

Reserved  
(On 30.08.2016)

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 29<sup>th</sup> day of September 2016

Original Application No. 897 of 2006

Hon'ble Dr. Murtaza Ali, Member – J  
Hon'ble Ms. Nita Chowdhury, Member – A

1. Smt. Rajwati Devi, W/o Late Harish Chandra
2. Deependra Singh, S/o Late Harish Chandra
3. Kapil Kumar, S/o Late Harish Chandra
4. Lalit Kumar, S/o Late Harish Chandra
5. Gyandra Kumar, S/o Late Harish Chandra
6. Ravindra Kumar, S/o Late Harish Chandra
7. Km. Savita Devi, S/o Late Harish Chandra  
All R/o Ram Bhawan Chau-ki- Basti Line Par (Near Jart) District  
: Moradabad.

By Adv: Shri A.K. Sinha . . . Applicants

V E R S U S

1. Union of India, through its Secretary, Railway Board, Rafi Marg, New Delhi.
2. The Joint Secretary (E&P), Railway Board, Rafi Marg, New Delhi.
3. The General Manager, Northern Railway, Head Quarters Office, Baroda House, New Delhi.
4. The Divisional Railway Manager, Northern Railway, Moradabad.

By Adv: Shri Anil Kumar . . . Respondents

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ORDER

Delivered by Hon'ble Ms. Nita Chowdhury, Member - A

The present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 by Harish Chandra. Subsequently he died on 12.06.2008 and his legal heirs have been substituted.

2. Through this OA the deceased applicant has prayed for the following reliefs:

- "i. This Hon'ble Tribunal may be pleased to quash both the dismissal order dated 01.09.2005 passed by Shri K.K. Sharma, Jt. Secretary (E&P), Railway Board communicated by D.R.M., Moradabad vide his letter dated 12.09.2005 and the appellate order dated 24.08.2006 passed by K.K. Sharma, Jt. Secretary Railway Board to the first amendment application dated 21.08.2007 and communicated vide DRM Moradabad letter dated 01.09.2006 as illegal, bad, perverse and without jurisdiction with all consequential benefits to the applicants.
- ii. The Hon'ble Tribunal may further be pleased to treat the entire period from suspension (January, 2002) till death (12.06.2008) of Late Harish Chandra as on duty and pay the entire amount of salary and other allowances, including all the retiral benefits with interest to the applicants.
- iii. The Hon'ble Tribunal be also pleased to direct the respondents to appoint one of the sons of Late Harish Chandra on compassionate ground.
- iv. Grant any other further relief as this Hon'ble Tribunal may think fit and proper in the circumstances of the case."

3. The brief facts of the case as narrated by the deceased/ substituted applicants are that Sh. Hari Ram Verma was working as Token Porter under SS/N. Rly, Sahzad Nagar on MB Divn. He expired

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on 28.12.2000 during service. After his death Sh. Raj Kumar Nehru and his younger brother named Sh. Dinesh Kumar resident of Budhi Vihar, Moradabad had submitted their claim for payment of settlement dues alleging that they are the legal heirs of the deceased employee being the son of said employee late Sh. Hari Ram Verma.

4. On the other hand Smt. Chandravati, mother of late Sh. Hari Ram Verma also approached to this office for the payment of settlement dues in her favour, disclosing that her son late Sh. Hari Ram Verma was bachelor throughout the life and never married.

5. In view of the above circumstances an enquiry into the matter was conducted through CPI/MB regarding the genuineness of claim of S/Sh. Raj Kumar Nehru & Dinesh Kumar. In the inquiry it is found that both the claimants are not the sons of the deceased employee. Hence, the claim was rejected by the then APO/MB and accordingly they have also been informed vide letter No. 720E/15/Pension/55/ Sahzad nagar dated 02.11.2001.

6. Shri Raj Kumar Nehru & Dinesh Kumar produced a succession certificate dated 06.02.2001 issued by Civil Judge (Sr. Division) – Rampur to this office, for payment of settlement dues in their favour. The genuineness of the said succession certificate was sought for from the Hon'ble Court Rampur vide letter no. 720-E/15/Pen/Shahzad Nagar dt. 10.12.2001. As per judgment dated

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13.04.2005 of the Hon'ble Court, the succession certificate deposited by the said party was found false and the same has also been cancelled by the Court. It was also directed that the amount withdrawn from Bank by the party on the basis of above false succession certificate will also be deposited by the party in the Court within 30 days.

7. Further, the applicant who had not accepted the claim of Sh. Nehru increased the enmity of Sh. Raj Kumar Nehru who made a complaint dated 16.01.2002 to the SP/CBI/Dehradun alleging that Sh. Harish Chandra, APO is not arranging payment of settlement dues of his deceased father deliberately & adopting delaying practice. CBI/DDN made a trap on 22.01.2002 and Sh. Harish Chandra, APO/MB was arrested. CBI/DDN filed a charge sheet before Spl. Court Anti Corruption (UP) East, Ghaziabad. Sh. Harish Chandra the applicant/APO/MB was placed under suspension w.e.f. 22.01.2002. As per judgment dated 06.04.2004 of the Spl. Court, Anti Corruption (UP) East Ghaziabad Sh Harish Chandra was convicted. After the conviction of the applicant, the railway board took the action under Rule 14(1) Railway Servants (D & A Rules), 1968 and issued a show-cause memorandum.

8. The applicant submitted 03 representations against the show cause notice. The Disciplinary Authority after going through the applicant's representations and after order of learned Special Judge, Ghaziabad and in the light of Rule 14(1) Railway Servants (D

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& A Rules), 1968 imposed the penalty of "dismissal from service" upon the applicant dated 01.09.2005. The applicant preferred an appeal dated 24.10.2005 against the penalty order and his appeal was considered by the Appellate Authority (President) in consultation with the UPSC, an advisory Constitutional body, and this was rejected. The applicant after rejection of his appeal dated 24.08.2006 filed this instant OA.

9. The counsel for the respondents submitted that the O.A. is not maintainable in the eyes of law as the same is filed before this Tribunal to re-assess the evidences on record and to come to different conclusion as the powers of judicial review of this Tribunal cannot be invoked to re-assess the evidences as held by Hon'ble Supreme Court in the case of **Transport Commissioner vs. A. Radhakrishnan**. He further submitted that this Tribunal's power of judicial review do not take into its ambit the exercise of going into the truthfulness and correctness of the charges.

10. Doubts have been expressed whether disciplinary action against a Government servant could be taken if there is –

- i. a stay of the sentence awarded to the Government Servant, or
- ii. a stay of the conviction of the public servant, in cases where he has gone in appeal and challenged the conviction.

The matter has been considered by the Department of Personnel and Training in consultation with the Ministry of Law and the Central Vigilance Commission and the position as clarified by DOP&T, vide their OM. No. 371/23/92-AVD-III dated 04.03.1994 is as follows.

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Legally speaking, when a person is convicted by a Criminal Court, the same shall remain in force until and unless it is reversed or set aside by a competent court in appeal. The mere filing of an appeal and/or stay of the execution of the sentence do not take away the effect of conviction, unless the appeal is allowed and the conviction is set aside by the appellate court. In the case of Om Prakash Narang vs Union of India and Ors (1990) 12 ATC 365, the full Bench of CAT held that during pendency of an appeal in a criminal case, only the sentence is suspended and not the conviction itself.

11. Counsel for the respondents further submitted that the penalty has been imposed upon the applicant after following due procedure as laid down under the rules. It was only after careful consideration of the judgment dated 06.04.2004 of the learned Special Judge convicting the applicant and the related relevant records and after coming to the conclusion that the grounds of conviction constituted serious misconduct that a show-cause memorandum was issued to the applicant and it was only after considering his representation thereupon that the penalty has been imposed upon him.

12. It is further submitted that the second proviso to Rule - 6 of the Railway Servants (D&A) Rules, 1968 provides inter alia that in case of persons found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive of reward for doing or forbearing to do any official act, one of the penalties specified in Clauses (viii) or (ix) (i.e. removal/dismissal from service) shall ordinarily be imposed and

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where such penalty is not imposed, the reasons there for, shall be recorded in writing.

13. As per extant rules, after Board's decision, as per the proviso to the said Rule 14 of Railway Servants (D&A) Rules, 1968, a show cause Memorandum was served on the applicant wherein he was required to represent against the proposed action/penalty against him.

14. After hearing both the parties and examining all the pleadings made by them, the reliefs claimed in this O.A. are now discussed.

15. The applicant prayed that the dismissal Order dated 01.09.2005 be set aside on the grounds that the Order of dismissal is in fact been passed by Joint Secretary, Railway Board and he is not the authorized authority to do the same. On this point, the respondents have been able to clearly bring out that the actions in the disciplinary proceedings have been initiated only after the decision of the Railway Board to proceed against the applicant under the relevant rules. The Joint Secretary, Railway Board after being authorized by the Board issued a show cause notice dated 07.01.2005 to take action under Rule 14 (1) of Railway Servants (D&A) Rules 1968 provisionally deciding to impose the penalty of dismissal from service on the ground of misconduct, which led to his

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conviction. The show cause notice dated 07.01.2005 was replied by the applicant vide representation dated 25.04.2005.

16. Thereafter, the applicant preferred an appeal dated 24.10.05 before the Secretary Railway Board New Delhi and this was also duly considered by the Board. The opinion of the U.P.S.C. was also obtained before passing the appellate Order and thereafter the decision to impose penalty on the applicant to dismiss him from service was duly arrived at after due consideration by the Appellate Authority (President) in consultation with U.P.S.C., Advisory Constitutional Body and was rejected as there was no merit in it. The dismissal from service was vide Railway Board's order dated 12.09.2005. No infirmity is made out in the passing of the Order and no case is made out for setting it aside or for quashing the dismissal order.

17. This Tribunal as pointed out by the respondents and as held by the Hon'ble Supreme Court in case of **Transport Commissioner vs A. Radhakrishnan** cannot re-assess the evidence on record and come to a different conclusion. The Tribunal's power of judicial review do not take into its ambit the exercise of going into the truthfulness and correctness of the charges.

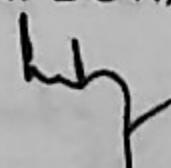
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18. The learned Special Judge Anti Corruption vide his Order dated 06.05.2005 had held the applicant guilty under section 7 and 12 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act.

19. Hence, no grounds are made out in the O.A. for any relief in this matter. Consequently, the Tribunal does not find any merit in this O.A. on the issue of treating the entire period of suspension as on duty and rejects the prayer of the applicant to pay the entire amount of salary and other allowances including all retiral benefits with interest to the applicants.

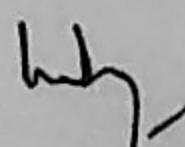
20. The second issue in this O.A. is the request to direct the respondents to appoint one of the sons of late Harish Chandra on compassionate grounds. In this matter the respondents have informed that they had conducted an enquiry in this matter and have found that the applicant in this O.A. had filed an application for payment of settlement of dues and had disclosed that he is a bachelor. The respondents have informed that they have looked into the full details of this matter and DRM Moradabad has made the following recommendation:-

“....It appears that trap, conviction and dismissal from service of late Sh. Harish Chandra the then APO/MB was his bad luck. There are several judgement on the similar nature cases in which relief has been granted to the distress families. In these circumstances prayer of Smt. Rajwati Devi,



is justified and requested to be considered favourably regarding sanction of pensionary benefits as admissible under Rule 65 of Railway Services (Pension) rules 1993 and instruction circulated under P.S. No. 13024/05 and 13522/08....." and he has recommended the matter to General Manager (P), Northern Railways. As the substituted applicant in this O.A. while filing the application for settlement of dues of the deceased had disclosed that he was a bachelor and Railways had carried out a detailed enquiry on the matter of legal heirs/claimants to the deceased applicant and found that in fact there was no successor to the deceased applicant and there is nobody to claim compassionate appointment in place of Sh. Harish Chandra.

21. Neither counsel has been able to clarify as to whether General Manager (P), Northern Railway, Hd. Qrs, Baroda House, New Delhi has taken any decision in this matter during the pendency of this O.A. before the Tribunal.
22. If/Unless the matter has not been decided by the Railways, they are directed to pass a clear and speaking Order on the same within a period of 3 months from the date of disposal of this O.A. They are also directed to furnish a copy of the same to the applicant of this O.A.
23. In view of the facts and circumstances stated above, it is clear that no case has been made out for quashing the dismissal order dated 01.09.2005 as it has been passed under due process and no illegality is made out. Similarly, no case for allowing the

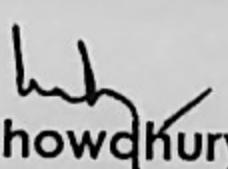


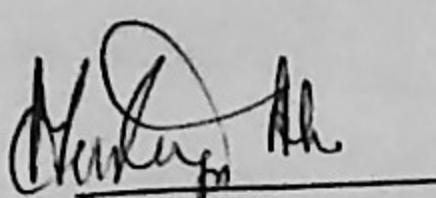
entire period of suspension to be treated as part of service and further payment of entire amount of salary and other allowances is made out. Accordingly, these reliefs are denied.

24. The third relief asked for in this O.A. is to allow pensionary benefits to the substituted applicant in this O.A. On this the respondents have themselves pointed out that the railways sometimes permit sanction of pensionary benefit under Rule 65 of the Railways Servants Pension Rules 1993. Without expressing any opinion on the matter, the respondents are directed to take a decision on the same and communicate the decision to the applicant.

25. With the above directions, the O.A. is partly allowed only on the issue of applicability of Rule 65 of the Railway Servants Pensionary Rules 1993. The O.A. is partly allowed. No other ground in the O.A. is made out.

26. No order as to costs.

  
Nita Chowdhury  
(Member-A)

  
Dr. Murtaza Ali  
(Member-J)

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BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH ALLAHABAD.

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LIST OF DATES & EVENTS.

IN

ORIGINAL APPLICATION NO. 897 OF 2006.

(Under Section 19 of Central Administrative Tribunal Act, 1985).

(District : Moradabad)

Harish Chandra.

----- Applicant.

Versus

Union of India,

and others.

----- Respondents.

Sl.No.	Dates	Events.
1.	28.12.2000	Hari Ram Verma, holding the post of <u>taken porter as Railway Employee</u> died.
2.	January 2001	<u>Raj Kumar Nehru and his brother Dinesh</u> made claim for the settlement dues showing Hari Ram Verma as their father.
3.	January 2001	Hari Ram Verma's mother Chandravati Devi also made claim for the settlement of dues disclosing the Naked reality that his son was unmarried.
4.	25.4.2001	The applicant ordered to be made an enquiry in connection with the claim made by Raj Kumar Nehru and his brother Dinesh for making settlement of dues.
5.	26.6.2001	A detail "Bayan" was taken from Raj Kumar Nehru by Railway authority in

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BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

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IN

ORIGINAL APPLICATION NO. 897 OF 2006.

(Registration Application Under Section 19 of Central  
Administrative Tribunal Act, 1985)

(District : Moradabad)

Harish Chandra.

----- Applicant.

versus

Union of India,  
and others.

----- Respondents.

COMPIILATION NO. I

Sl.No.	Particulars of Documents.	Page Nos
1.	List of Dates & Events.	A - C
2.	Original Application. (U/S 19 of C.A.T. Act, 1985).	1 - 19
3.	Annexure-A-13 : True copy of Order dated 12.9.05.	20 - 27
4.	Annexure-A-14 : True copy of the Appeal dated 24.10.05.	28 - 40
5.	Vakalatnama.	41

Dated : 24.8.06

( H. C. SHUKLA )  
Advocate,  
Counsel for the Applicant,  
Advocates' Association Hall,  
IIInd Floor, New Building,  
Chamber No.54, High Court,  
Allahabad.

( H. C. SHUKLA )

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persuance to enquiry ordered by the applicant.

6. 2.11.01

The applicant rejected the claim of Raj Kumar Nehru and Dinesh communicating working that no further communication in connection with the same shall be entertained.

7. 2.11.01

Raj Kumar Nehru was succeeding writing for the settlement of dues so the applicant acting in law wrote to Head-quarter Authorities.

8. 10.12.01

The applicant wrote to Civil Judge, Senior Division Rampur in connection with issue of succession certificate.

9. 16.1.02

The Raj Kumar Nehru made a complaint before Superintendent of Police, C.B.I. Dehradun ordering statement that the applicant is a corrupt official and is demanding bribe and he does not want to do so, so the case may be enquired into.

10. 22.1.02

A false Trapping took place.

11. 23.1.02

An F.I.R. was lodged by C.B.I. against the applicant.

12. 25.1.02

The applicant's brothers wrote to responsible authorities that the said incident of trapping is false case and his brother may be protected.

13. 7.3.02

The applicant himself wrote to authori-

-ties, that the incident of trapping is a false case and his suspension may be revoked.

14. 30.7.2002

The authority illegally and without jurisdiction granted sanction for prosecution.

15. 30.8.02

C.B.I. submitted the charge sheet.

16. 6.4.04

The Special Court, Anti Corruption U.P. East, Ghaziabad punished the applicant.

17. 7.1.05

Respondent No.2 Joint secretary (E&P) Railway Board, Rafi Marg, New Delhi issued a show cause notice under Rule 14(1) of Railway Servants (D&A) Rule 1968.

18. 13.4.05

Civil Judge (Sr.Div.) Rampur rejected the claim of succession certificate of Raj Kumar Nehru and Dinesh.

19. 25.4.05

The applicant replied the show cause notice dated 7.1.05.

20. 12.9.05

Respondent No.2, Joint Secretary (E&P) Railway Board, Rafi Marg, New Delhi, imposed the punishment Dismissal from the service upon the applicant.

21. 24.10.05

The applicant moved an appeal dated 24.10.05 before Respondent No.1, Secretary Railway, Board, Rafi Marg, New Delhi, which is lingering and pending waiting determination as to the fate of the applicant/appellant.

Dated : 24.08.06

*H.C. Shukla*  
( H.C. SHUKLA )  
Advocate,  
Counsel for the Applicant.