

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

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O.A. No. 317 of 1988  
T.A. No.

DATE OF DECISION 29th September 1982.

Smt. H.C. Raval and Ors. Petitioner

Shri B.B. Gogia Advocate for the Petitioner(s)

Versus

Union of India and Ors. Respondent

Shri B. R. Kyada Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.V. Krishnan

Vice Chairman

The Hon'ble Mr. R.C. Bhatt

Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

Shri Chimanlal J. Raval  
C/o Hansa Villa,  
Lal Bungalow  
Behind Bachubhai Vailis House,  
Surrendranagar

Applicant.

2. Smt. Hansaben Chimanlal Raval,  
Wife of deceased Shri Chimanlal J. Raval  
Soni Talavadi, Lal Dela,  
Dhrangadhra

3. Mr. Kartikeya C. Raval  
Soni Talavadi,  
Lal Dela, Dhrangadhra.

(2 & 3 are legal heirs)

Advocate Shri B. B. Gogia

Versus

1. Union of India and Ors  
Through General Manager  
Western Railway,  
Churugate, Bombay.

2. Divisional Railway Manager  
Western Railway  
Rajkot.

3. Sr. Divisional Electrical Engineer  
Western Railway,  
Rajkot.

Respondents.

Advocate Shri B.R. Kyada

ORAL JUDGEMENT

In

O.A. 317 of 1988

Date: 29-9-92

Per : Hon'ble Shri R.C. Bhatt

Member (J)

Shri B.B. Gogia for the applicant.

Shri B. R. Kyada for the respondents.

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1. The Original Applicant Shri Chimanlal J. Raval had filed this application under section 19 of the Administrative Tribunal Act, seeking the relief that the order of dismissal from services passed by the Disciplinary authority and subsequently confirmed by the Appellate authority, <sup>to be set</sup> ~~to~~ quash and set aside and Tribunal be pleased to declare that the applicant <sup>is</sup> ~~be~~ continued in service as electrical feeder with all the consequential benefits such as pay and allowance seniority promotion etc., as and when it was due and the respondents may also be directed to grant consequential benefits to the applicant. During the pendency of the application, the original applicant expired on 4-4-1989 and <sup>and</sup> his heirs legal representatives were brought <sup>into</sup> ~~into~~ on records <sup>in the</sup> ~~of the applicant's~~ application who further prosecuted this application. They also amended the application alleging that the deceased was not supplied with the report of the inquiry officer before imposing penalty/punishment, <sup>though</sup> ~~which~~ the inquiry officer <sup>was different</sup> ~~had~~ from the Disciplinary authority. The original applicant had made various averments in the application challenging the order of

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of punishment.

2.

The respondents have filed reply contending that the applicant was imposed with the punishment of removal from service vide letter dated 7th Sept., 1981, that the same order was <sup>sent</sup> ~~given~~ by Registered Post at his last known address twice, but the same returned with the endorsement that the addressee was not available and hence the same was afterward affixed on the doors of his residence and then again it was <sup>sent</sup> ~~sent~~ to the applicant on 21st March 1983, which was ~~received~~ by him as stated in his application para 6 (b) but he tried to avoid the ~~delivery~~ <sup>delivery</sup> of the Registered Post. The respondents in details <sup>have</sup> ~~have~~ refuted the other averments made in the application.

3. The respondents were directed to produce the documentary evidence regarding the decision of the Disciplinary authority and also to produce the evidence <sup>to show</sup> ~~whether~~ the inquiry report was served before the Disciplinary authority took the decision of punishing the applicant.

4. We have heard the learned Advocate Mr. Kyada on this point and he has referred to the letter dated 7th <sup>September</sup> ~~December~~ 1981 sent by Registered Post to the applicant. We have perused ~~that~~ <sup>the</sup> letter which ~~also~~ at the back of it reveals the decision of the

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Disciplinary authority. This letter is self explanatory to the extent that it in clear terms shows that finding of Inquiry Officer were also sent along with <sup>it</sup>. There is no evidence produced by the respondents that the report of inquiry was sent earlier to this Registered Post letter dated 7th September 1981. Therefore, there is no doubt in our mind that the findings of the Inquiry Officer were sent for the first time along with the decision of the Disciplinary Authority by registered letter dated 7th September 1981.

5. In this view of the matter, the learned Advocate Mr. Gogia submitted that the principle of natural justice is violated as no opportunity, was given to the deceased applicant to make representation against <sup>the</sup> finding of the inquiry officer before the Disciplinary Authority took the final decision and in support of his contention, he has relied on the decision of the Hon'ble Supreme Court in Mohammed Ramzankhan's case. The learned Advocate for the respondents <sup>submitted</sup> that as the original applicant has expired during the pendency of this application, his legal heirs and representation have no legal right to continue <sup>the</sup> proceedings. We see no substance in this contention. <sup>per</sup> ~~against~~ <sup>the</sup> right of the original applicant about his service benefits, <sup>enures</sup> ~~while enuring~~ also for the benefit of his legal heirs after his death <sup>in the case</sup> ~~to that~~

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like the present one because the original applicant had not only challenged the decision of the authorities concerned regarding his dismissal but he has also prayed for the relief that he should be declared as being in continuous service if the said decision of the authority concerned is held illegal and also sought the direction to grant all consequential benefits.

6. In this view of the matter, the heirs and legal representatives of the applicant have a legal right to continue the original proceeding. The next question arises whether the order of dismissal passed by the Disciplinary authority and confirmed by the appellate authority should be quashed, in view of the decision in Mohammed Ramzankhan's Case. In our opinion, the answer would be in the affirmative because no opportunity was given to the applicant to make representation against the findings of the Inquiry Officer before the Disciplinary authority took a final decision of punishment. The third question would be about the effect of quashing the order of Disciplinary authority as well as of the appellate authority, in view of the fact that the original applicant has expired. If the applicant had been alive, it was open for the respondents to continue the Disciplinary proceedings from the stage of giving opportunity to the original applicant to make representation against the

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the findings of the Inquiry Officer but that stage does not survive as the original applicant has expired. Moreover, the respondents would not be legally entitled to proceed against heirs and legal representatives of the applicant <sup>asking them</sup> to make representation as the applicant has expired and hence the only course open would be that the heirs and the legal representatives of the applicant would be entitled to the benefits which the applicant would have got if he was not faced with the Disciplinary proceedings. In short, the Disciplinary proceedings against the deceased has come to an end as he has expired. <sup>and</sup> also in view of the fact that we have quashed the orders of the Disciplinary authority and the Appellate Authority for the reasons mentioned above.

7. It may be noted at this stage that the applicant if he had survived, would have retired on 30th April, 1986. The respondents learned Advocate submitted that there was unauthorised absence on the part of the applicant from 1976 to 1981 and therefore he submitted that so far as the wages of that period is concerned, the legal heirs of the applicant would not be entitled to that amount. The learned Advocate Mr. Gogia submitted that the original applicant was prepared to resume duty during that period but the respondents did not permit him to resume. In our opinion, the readiness of the original applicant to resume duty has nothing



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to do with the charge of absence made against him and therefore the question as to whether the respondents did not permit him to report on duty, also would not be a matter which can help the applicants. Therefore, the applicants<sup>^</sup> would not, in our opinion be<sub>^</sub> entitled to the benefits for the period from 1976 to 1981 and the retiral benefits shall be calculated as per the following order.

ORDER

8. The application is allowed to the extent that the present applicants would be entitled to retiral benefits on the footing that the applicant had retired on 30th April 1986. The respondents are directed to fix the retiral benefits etc., for the applicants, considering that the applicant has retired on 30th April 1986 less the benefit for the period from 1976 to 1981 for unauthorised absence as per the regulations. The respondents to calculate and fix the retiral benefits within 3 months from the date of receipt of this judgement.

The application is disposed of accordingly. No order as to cost.

*R.C. Bhatt*  
(R.C. Bhatt)  
Member (J)

*N.V. Krishnan*  
29/5/82  
(N.V. Krishnan)  
Vice Chairman