set aside both these orders. Consequently, the husband of the applicant shall be deemed never to have been removed from service and to have continued in service till the date of his accidental death. The period from 1.5.1986 till the date of his death shall be regularised by grant of leave as due. The applicant and the other legal heirs of the deceased employee shall be entitled to all terminal benefits admissible to them under the ~~existing~~ rules as if the husband of the applicant had died in harness. The applicant or one of her children shall also be eligible for consideration for employment on compassionate ground. Any application in this regard, if submitted within one month from the date <sup>of</sup> this order shall be considered in accordance with law and action taken thereon within a period of 6 months from ~~the~~ the date of receipt of the application. The arrears

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of salary etc and all the eterminal benefits shall be paid to the applicant and the other legal heirs within a period of 4 months from the date of communication of this order.

12. The application is allowed on the above terms. Parties to bear their own costs.

*J. Herma*  
MEMER(J)

*[Signature]*  
MEMBER(A)

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