

RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated this the ^{8th} day of May 2009.

Original Application No. 1335 of 2003

CORAM:

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

Ram Pal, S/o Late Shri Babulal
 R/o Village – Andhra Post Alapur District
 Lalitpur.

... Applicant

By Adv: Sri R.K.Nigam

V E R S U S

1. Union of India through General Manager,
 North Central Railway, Allahabad.
2. Divisional Railway Manager,
 North Central Railway, Jhansi.
3. Sr.Divisional Engineer (Co),
 North Central Railway, Jhansi.
4. Sr.Divisional Engineer,
 West Central Railway, Bhopal.

... Respondents

By Adv: Sri K.P. Singh, Standing Counsel(Railways)

O R D E R

HON'BLE MRS. MANJULIKA GAUTAM, MEMBER (A)

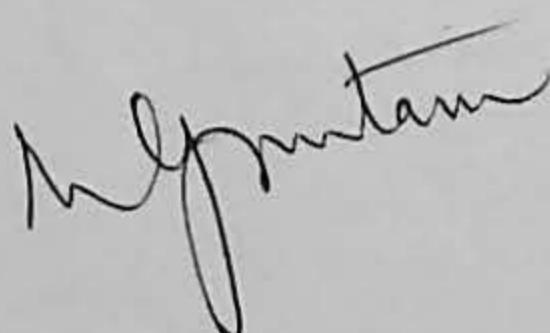
This O.A. has been filed by Shri Ram Pal who is the son of late Shri Babulal. Shri Babulal was originally appointed as Gangman on 30.6.1980 in the Engineering Department in Jhansi Division. The facts of the case are that, Shri Babulal was transferred to Bhopal vide letter dated 13.6.1983 (Annexure A-I), but he was not allowed to join there and sent back to Jhansi. Subsequently, Shri Babulal was transferred to Beena vide letter dated 24.8.83.

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Again without joining there he was returned to Jhansi. Shri Babulal was given a charge sheet dated 30.3.1984 alleging that he was absconding from 28.5.1983. Vide an ex-parte order dated 13.1.1987 (Annexure A-II) Shri Babulal was removed from service. The removal order clearly states that he was not present during the enquiry and also directed that he could file an Appeal against the order of removal within forty five days. Shri Babulal preferred his statutory appeal dated 13.2.1987 (Annexure A-III) which was however never disposed of. Thereon Shri Babulal filed O.A. 1099/88 which was disposed of with direction i.e. 'Appeal should be disposed of'. Tribunal's judgement dated 27.7.89 is placed at Annexure A-IV. Since this order was not complied with Shri Babulal filed another O.A. 1065/93, and vide judgement dated 29.11.2000(A-V) the Tribunal gave a direction to the 3rd respondent i.e. Sr. Divisional Engineer, Central Railway, Bhopal, to dispose of the Appeal within two months from the date of receipt of a copy of that order.

2. Meanwhile, before the above mentioned order of the Tribunal was passed, Shri Babulal died on 12.6.1998. The orders of the Tribunal dated 29.11.2000 for disposing of the Appeal of Shri Babulal have still not been complied with. It was only in August 2001 that the son of late Shri Babulal found the concerned documents and submitted a representation dated 17.8.2001(Annexure A-VII). Through this O.A. the son of Shri Babulal has asked for the following main relief:

- i. The relief of declaration to be granted declaring that Shri Baboo Lal, Gangman working in Jhansi Division under Respondents No.2&3 was through out in service until his death and after his death his family shall be entitled to family pension as well as other retiral and other consequential benefits as are usually granted to a Railway servant in the event of routine



superannuation/retirement for which a time bound order is solicited.

3. The grounds taken by the counsel for applicant is that the DAR proceedings against Shri Babulal could not be completed during his life time as his appeal dated 13.2.1987 was never decided. It is also clear that, since DAR proceedings start from the date of issuance of charge sheet and continue till the disposal of the statutory appeal. Thus the proceedings in this case were never completed. Counsel for the applicant has also placed reliance on Railway Board Letter dated 19.6.2000 (Annexure A-6) wherein it is stated that *"It is clarified that the Disciplinary proceedings should be closed immediately on the death of the charged Railway Servant".* In view of the same, it has been argued that the DAR proceedings against Shri Baboo Lal should be closed and all his retrial benefits and other dues should be given to his family.

4. Counsel for respondents on the other hand stated that Shri Babu Lal expired during the pendency of O.A.1065/2003 and the order was passed after the death of Shri Babu Lal. No substitution application was filed and the Tribunal was not aware that Shri Baboo Lal has expired when the case was finally decided. He has also held that the present O.A. is time barred as O.A. No. 1065/93 was decided on 29.11.2000 whereas the present O.A. was filed in the year 2003.

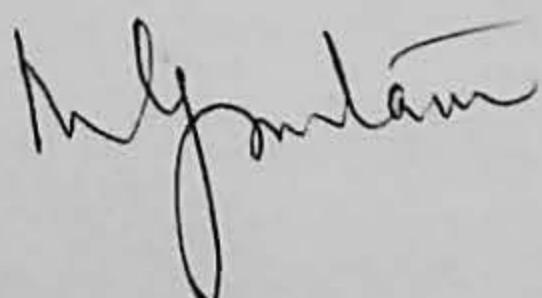
5. Respondents have also stated that various representations sent by the applicant were wrongly sent to the 3rd respondent whereas those should have been sent to 4th respondent. The main stand taken by the respondents is that Shri Baboo Lal was under the jurisdiction of Bhopal Division and not Jhansi

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division and therefore, his appeals/representations should have been sent there.

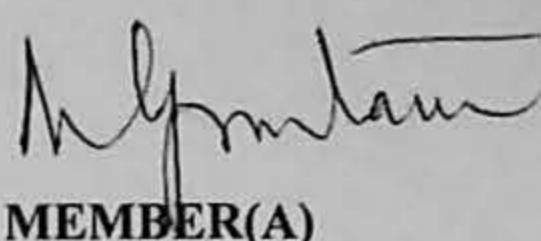
6. Having heard both the counsel and perused the records on file, I am of the opinion that the DAR proceedings against Shri Baboo Lal were incomplete at the time of his death. The main charge against Shri Baboo Lal was that of unauthorized absence and order of removal was passed without giving him adequate opportunity to represent his case. It is clear from the removal order that Shri Baboo Lal was not present at any stage during the enquiry. The technical ground that he was under jurisdiction of Bhopal Division and not Jhansi Division, is not more important than the fact that he was a Railway Employee and therefore DAR proceedings against him should have been completed after giving him adequate opportunity to put up the facts. It is strange that even till his death his representation dated 13.2.1987 remained undisposed of. Even if it had been wrongly sent, statutory appeal against an order of removal should have been sent to the concerned division promptly, whereas the appeal of Shri Baboo Lal dated 13.2.1987 has still not been disposed of. This is also mentioned in the judgement of the Tribunal dated 29.11.2000 and on this ground the delay in filing the O.A. by the applicant is condoned. The stand of the respondents that the statutory appeal of Shri Baboo Lal was not in existence because it was sent to Jhansi division and not to Bhopal Division, does not stand.

7. Thus, in my opinion, the order of removal against Shri Baboo Lal was not finalised in the absence of disposal of his statutory appeal and therefore, he is entitled to the benefits of Railway Board's circular dated 19.6.2000,



according to which any incomplete DAR proceedings against a Railway Employee should be dropped at the time of death of the Railway Employee.

8. In view of the above facts and circumstances, removal order dated 13.1.1987 is hereby set aside. O.A. is accordingly allowed with a direction to the first respondent to ensure that the Railway Boards' Circular dated 19.6.2000 (Annexure A-VI) is complied with, and to give all retrial and other consequential benefits to the family of the deceased employee within three months from the date of receipt of the copy of this order. No costs.



MEMBER(A)

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