

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

THIS THE 15th DAY OF March 2011

HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)

Original Application No. 55 OF 2007
(U/S 19, Administrative Tribunal Act, 1985)

Smt. Mamta Yadava, Widow of the Late Shri Kishan Yadava,
residing as 1023/1, Nai Basti near Junior High School, Jhansi
(U.P.)

.....Applicant

V E R S U S

1. The Union of India through the General Manager,
North Central Railway, Allahabad.
2. The Chief Workshop Manager, North Central Railway
Workshop, Jhansi (U.P.).

.....Respondents

Present for the Applicant: Sri S.K. Mishra

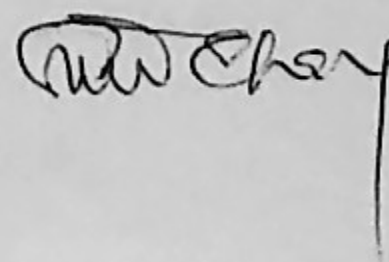
Present for the Respondents: Sri P. Mathur

O R D E R

(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER (J))

Instant O.A. has been instituted for the following
releifs:-

"(1). That the respondents may kindly be directed to produce before this Hon'ble Tribunal the original copies of the order passed upon the departmental appeal dated 29.05.1991 (Annexure-II) filed by late Shri Kishan Yadava and the orders passed on the revision petition dated 16th August, 2000 (Annexure-IV) submitted by the applicant before the Chief Workshop Engineer, Mumbai, for perusal of this Tribunal.



(2). That the Hon'ble Tribunal may be pleased to quash and set aside the order dated 10.05.1991 and order/letter dated 16.11.2006 (Annexure-I & VII) thereby removing Shri Kishan Yadava from his post as being illegal, null and void and against the principles of natural justice as also violative of the provisions of Article 311 of the Constitution.

(3). That the Hon'ble Tribunal may also be pleased to quash and set-aside the orders passed upon the appeal dated 29.05.1991 and upon the Revision petition dated 16.08.2000 filed by the applicant (described in para 1 of the relief clause) as being illegal and against the rules and also against the specific directions given by this Hon'ble Bench in the judgment dated 19.07.2000 (Annexure-III)."

The facts of the case may be summarized as follows:-

2. That the husband of the applicant namely late Kishan had been working in the then Central Railway and now North Central Workshop, Jhansi upon the post of Wagon Repairer Grade-II and Sri Kishan was a permanent employee of the Railways. That Sri Kishan was removed from service vide order dated 10th May, 1991 passed by the Deputy Chief Mechanical Engineer, Central Railway Workshop, Jhansi without holding any inquiry and even without giving him any show cause notice. No opportunity of defending was given to late Sri Kishan before his removal from his post on

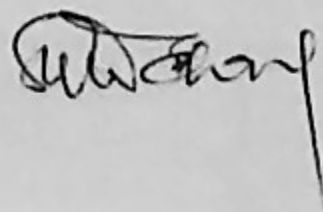
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the grounds of misconduct and it was gross misuse of powers and against the principles of natural justice and violative of Article 311 of the Constitution of India. It was alleged that late Kishan committed the misconduct of allegedly assaulting and manhandling Sri O. P. Kindra, W.M. (R) Jhansi on 10th May, 1991 at 0900 hrs.. That the order of the removal against Sri Kishan was passed within few hours of the alleged incident and was handed over to him before 1600 hrs. the same day. The disciplinary authority did not even apply his mind before passing the order of removal. That the husband of the applicant filed departmental appeal on 29th May, 1991, but appeal was not decided and kept pending. Moreover, if any, decision on the appeal was taken it was not communicated during the life time of Sri Kishan. That Sri Kishan died on 14th January, 1995 notice was sent to the respondents through the Advocate by the applicant that the appeal was decided by the appellate authority on 16th June, 1991 but it was not communicated to the husband of the applicant. As copy of the appellate order was not received hence the same could not be filed. That the applicant alongwith one of her son filed an O.A. No. 886 of 1995 and this O.A. was decided on 19th July, 2000 and the Tribunal permitted the applicant to file revision under rule 24 before the competent authority challenging the appellate order. In pursuance of the direction of the Tribunal a revision petition was filed before the Chief

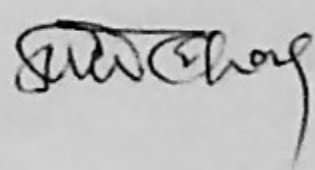
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Workshop Engineer, Central Railway, Mumbai on 16th August, 2000. That the applicant did not hear anything from the office of the Chief Workshop Engineer, Mumbai, but was informed by the Dy. Chief Mechanical Engineer (R) Jhansi that her revision petition was not legally maintainable. That the Dy. Chief Mechanical Engineer, Jhansi was not the competent authority to decide the revision petition as it was addressed to Chief Mechanical Engineer and hence it must be decided by him. Representations were made for deciding the revision by the competent authority but nothing has been done, hence the O.A.

3. Respondents contested the O.A. and file Counter Reply. It has been alleged that the orders dated 10th May, 1991 and 29th May, 1991 were subject matter of earlier O.A.. In that O.A. it had already been decided that the O.A. is not legally maintainable and is barred by limitation and has been dismissed. From the order dated 28th November, 2006 it is also evident that revision under rule 24 is not maintainable as the appeal of the husband of the applicant late Kishan had already been considered and rejected vide order dated 29th May, 1991 and the same was communicated under registered cover to the deceased employee. That a revision was not preferred by the deceased employee and the deceased employee had died



on 14th January, 1995 and hence the claim of the applicant is devoid of merit. It has been held in Rule 21 of the Railway Servants (Discipline & Appeal) Rules 1968 that every person who preferred an appeal shall do so as per rules and in his own name. An appeal forwarded through or counter signed by a legal practitioner or an assisting Railway servant or a Railway Trade Union Officer shall not be entertained but shall be returned with direction to submit it under the signature of the applicant only. That Late Sri Kishan Yadava had not preferred any revision during his life time even after receiving the Appellate Order dated 25th September, 1991 and hence the order dated 28th November, 2006 passed by the respondents will not give any fresh cause of action to the applicant. That the husband of the applicant on particular date was involved in manhandling and assaulting one Sri O. P. Kindra, Manager (Works) while he was taking round of the Workshop. This act of late Kishan Yadava of course unbecoming to the Government employee and it was breach of rule 3(i) (iii) of the Railway Servants (Conduct) Rules 1966. In the peculiar circumstances, the power vested with the competent authority as action was taken under Rules 14(2) of the Railway Servants (Discipline & Appeal) Rules 1968 after recording reasons for dispensing with the regular proceedings to be initiated in the matter as a consequence of which, he was removed from service w.e.f. 10th May, 1991 and the appeal was also rejected vide



order dated 12th June, 1991. Thus, the provisions of Article 311 of the Constitution of India are not at all attracted in the facts and circumstances of the case. That the husband of the applicant was involved in assaulting and manhandling Sri Kindra and as such the very action was necessitated under relevant rules. That the husband of the applicant was very well alive when the appeal was rejected in the year 1991 but he did not challenge the order, that the appeal was not legally maintainable and the same was dismissed. Revision was not maintainable by the widow of the deceased and the same was dismissed as barred by limitation and also not filed by the competent person, hence the O.A. lacks merits and the same is liable to be dismissed.

4. We have heard Mr. Prashant Mathur, Advocate for the respondents and perused the entire facts of the case. Learned counsel for applicant was not present, however, he was required to file written argument but no written argument was filed by him and instead of filing written argument he moved an application to set aside the order dated 04th January, 2011 and this application was rejected as the matter pertains to the year 1991. It has been alleged by the applicant, the widow of the deceased employee that the applicant's husband late Sri Kishan was working in the then Central Railway and now North Central Workshop, Jhansi on the post of Wagon Repairer Grade-II. He was

Sudhakar

removed from service vide order dated 10th May, 1991 passed by the Deputy Chief Mechanical Engineer, Central Railway Workshop, Jhansi without holding any inquiry and even without giving him any show cause notice. No opportunity of defending was given to late Sri Kishan before his removal from his post on the grounds of misconduct and it was gross misuse of powers and against the principles of natural justice and violative of Article 311 of the Constitution of India. It is also a fact that the order of removal was passed on 10th May, 1991 and departmental appeal was preferred on 29th May, 1991. Although, it has been alleged by the applicant that the order of appellate authority was not communicated to the applicant or her husband during his life time, but it has been stated that the appeal was decided on 12th June, 1991 but it was not received by late Kishan during his life time or by the applicant.

5. It has been alleged by the respondent that the applicant was removed from service on the ground of gross misconduct, that the late Kishan manhandled and assaulted one Sri O. P. Kindra while he was taking round of the workshop. This act of late Kishan Yadava of course unbecoming to the Government employee and it was breach of rule 3(i) (iii) of the Railway Servants (Conduct) Rules 1966. Under Rules 14(2) of the Railway Servants

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(Discipline & Appeal) Rules 1968 competent authority is vested with powers that in exceptional circumstances after recording reasons for dispensing with the regular proceedings to be initiated in the matter as a consequence of which, he may be removed and hence he was removed from service w.e.f. 10th May, 1991 under that rules. It is material to perused the provisions of rules 14(2) of the Railway servant (Discipline & Appeal) Rules 1968 it has been provided *"That whether the reasons recorded by disciplinary authority indicating that it is not reasonably practicable to hold inquiry should be communicated to the employee and thereafter, an order can be passed for imposing major punishment. It must also be shown that the delinquent employee involved in hooligans and other unruly elements taking opportunity and time to organize further unlawful activities which may result in the aggravation of the situation which is already explosive and which may lead to disturbance to public order and tranquility and/or damage to vital installations/costly public property. And in order to take the swift disciplinary action against such a potentially dangerous employee who is directly or indirectly responsible for the above situation toward of caution and deter other employee, who are intimated by him, not to abstain from work and where it is not practical to conduct disciplinary inquiry."* It has also been provided under Article 311 (2) of the Constitution of India *"that no such person as*

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aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of that charges against him and given reasonable opportunity of being heard in respect of those charges."

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed.

Provided further that this clause shall not apply—]

(a). where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b). where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c). where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

(3). If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such 'inquiry as is referred to in clause (2), the decision

withholding

thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.

6. Hence in view of this provision of the Constitution of the India if it is not practicable to conduct inquiry against delinquent officer then for the reasons to be recorded by that authority in writing it is not reasonably practicable to hold such inquiry then the decision of dismissal or removal of such person or to reduce him in rank shall be final of that authority. In the present case the disciplinary authority passed the order dated 10th May, 1991 under rule 14(2) of the Railway Service (Discipline & Appeal) Rules 1968. It will be material to reproduce the order of punishment dated 10th May, 1991 in order to scrutinize whether disciplinary authority is justified in initiating the proceeding under Rule 14(2) of the Railway Service (Discipline & Appeal) Rules 1968.

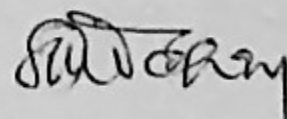
"On dated i.e. on 10th May, 1991 at 9.00 hrs. Shri O. P. Kindra W.M.(R) JHS Workshop was manhandled and assaulted by Shri Kishan Yadav S/o Shri Ram Lal, Wagon Repairer, Gr-II, T. No. 0068093.0 BWR-I shop workshop Jhansi, this is an act of gross indiscipline and misconduct on the part of above employee and can have grave consequences on the peaceful working environment of this Workshop. Also this is a breach of Rule 3(1) of the Railway Service conduct Code 1966 by Shri Kishan Yadav."

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In the said situation normal D.A.R. proceedings of issuing a Charge-sheet and holding a consequent inquiry is not practicable.

Therefore, by virtue of the powers vested under rule 14(II) of Railway Service (Discipline & Appeal) Rules 1968, the undersigned is convinced and hold the view that it is not reasonably practicable to hold an inquiry into the above charges and therefore dispense with normal inquiry procedure laid down under rule....."

7. Under these circumstances it appears that the act of the husband of the applicant was of gross misconduct as he manhandled and assaulted one Sri O. P. Kindra W.M.(R) JHS Workshop. And in order to restore peaceful working and unblemished atmosphere in the Workshop the order was passed under Rule 14(2) of the Railway Service (Discipline & Appeal) Rules 1968. In view of the provision also the disciplinary authority is empowered to pass this in the circumstances of the case. As the act of the husband of the applicant was grave in nature hence the respondents were justified in initiating action under rule 14(2) of the Railway Service (Discipline & Appeal) Rules 1968. It can't be said that the disciplinary authority was not empowered or he acted illegally in initiating proceedings under 14(2) rather the disciplinary authority was fully competent to pass such and order.



8. Hence from perusal of the above rule it is evident that in any exceptional circumstances lengthy procedure of conducting inquiry and serving a show cause notice can be dispensed with and out right employee can be removed from service. Learned counsel for the respondents argued that as the applicant committed gross misconduct and of course unbecoming to the Government servant by manhandling and assaulting one Sri O. P. Kindra (Works) hence this extraordinary procedure was conducted of removal from service. That this misconduct was committed by the husband of the applicant on 10th May, 1991 and on the same date the order of removal from service was passed against the husband of the applicant by the competent authority. That in exceptional circumstances the power vested under Rule 14 (2) can be invoked. It is a fact that no opportunity was provided to the deceased employee of defending himself and no show cause notice was served on the deceased employee and out rightly an order was passed against the applicant for removal from service. But powers must be utilized in exceptional circumstances.

9. It has also been argued by the learned counsel for the respondents that against the order of removal from service late Kishan Yadava preferred an appeal before the appellate authority and the appeal was also dismissed on 12th June, 1991. Thereafter, no revision etc. was filed by the deceased

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during his life time. It is an undisputed fact that the deceased survived even after dismissal of appeal on 12th June, 1991 even he had a right to challenge the order by filing a revision before revisional authority but he preferred no revision rather the revision was filed after his death by the applicant. It has also been alleged that the O.A. No. 886 of 1995 was filed before this Tribunal challenging the order of respondents and the O.A. was decided on 19th July, 2000 and the order is required to be reproduced which as under:-

"This application has been filed challenging order dated 10th May, 1991 by which the husband the applicant No.1 Sri Kishan Yadava was dismissed from service against the aforesaid order, appeal was filed by husband before the respondent no.1 on 29th May, 1991 which was dismissed by Appellate Authority by order dated 12th June, 1991 which has not been challenged. This O.A. has been filed on 21st March, 1995 whereby the appellate order was confirmed. In the circumstances in our opinion this application is not legally maintainable and is also time barred, the application is accordingly rejected. However, the applicant may challenge the appellate order in Revision under Rule 24 before the Competent Authority which will be considered in accordance with law."

10. From perusal of the above it appears that the O.A. was dismissed as not legally maintainable. But at the same time it is provided to the applicant to prefer revision in order to challenge the appellate order. And to file revision before the competent authority and it will be decided in

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accordance with law. Although, no relief was granted to the applicant but even then it was provided that the applicant may file revision and accordingly the revision was filed and it was dismissed by the respondents with the observation that it was not maintainable.

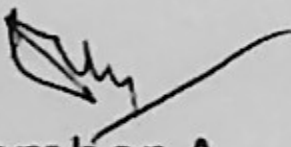
11. It has been argued by the learned counsel for the respondents that as per Railway Rules appeal or revision is required to be filed by the employee concern by his own signature and it can't be filed through an Advocate or through some body else and as it was not filed by competent person and hence it was dismissed. It is also evident that the revision was also barred by limitation. It is also a fact that the appeal was decided by the competent authority during the life time of the deceased on 12th June, 1991 and he preferred no revision against that order of the dismissal of appeal during his life time and he lived after the rejection of the appeal. It is an admitted that the applicant died on 14th January, 1995 during this period of about more than three years Sri Kishan did not challenge the order of the appellate authority before this Tribunal or by the filing revision. And the applicant was not the competent person to file the revision.

12. For the reasons mentioned above we are of the opinion that as applicant manhandled, misbehaved and

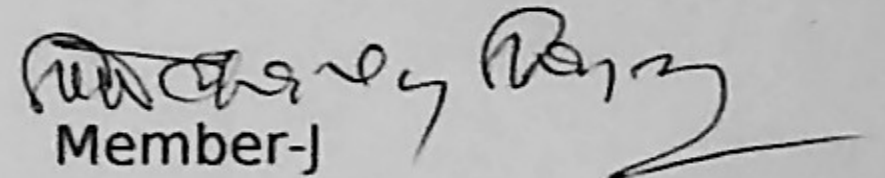
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assaulted one Sri O. P. Kindra Manager (Works) while he was on round of the workshop hence he was removed from service on 10th May, 1991 under rule 14(2) of the Railway Servants (Discipline & Appeal) Rules 1968 and the order was passed perfectly in accordance with law and rules. And it can't be said that the respondents committed some illegality in not providing opportunity to the applicant. Hence the deceased also filed an appeal and appeal was also dismissed on 12th June, 1991 and, thereafter, the deceased remained silent till his death on 14th January, 1995. In our opinion the O.A. is devoid of any merit and the same deserves to be dismissed.

13. O.A. is dismissed. No order as to costs.


Member-A

/Dev/


Member-J