

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 4th DAY OF January, 2010)

PRESENT:

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J

HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 1593 OF 2002

(U/s, 19 Administrative Tribunal Act.1985)

1. Smt. Jagani Devi, widow of late Ram Dhani.
2. Ram Milan Bind, Son of Late Ram Dhani
(Both resident of Village-Bhawan (Nayapur), Post-Jigna,
District-Mirzapur.

.....Applicant

By Advocate: Shri Sudama Ram
Shri C.P. Gupta

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway,
Allahabad.
3. The Assistant Engineer, Northern Railway, Chunar.

..... Respondents

By Advocate: Shri Gautam Chaudhary

ORDER

(DELIVERED BY: JUSTICE A. K. YOG- MEMBER-JUDICIAL)

1. Heard Shri Sudama Ram, learned counsel for the applicant
and perused the records.

2. The applicant before us is the wife of the employee of the
Respondents' Department who is said to have been disappeared
and not heard for more than seven years. The applicant further
informs that her husband has faced Disciplinary Enquiry wherein
order of punishment has been passed. Appeal was filed by the
applicant (wife of the employee presumed to have may Civil death).



Relevant pleadings in this respect find place in para 4.14 which reads:-

"That the respondents have filed the order of removal from service her husband vide order No.CA /Saha /Abhiyanta/Chunar/Ram Dhani/DAR/93 dated 20.9.93 much after the date of his missing from the place of duty on 05.9.93 on the basis of such inquiry-report dated 30.12.92 which was not given conducted ex-parte as per provision of the Railway Board's instructions dated 18.4.1990. Order of removal from service was never served upon her husband i.e. Shri Ram Dhani as he had already been missing from place of duty-station i.e. Chunar effect from 05.9.93".

3. The applicant has, however, not disclosed the fact that said appeal has been decided and if so, whether order deciding said appeal has been challenged. The learned counsel for the applicant concedes that appeal has not been decided and is pending. The applicant placed reliance upon R.B.E. No.150/91 dated 22.8.1991.

Relevant contents of the said R.B.E. read:-

"Some cases have come to notice where Railway Servants who were missing and whose whereabouts were not known to their family were removed from service for unauthorised absence. It has been represented by the NFIR in PNM meeting with Railway Board that initiation of disciplinary action in such cases where even the police after all-out efforts have not been able to trace the employee is not justified since they are to be presumed as dead under Section 108 of the Indian Evidence Act. The NFIR also represented that in such cases, the disciplinary action/punishment should be annulled and the families be granted family pension and their request for compassionate appointment to wards etc. to which they would have been entitled but for the disciplinary action be also considered.

2. The Board have considered the matter and it is clarified that in cases of the type mentioned above where it is established that the railway employee was really missing and not unauthorisedly absent, the disciplinary action should be treated as initiated on invalid premises and the on-going disciplinary action or the punishment order should be annulled. While the annulment of the on-going disciplinary proceedings in such cases may be made by the disciplinary authority, in the case of punishment orders already issued, the annulment may be made by the appellate/revisionary authority, as the case may be. For this purpose, it is not necessary to follow any 'Revision' or 'Review' procedure since the charges/punishment are obviously based on invalid premises. After the dropping of the disciplinary action and annulment of the punishment of removal, as the case may be, the relevant benefits like grant of leave encashment, salary dues, retirement benefits, etc. may be extended as outlined in Board's letter No.F(E)III/86/PN1/17 dated 19.9.1986."

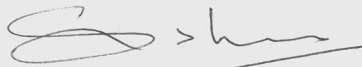
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4. In view of the above, it is clear that order of annulling punishment has to be sought, before applicant (wife of employee in question) can claim relief contained in this OA.

5. In view of the above, we are satisfied that the applicant should pursue appeal (referred to above) and the same be decided by speaking order in accordance with law.

6. Consequently, we direct the applicant to file a certified copy of this order before Appellate Authority before whom aforesaid appeal is said to be pending within six weeks from today and the Appellate Authority shall, on receiving certified copy of this order, provided it is filed within the time stipulated/contemplated above and dispose of appeal within two months of receipt of certified copy of this order by passing a reasoned/speaking order in accordance with law. Decision taken shall be communicated to the applicant forthwith.

7. OA stands finally disposed of subject to above observations/directions. No costs.



Member-A



Member-J

/ns/