

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 8th Day of October, 2015

Hon'ble Ms. Jasmine Ahmed-J.M.

Hon'ble Mr. U.K. Bansal-A.M.

Original Application No. 685/2003

(U/S 19, Administrative Tribunal Act, 1985)

Lal Sahab, son of Shri Radha Kishan, Resident of 77E, Muir Road,
Allahabad

.....**Original Applicant since deceased**

Substitute by legal heirs

- i. Shanti Devi, W/o Late Lal Sahab
- ii. Suresh Kumar Verma, S/o Late Lal Sahab
- iii.1 Smt. Usha Verma, wife of Late Ramesh Kumar Verma
- iii.2 Sachin Verma(minor), Son of Late Ramesh Kumar Verma
- iv. Pradeep Kumar Verma, S/o Late Lal Sahab
All R/o 77E, Muir Road, Rajapur, Allahabad.
- v. Kiran Verma, w/o Arun Kumar, R/o 38/267, Tulsipur, P.O.
Mahmoorganj, Varanasi.

.....**Substitute Applicants**

V E R S U S

1. Union of India, Union of India, through the General Manager,
North Eastern Railway, Gorakhpur.
2. Appellate Authority / General Manager, North Eastern
Railway, Gorakhpur.
3. Chief Operating Superintendent, N.E. Railway, Gorakhpur
(now Chief Operation Manager).

.....**Respondents**

Advocate for the applicants:-

Shri Y.K. Saxena

Shri Rajesh Rai

Advocate for the Respondents:-

Shri S.K. Anwar



O R D E R

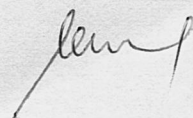
DELIVERED BY:-

HON'BLE MR. U. K. BANSAL (MEMBER-A)

The applicant had earlier approached the Tribunal by filing O.A. No. 1117 of 1987 where he had challenged the order dated 19.07.1984 passed by the Disciplinary authority imposing the punishment of removal from service and the validity of the appellate order dated 29.03.1989. This O.A. was partly allowed and the respondents were directed to provide a copy of inquiry report to the applicant and the applicant was directed to file a fresh appeal. This appeal has also been rejected by the appellate authority by an order dated 29.08.2001. Subsequently, the applicant filed O.A. No. 685 of 2003 challenging the original order imposing punishment dated 19.07.1984 and the new appellate order dated 29.08.2001 passed by the appellate authority on the intervention of this Tribunal in O.A. No. 1117 of 1987.

2. O.A. No. 685 of 2003 was decided by an order of this Tribunal dated 28.08.2009 by issuing following order.

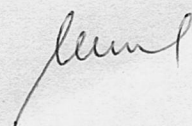
"We have given our thoughtful considerations to the pleas advanced by the parties counsel and without going into the other aspects of the matter, we are fully convinced that more than two decades have already been elapsed in deciding the appeal of the applicant.



Considering the abnormal delay in deciding the case, we could have quashed the order of Appellate Authority straightway and directed reinstatement with all consequential benefits but we leave it open to the respondents to pass appropriate reasoned and speaking order taking into account the quantum of punishment of the applicant and various other aspects. We are firmly of the view that the appellate order is not speaking and cryptic and the same deserves to be quashed and set aside. We are also conscious of our power and jurisdiction to interfere with the quantum of punishment already awarded to the applicant. However, in our considered view the punishment of removal awarded to the applicant for his unauthorised absence for a period of about Nine Months is not commensurate with his guilt.

In our considered view the ends of justice would be met, if direction is given to the Competent Authority to reconsider and decide the appeal of the applicant afresh taking into account the humanitarian approach and other various aspects, so that family of the deceased employee may not suffer further. While deciding the appeal of the applicant the proportionality of punishment may also be considered by the appellate authority.

We accordingly allow the Original Application partly, and quash and set aside the order dated 29.08.2001/Annexure A-2. The matter is remitted back to the Appellate Authority to reconsider the appeal afresh taking into account proportionality of




punishment awarded to the deceased employee and also sympathically taking into account the other various aspects of the matter and pass appropriate reasoned and speaking order within a period of three months from the date of receipt of copy of this order.

With the aforesaid observations O.A. is disposed of. No costs."

3. The applicant died on 02.09.2003, thereafter, the legal heirs of the deceased applicant approached the Honble High Court, Allahabad, against the order of this Tribunal dated 28.08.2009 passed in O.A. No. 685 of 2003 through Writ petition no. 18824 of 2012. Another writ petition was filed separately by the respondents (Union of India) and both these writ petitions were clubbed by the Hon'ble High Court. The Hon'ble High Court disposed of writ petition no 18824 of 2012 filed by the legal heirs of the applicant by setting aside the order dated 28.08.2009 passed by this Tribunal and restored the original application 685 of 2003 to its original number. After going through complete details of this case the Hon'ble High Court vide its order dated 13.01.2014 observed as follows:-

"It is not in dispute that under the earlier order of the Tribunal dated 20.08.1996, the order of the appellate authority passed earlier was set aside and a direction was issued to supply a copy of the enquiry report to the applicant within the time specified, thereafter, a



liberty was granted to the applicant to file another appeal, which was directed to be decided within two months after affording opportunity of personal hearing to the applicant. This order has become final between the parties with the dismissal of writ petition no. 17756 of 1997 on 16th November, 2004. Therefore, it was obligatory upon the department to have supplied a copy of the enquiry report and thereafter the fresh appeal could have been filed by the applicant which was to be decided on merits.

The order of the Tribunal dated 28th August, 2009 passed in Original Application No. 685 of 2003 has completely lost sight of the aforesaid facts and without any reasonable basis, a finding has been recorded that the punishment of dismissal from service is too severe for the charge of unauthorised absence from duty of 9 months. Since the employee had expired, a direction has been issued to consider the appeal afresh on the issue of proportionality of punishment sympathetically taking into account the various aspect of the matter.

We are of the considered opinion that if under the statutory provisions supply of the enquiry report is mandatory and even otherwise, since there is an order of the Tribunal dated 20th August, 1996 between the parties requiring supply of enquiry report and thereafter right to file an appeal was conferred upon the applicant, then the order of the appellate authority impugned in Original Application No. 685 of 2003, which had been made de hors the direction issued in



Original Application No. 1117 of 1997 could have not been legally sustained. The Tribunal should have set aside the appellate order instead of asking the appellate authority to decide the appeal afresh on proportionality of the punishment only.

In the normal course of thing, we would have set aside the order of the Tribunal as well as the order of the appellate authority and since the original records of the disciplinary proceedings had become untraceable, we would have directing de novo enquiry from the stage of service of the charge-sheet but since the employee has expired and any direction to undertake such exercise would be futile. Further, since the order of punishment is not challenged before us, we have no other alternative but to set aside the order of the Central Administrative Tribunal dated 28th August, 2009 and to restore the Original Application No. 685 of 2003 to its original number. It is ordered accordingly. Let the Tribunal decide the original application afresh on merits within three months from the date a certified copy of this order is filed before it. The Tribunal shall examine as to what relief can be granted to the legal heirs of the deceased employee, if any. Legal heirs of Lal Sahai are at liberty to make a substitution application in the original application. Both the petitions are allowed subject to the observations made above."



4. Having set aside the order of the Tribunal dated 28.08.2009 the Hon'ble High Court had also directed that the O.A. should be decided afresh on merits.
5. We have heard counsel for both sides and examined the case file.
6. There is no ambiguity regarding the facts of the case which have been discussed before this Tribunal during the first hearing of O.A. No. 685 of 2003. These facts have also been examined at length by the Hon'ble High Court.
7. A bare perusal of the order dated 29.08.2001 passed by the Appellate Authority reveals that the fact of non service of inquiry report on the applicant has not been taken into account.
8. The non availability of records have not been kept in mind by the Appellate Authority at the time of passing the appellate order. Clearly the respondents cannot avail any advantage of having misplaced the record of the department inquiry and the punishment awarded to the applicant (deceased). At the same time the respondents, in their counter affidavit, have denied the averments in the O.A. in detail and clearly stated the circumstances in which ex

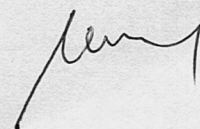


party proceedings were held against the applicant. It has been categorically denied that the applicant was on leave from 19.07.1982 to 30.04.1983. It has been stated that the applicant was asked to resume duty but he did not join. The contention of the applicant about his service has not been proved by any document. Sufficient opportunity was given to the applicant to appear in the inquiry but he did not attend the inquiry. When the applicant came before the inquiry officer he was sent to the railway doctor for obtaining a fitness certificate but he did not return back for duty after getting this certificate. As regards the retention of railway accommodation at Allahabad from 1972 to 1985 although the applicant was posted at Gorakhpur at that time it is clear that there was no official sanction or permission for such retention of the official accommodation. It is also clear from the documents on record that during the course of DAR proceedings the applicant was given opportunity to defend himself which he did not avail. After receiving direction from this Tribunal the appeal of the applicant was decided by the Appellate Authority after giving him a personal hearing on the basis of record available by detailed speaking order dated 29.08.2001. The main and important infirmity in the appellate order continues to be non availability of inquiry report for being supplied to the applicant and this position cannot be remedied since the records are not available. The respondents had also submitted



that the order of removal from service was passed as far back as in the year 1984 and at that time there was no such mandatory requirement to supply a copy of the inquiry report prior to imposition of the punishment. It was argued that this supply of a copy of the inquiry report was made effective from 29.11.1990 when the case of Mohammad Ramzan Khan was decided by the Hon' Apex Court. It has been argued by the counsel for the applicant that the appeal of the applicant has been rejected in violation of provisions contained in Rule 22 (2) (a) of the Railway Service (Discipline and Appeal) Rules, 1968. The respondents should not have decided the appeal in the absence of record and inquiry report, and in violation of earlier order of this Tribunal passed in O.A. 1117 of 1987. It is notable that the plea of non-supply of enquiry report to the applicant has been raised by him in O.A. No. 1117 of 1987 also. A reference can be seen in the order of this Tribunal in this case dated 20.08.1996 at para 2. Further the charge sheet dated 19.07.1984 mentions that a copy of the enquiry report is being enclosed at Annexure A-1. Thus to say that was not required or not customary to give a copy to the party charged is not correct.

9. Given the peculiar circumstances of the case and the fact that the concerned records which are vital for taking any legitimate view on the appeal filed on behalf of the applicant against the order of his



removal from service, are not available, the appellate order cannot sustain. The order of removal from service which would merge in the appellate order is also therefore unsustainable.

10. While deciding O.A. No. 685 of 2003 by order dated 28.08.2009, this Tribunal had taken note of the averment made by the learned counsel for the applicant that the appellate order must be reasoned and speaking and must have been passed after application of mind and consideration of grounds taken in the appeal. At the same time, the arguments of the respondents counsel that the applicant has failed to show that some prejudice has been caused to him due to non supply of inquiry report was also duly noted by the Bench. We also find that the decision and observation made in the order dated 20.08.1986 in O.A. 1117/87 passed by this Tribunal have already become final and it was not open to the respondents to say that they have decided the appeal of the applicant without taking into account the direction of the Tribunal to consider the effect of non-supply of copy of inquiry report. A contempt application no. 27/1997 was filed by the applicant in respect of non compliance of the order of the Tribunal in O.A. No. 1117/1987. The observations of the Bench in this case are also relevant as the appellate order has referred to the same by saying "Hon'ble C.A.T. has directed to dispose off the appeal on the basis of available



records". The observation of C.A.T. in the contempt application are reproduce below, which are not the same as stated in the impugned appellate order

"Shri V.K. Goel learned counsel for the respondents has submitted that during pendency of the O.A. 1117/87 record of the disciplinary proceedings against the applicant was lost and could not be find out. After the O.A. was decided, a review application was filed immediately placing before this Tribunal that the order cannot be complied with as inquiry report is not available. The review application was however dismissed by order dated 11.04.1997. The respondents have challenged order of this Tribunal dated 20.08.1996 and 11.04.1197 by filing writ petition no. 17756/97 which is pending in High Court. No interim order or relief has been granted by the Hon'ble High Court to the respondents. The question before us is, whether the respondents can be held guilty for committing contempt of this Tribunal in the set of facts mentioned above. It is well established principle that the court cannot direct not the court can except to perform something which is impossible. If the respondents have come with the case that record of the disciplinary proceedings has been lost and it is not possible to serve the inquiry report on the applicant, it cannot be said that they have committed contempt. However, the part of the order which can be complied with is that Appellate Authority may proceed with the hearing of the appeal taking to be as a fact that inquiry report cannot be served. The effect of non service of inquiry report; with its legal and factual angles has to be considered by the Appellate Authority. But on the basis of this fact that inquiry report cannot be served, remaining part of the order cannot be left complied, the respondents cannot say that whole order cannot be complied with."

The appellate order does not reflect that the appellate authority has paid adequate attention to the observations of the C.A.T. as quoted



above particularly "the effect of non service of the enquiry report with its legal and factual angles has to be considered by the Appellate Authority."

11. In view of the totality of circumstances the appellate order dated 29.08.2001 is quashed and set aside. More than two decades have passed in deciding the appeal of the applicant. It is also obvious that the same cannot be decided as per the judicial directions which have attained finality. The process of decision on the appeal of the applicant against the punishment of removal from service is completely vitiated in the absence of the copy of the enquiry report which had to be supplied to the applicant. Hence, the appellate order dated 29.08.2001 cannot survive and this order dated 29.08.2001 is quashed and set aside. The order of removal from service dated 19.07.1984 having merged with the appellate order is also set aside along with appellate order. The applicant would be deemed to be in service from the date of his removal i.e., 01.08.1984 till the date of his superannuation i.e., 31.12.1997. The respondents shall, therefore, calculate the dues of the applicant (since deceased) as if the order of removal was never passed and pay the same to legally substituted heirs of the deceased applicant. The applicant died on 02.09.2003. Hence, he would be entitled to all pensionary benefits from 31.12.1997 and regular

1987-88 30/3/16

etc

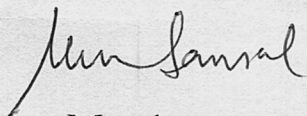
1987-88 30/3/16

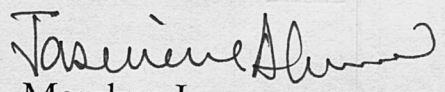
etc

[Signature]

pension, payment of gratuity, leave encashment etc as per rules and these amounts should be paid to the legal heirs. Thereafter, family pension as per rules should also be paid and orders to this effect shall be issued giving clearly the amount of family pension per month as increased from time to time due to recommendation of successive Pay Commissions and due to increase in D.A. etc. A detailed calculation sheet of dues of the applicant during his lifetime and dues of family pensions shall be provided by Respondent No. 3 to the heirs. The aforesaid activity shall be completed by the respondent no. 2 and 3 namely General Manager, North Eastern Railway, Gorakhpur and Chief Operating Superintendent, North Eastern Railway, Gorakhpur within 3 months from date of receipt of a certified copy of this order. It is clarified that no interest shall be payable on past payments which are made as a consequence of this order.

12. The O.A. is accordingly allowed as detailed above. No costs.


Member-A


Member-J

Anand...