

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 97/90**T.A. NO.****DATE OF DECISION** 17/8/94Smt. Jubeda Mohammad Iqbal **Petitioner**Mr. M.K. Paul**Advocate for the Petitioner (s)****Versus**Union of India and Others**Respondent**Mr. B.R. Kyada**Advocate for the Respondent (s)****CORAM****The Hon'ble Mr. K. Ramamoorthy** **Member (A)****The Hon'ble Dr. R.K. Saxena** **Member (J)****JUDGMENT**

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

Smt. Jubeda Mohammad Iqbal
 C/o Shri Pirmohammad,
 Behind Rukhadiya Colony
 Rajkot.

VS
 Applicant

Advocate Mr. M.K. Paul

Versus

1. The Union of India,
 Owing Western Railway
 Through the General Manager
 Western Railway, Churchgate
 Bombay.

2. The Divisional Railway Manager
 Western Railway Kothi Compound
 Rajkot.

Respondents

Advocate Mr. B.R. Kyada

JUDGMENT

In

O.A. 97 of 1984

Date: 17/8/94

Per Hon'ble Dr. R.K. Saxena

Member (J)

This application has been filed by Smt. Jubeda Mohammad Iqbal— widow of Late Mohammad Iqbal who was working as Cleaner under the respondents since 1976. He was charge-sheeted on 30-5-1983 and was removed from service on 28-8-1984 after holding the inquiry as stipulated under the Rules. The husband of the applicant had challenged the order of termination by filing Civil Suit No. 1027/84 before the Civil Judge, Rajkot. On the creation of this Tribunal, the said case was transferred to this Tribunal and was numbered as T.A. 1334/86. The Tribunal

directed the husband of the applicant on 26-7-1988 disposing of the said T.A. 1334/86 that he should present ^{at} the appeal before the Appellate Authority within 15 days and the Appellate Authority should dispose of the said Appeal within three months. It is stated that the appeal was preferred to ~~to~~ the Divisional Railway Manager on 4-8-1988 but it was decided by D.M.E., Rajkot on 16-11-1988 and was rejected. A mercy petition was also moved before the Divisional Railway Manager on 4-12-1988 but before it could be decided, the husband of the applicant died on 16-4-1989. Therefore, the applicant also preferred another mercy petition on 24-4-1989 in which employment on compassionate ground was also sought. The application was rejected and thus the applicant came to this Tribunal seeking the relief ^{that} ~~of~~ the termination order dated 28-8-1984 be quashed and the period from the date of termination i.e. 28-8-1984 till the death of the applicant i.e. 16-4-1989 be treated as duty period, and full salary and other consequential benefits be directed to be paid. Besides, the family pension, Provident Fund amount, ^{claimed} Gratuity and other benefits ~~be~~ also ^{be} directed to be paid.

2. The respondents contested the case on the ground that the husband of the applicant was charge-sheeted for his mis-conduct and the inquiry was done according to the Rules. An opportunity of hearing was given to him and that the charges were found established ^{and then} his services were terminated by the Disciplinary Authority. Thus the order of termination is quite legal and does not suffer from any defect. It is contended that the Appeal which was preferred by the husband of the applicant was taken into consideration and was rejected. The mearcy appeal was also rejected and the order was communicated to the applicant.

3. This case is pending disposal since 1990. It is seen that either the learned counsel for the applicant or of respondents had been seeking time or were not present. It was found on 22-6-1994 that the learned counsel for the applicant sought adjournment through the learned counsel for the respondents. It was, however, allowed and the case was fixed for final hearing on 19-7-1994. On that date also adjournment was sought and the case was adjourned to 22-7-94. When it was taken up on 22-7-1994, the learned counsel for the applicant was not present. The learned counsel for the respondents was present. We, therefore perused the file and heard the learned counsel for the respondents. We were, however, deprived of the arguments of the learned counsel for the applicant.

4. The important question in this case is whether the applicant who is the legal representative of her deceased husband, ^{this case or} can prosecute the mercy appeal on behalf of the deceased husband whose services were terminated as early as on 28-8-1984. It is admitted by the applicant that her husband had preferred an appeal against the order of punishment passed by the Disciplinary Authority, and that appeal was decided on 16-11-1988. It is also contended on behalf of the applicant that her husband had preferred a mercy appeal to the Divisional Railway Manager but before it could be decided, her husband expired on 16-4-1989.

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The contention of the applicant is also to the effect that she had also moved mercy petition but the same was rejected and thus she approached this Tribunal. There is no dispute that the Central Administrative Tribunal and before its creation High Court was exercising the jurisdiction of Civil Court and the provisions of Civil Procedure Code were applicable. This Tribunal is also exercising the same jurisdiction now. It is, therefore, necessary to find out the definition of "Legal Representative" and the circumstances under which the heirs of Legal Representative can enter into the shoes either of the plaintiff or the defendant. The term "Legal Representative" has been defined under section 2 (11) of the Code of Civil Procedure, 1908. It reads:

" Legal representative means a person who in law represents the estate of a deceased person and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in representative character, a person on whom the estate devolves on the death of the party so suing or sued".

It will appear from this definition that the person must represent the estate of the deceased which might have devolved on the death of the party in suit. Order XXII of the Code deals with the death, marriage and insolvency of parties and the manner in which and when the legal representative is substituted. Rule 1 of Order XXII lays down that the death of plaintiff or defendant shall not cause the suit to abate if the right to sue survives.

Thus the important and crucial point is to see if right to sue survives. The learned counsel for the respondents in the case before us argued that the deceased husband of the applicant who was holding a post of Cleaner under the respondents, died and the holding of such post was personal right, and thus this personal right does not devolve on the applicant. He said about several decisions on this point but no decisions could be cited either at the time of arguments or thereafter. We have already mentioned that we were deprived of the arguments of the learned counsel for the applicant because he did not appear in the case at all. Therefore we had to undertake this exercise of finding the available case law on the point ourselves. The first case on this point was J.P. Mathur Vs. U.P. Government, AIR 1965, All. 114. In this case Shri J.P. Mathur was a Government employee and was dismissed. He had filed a suit for declaration that his dismissal was illegal and also sought consequential reliefs. The suit was dismissed and, therefore, an appeal was filed but during the pendency of the appeal, J.P. Mathur died. His legal representatives came on the record but their locus standi was challenged by the State. The Division Bench of Allahabad High Court held as given below:

" These legal representatives are not entitled to the declaration to which the plaintiff would have been entitled but nevertheless the legal representatives are entitled to a finding that the plaintiff's dismissal on 23-8-1941 was an illegal dismissal. Mr. Dhaon appearing for the respondents contended that we could give no relief whatsoever to the legal representatives of the plaintiff after his death, in as much as the primary relief and other consequential relief sought by him, were only personally available to the plaintiff

and did not enure to the benefit of the legal representatives

The arguments of MR.Dhaon in its broad aspect is not sound for we are unable to hold that in no case the legal representatives be entitled to the benefit of a declaration which a plaintiff would have got if his rights were in someway dependent of such a declaration. In this case from the fact of the plaintiff's unlawful dismissal however, certain consequences the result of which would affect the legal representative in the absence of the plaintiff.

The plaintiff was alive at the time when his dismissal was made. Indeed he lived for 10 years after his illegal dismissal. The consequence of our holding that the dismissal was illegal must be that the applicant would be entitled to the salaries or allowances or such other benefits that accrued to him under the law. To his money it must be interpreted in terms of money in many a case the legal representatives would be entitled to after his death.

In this view of the matter it is important for us to say that with the death of the plaintiff the suit died and the Court could give no relief to the legal representatives who were before the Court continuing the appeal on behalf of and in place of the plaintiff. We therefore hold that although the legal representatives would not have been entitled to seek the declaration which the plaintiff sought after his death, they are entitled to our finding that the dismissal of the plaintiff was wrongful and further that they are entitled as a result of such finding to the consequences that flow from such a finding.

According to this decision the relief was split up into two parts and the first part i.e. the declaration of the dismissal as illegal was found within the compass of the legal representatives

but the consequential relief which flowed from the finding was found available to the legal representatives.

The second case U. Vridachalam V. State of Madras, AIR, 1966 Madras 260, is also on the point but in this case contrary view was taken. In that writ the quashing of the order of dismissal and to restore the petitioner's right in service were sought. It was therefore held that for money benefit and other emoluments the legal representative had to file a separate suit even if the writ petition succeeded and on this ground and also on the consideration that the relief sought was purely personal to the delinquent officer and such personal right which really involved the continuance in service or otherwise of a person, would not survive, to the legal representative.

In the case of Ibrahimhai Karimbhai Vs. State of Gujarat AIR 1968 Guj. 202, the view propounded by Allahabad High Court was taken and the view of the Madras High Court was discarded. The same point came for consideration in the case P.V. Sharma Vs. Chairman Committee of Management, the SC Railway Employees Corporation Credit Society Secundrabad AIR 1977 A.P. 319 in which the Division Bench took a view that the right to office being a personal, any relief seeking continuance or restoration of office was personal to the employee which did not survive his death and therefore the legal representatives were not found entitled to prosecute the proceedings commenced by the applicant for such a relief.

It was observed that the mere fact that there was possibility of the petitioner obtaining the reliefs in case he succeeded in establishing the right which ^{was} claimed in the particular proceedings, could not be taken into account in determining whether a right to sue survived or not. This view was ~~xx~~ rejected by the Karnataka High Court in the case of Suresh Shetty and others vs. Chief Executive Officer, Taluka Development Board, Kundapur and others 1989 (Lab. I.C.) 408. In this case, the Division Bench of the Karnataka High Court was hearing an appeal against the judgement of the Single Judge who had followed the view of Madras High Court. Disposing of this appeal and disagreeing with the view of Andhra Pradesh High Court their Lordships of Karnataka High Court held that the right to hold office under the Governmental office involved a constitutional status. Removal from such an office was illegal, could amount to unconstitutional act, which was void because an illegal dismissal order was always treated as void order resulting in the officer holding the post vested with the right to claim arrears of salary and other emoluments. In this case, the Division Bench of Karnataka High Court did not give any reasons against the view which was taken by the Andhra Pradesh High Court holding that the right to hold the office was personal right and it could not survive his death. The Division Bench, however, observed that the legal concepts could not be static because ~~xx~~ over the years, service law has grown vastly and several old concepts were being given up to be replaced by more ~~xx~~ modern equitable consideration. Illustratively section 10 (8) of Industrial Disputes Act was mentioned and it was held that the

view which was taken by Allahabad, Gujarat and Punjab High Court (in the case of Manmohan Anand vs. State of Punjab 1972 SLR 852) holding that the ~~view~~ ^{right to sue} survived to legal & representatives) was preferred.

The Rajasthan High Court in Gul Mohammed vs. Union of India 1973 (2) SCR 35 holds the view that the legal representatives were ^{entitled} to the relief which was claimed against the dismissal from service and during pendency ^{of} the petitioner having died. In this case, the view taken by Madras and Andhra Pradesh High Court was followed but disagreed with the view which was taken by the Gujarat High Court.

From the analysis of the above cases, it is apparent that there are two clear cut views on the point and this controversy has not been set at rest by any judgement of the Supreme Court directly on the point. As has been mentioned in the ~~defence~~ ^{definition} of the legal representatives and the phraseology adopted under Order XXII of Civil Procedure Code, it emerges that the substitution of legal representatives in place of the deceased plaintiff is intimately connected with the estate ^{of} the said deceased plaintiff. It is for these reasons ^{that} it was mentioned in Order XXII that the right to sue must survive. To hold a post is undoubtedly a personal right and if the deceased person has been deprived of that office by way of an order of dismissal or removal, the legal representatives cannot get the said office. This is a crucial point for

determination is whether the legal representatives in such a case could get that office, and if the answer is in affirmative only then it could be said that the right to sue survives. The Division Bench of Andhra Pradesh High Court in the case P.V. Sharma (supra) had clearly attempted to ~~separate~~ the dismissal order from consequential relief. To obtain consequential relief is not a reality but an imaginary preposition because it is dependent on the order of dismissal or removal being set aside. If the order of dismissal or removal is not set aside, the consequential relief though claimed in the petition is of no relevance. This view is supported from the observations which were made before their Lordships of Supreme Court in the case State of Madhya Pradesh vs. State of Maharashtra and others AIR 1977 SC 1466. In this case their Lordships held that the right which was in existence at the time of the first suit could not be regarded as portion of his claim. It may be pointed out that in this case a plaintiff who was in service of M.P. Government, was placed under suspension on 9-1-1954. The order of suspension was challenged and ultimately it was held to be illegal. He was therefore reinstated. He was again suspended and removed from service in February 1956. The plaintiff then filed another suit for declaration that the order was illegal, void and inoperative and that the plaintiff should be deemed in continuous service from 16-9-1944 and an amount of Rs. 64588 2 anna and 6 paise be awarded in his favour. The state had taken objection that since in the first suit it was filed against suspension, the plea of payment of salary was not taken and therefore it was time barred. It was in this context that the Supreme Court had held the above view.

It suggests and approves the view of Andhra Pradesh High Court that the consequential benefits cannot be deemed to be in existence at the time of challenge of dismissal order.

Provisions under section 306 of the Indian Succession Act, 1925 will have to be considered because it deals with the same ~~situation~~. It reads as under:

"306. — Demands and right of action of or against deceased survive to and against executor, or administrator. — All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault, as defined in the Indian Penal Code, (45 of 1860), or other personal injuries not causing the death of the party and except also cases where after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory."

This section embodies the conditions under which the right to prosecute or defend in action or special proceedings may survive. Certain matters such as action for defamation, assault or personal injuries except for causing the death of the party, do not survive. In a case Smt. Phoolrani and Others vs. Nobatram Ahluvalia, AIR 1973 SC 2110, it was held that the legal representatives of landlord (since deceased) had no right to continue the proceedings as initiated by the landlord for ejectment of the tenant because the bonafide requirement of the premises — for the residence of himself (deceased landlord) and his family members was a personal requirement and such a personal cause of action

must perish with him when the application for ejection had been decided on merits. It was, however, observed that it was more so particularly when the continuance of the proceedings required determination of wholly different and distinct issues.

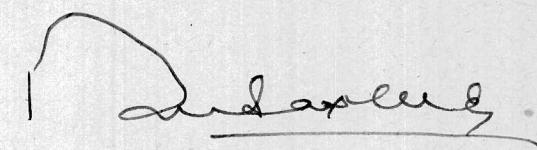
There is another aspect of the problem also. If the legal representative of a deceased employee can be permitted to prosecute with the pending proceedings on the pretext that consequential relief claimed along with the quashment of order of termination, there could be no justification for dropping the inquiry against the deceased employee. The interpretation of law cannot be one sided. It is for these reasons, that the right to sue does not survive in personal matters.

We, therefore, hold that the applicant in the present case before us cannot claim to be legal representative for seeking the quashment of the order of dismissal or removal of her husband. It is true that this application has been made not only for quashment of order of termination but also for consequential benefits, including family pension and others. It is mandatory condition under Rule 10 of CAT (Procedure Rules, 1987) that not more than one relief can be sought. Thus the present application can be deemed only relating to challenge the order of termination as against which the right does not survive to the legal representatives. Moreover, it is not the case where the application was moved by the deceased husband of the applicant and she wanted to continue with the case. Here the application has been moved by the applicant herself and it is, therefore, not a continuity of pending case or proceedings, but actually it is initiation of proceedings before this Tribunal.

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Assuming for a moment that the view taken by the Division Bench of Karnataka High Court in the case cited above is correct, we do not find any ground on which the order of termination may be declared illegal. As such the question of consequential relief does not arise and the applicant is not entitled thereto. The same view was taken by the Delhi Bench of Central Admn. Tribunal in the case Ram Swaroop (through legal representatives) Vs. Union of India (1991) 16 ATC 384 and in Sarojchandra Shekaran (Ms.) Vs. Union of India and Others (1993) 25 ATC 668 by Madras Bench of Central Admn. Tribunal.

Having considered all these points discussed above, we come to the conclusion that there is no merit in the case of the applicant and the application is, therefore, rejected.



(Dr. R.K. Saxena)
Member (A)

Date : 17/8/94

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

I have gone through the Judgment delivered by my brother Dr.R.K.Saxena.

2. With great respect I will have to record by note of dis-agreement, on the reason adduced for rejecting the petition. The proposition of law as expounded therein is a matter of long term significance, and hence needs a relook.

3. The judicial decisions on the basic sustainability of the application ^{against} ~~under~~ the disciplinary proceeding by the heirs of the deceased employee, has been amply brought out by my learned brother and it is a fact that the whole issue of right of a legal representative to pursue such cases has been a matter of differing judgments. The matter itself is one which has a wide ranging implication. As my learned brother has rightly pointed out, both the sides of the arguments have been favoured by one court or another. I share with my brother the regret at the fact of Tribunal's being deprived of the arguments of the learned counsel for the applicant on this important question. However, on this issue the Supreme Court has since delivered a judgment on 16.11.1993, in Civil Appeal No.107 (N L) of 1984, reported in Vol.III Current Service Journal, 1993, P.327. Though the issue there relates to the prosecution of cases under the Industrial Disputes Act regarding a workman who dies during the pendency of application, the issue raised in this judgment is very much germane to the issue raised by my learned brother. In fact the deceased person of whom the applicant is the heir, was an employee of the Railways, and was thus very much a workman who could have raised his dispute under Industrial Disputes Act also.

4. In this judgment the Supreme Court has conclusively decided that "it is open to the heirs and legal representative of the workman to have the matter agitated and decided."

5. On the specific provisions of Section 306 of the Indian Successions Act cited by my brother in his judgment, the Supreme Court has reiterated with approval the findings of the Gujarat High Court. The remarks of the High Court of Gujarat on this point along with approving remarks of the SC are reproduced below :

In Bank of Baroda V. Workman, 1979 (II)LLJ 57, a Division Bench of Gujarat High Court, followed the reasoning of Chandrasekhara Menon, J. in Gwalior Rayons' case. B.J.Diwan, C.J. speaking for the Bench quoted verbatim from Gwalior Rayons' case and in addition observed as under :

"It may be pointed out that under Section 306 of the Indian Succession Act, "All demands whatsoever and all rights to prosecute or defend any action or special proceeding existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault, as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory." In this context, it must be pointed out that, so far as the granting of relief of reinstatement is concerned, it would be nugatory on the death of the workman concerned pending the reference before the Tribunal or the Labour Court, as the case may be. However, reinstatement involves the concept of backwages also and very often the Tribunal has to pass orders providing for the backwages from the date of wrongful termination of the services till the date of reinstatement. It is only under the Industrial Disputes Act that in the field

of industrial relations, the Tribunal concerned can direct reinstatement of the workman. Under the ordinary civil law, it is not open to a Civil Court to direct reinstatement of a workman. The only thing that a Civil Court can do is to provide for damages for wrongful termination of service or wrongful dismissal. Again, the whole concept under the Industrial Disputes Act of the Tribunal ascertaining whether the termination of services was proper, legal and just, is unknown to the Civil Courts. So, in the case of a deceased workman where the reference is under Section 2 A of the Industrial Disputes Act, the heirs and legal representatives can agitate the question, firstly, whether the termination of the deceased workman was just, legal and proper, and secondly, if it was wrongful and invalid, then, what compensation in terms of money could have been given to the workman from a particular date fixed by the Tribunal till the date of reinstatement and if reinstatement cannot be granted because of the death of the workman, till the date of his death. It is therefore, in this context of Section 306 of the Succession Act that the right to prosecute these special proceedings before the Industrial Tribunal survives to the administrators, executors, heirs and legal representatives of the deceased workman. It is only a cause of action for personal injury or in the case of defamation or assault or battery or mislicious prosecution which cannot be said to survive after the death person concerned."

We have quoted in extenso the reasoning of the Kerala High Court in Gwalier Rayon's case and of the Gujarat High Court in Bank of Bareda's case. We agree with and approve the reasoning and the conclusions reached therein.

6. The Supreme Court has given a decent burial to the maxim *actio personalis moritur cum persona* and has spelt out the very limited purpose for application of this maxim which is the basis for the proposition of law mentioned by my Hon'ble brother. It is obvious that it operates only in a limited class of "actions ex delicto" such as actions such as actions for damages for defamation, assault or other personal injuries not causing the death of the party, and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory."

7. The Supreme Court has very categorically stated in para-14 of this judgment that "the death of the workman during pendency of the proceedings cannot deprive the heirs or the legal representatives of their right to continue the proceedings and claim the benefits as successors to the deceased workman."

8. While delivering the judgment, the Supreme Court has itself taken note of the sharp of difference of opinion in this case between the Assam, Patna, Delhi and Orissa High Courts on the one hand and Kerala and Gujarat High Court on the other. Now, however, since the Supreme Court has laid down the law for us in this regard we will have to be guided by this proposition of law. It is true that this Judgment has been delivered to answer the two questions as under :

"Kuldip Singh, J. - The question for our consideration, in this appeal, is whether an industrial dispute survives when the workman concerned dies during its pendency ? Can the proceedings before the Tribunal/Labour Court be continued by the legal heirs/representatives of the deceased workman ? "

9. The answer given by the Supreme Court however is also an answer to the basic issue raised in the judgment of my learned brother referred to above. It is also seen that in the cases decided by the Supreme Court the application had been filed by the workman concerned whereas he had died ^{of} and the question was/one showing his successors in the further proceedings, while in the present case the applicant had died even before the petition was filed before this Tribunal. This fact does not take away the substance of the matter which relates to the issue of heirs pursuing the cause after the death of the concerned civil servant. There can be gross instances of non application of mind in departmental proceedings. It is also possible that just before the petition can be filed the applicant can die but that by itself does not take away the right of the legal representatives or heirs to pursue the matter. In view of the definitive ruling given by the Supreme Court, in this case of Rameshwar Manjhi Vs. The Management of Sangramgarh Colliery, no doubt can remains on this basic issue and on this issue the petition cannot be rejected.

10. On the merits of the case itself I agree with the conclusion - the application being devoid of merit and is rejected for following reasons.

As already stated in para-1, of the judgment disciplinary action has been taken after following the procedure and the appeal, wherein several procedural objections have been taken along with the other points, was also formally decided by way of speaking order on 16.11.1988, after a personal hearing - - - given on 28.10.1988. It is obvious from the working of the representation of 14.12.1988, that it is a mercy petition and reading the contents therein it is obvious that the applicant had

accepted the appellate order but only sought for mercy on the ground of poverty and inability to support six family members. Thus, there is no formal order passed in a original capacity or in an appellate capacity which is sought to be adjudicated. A mercy petition by its nature is a matter for administrative decision by the department concerned and therefore, such a decision cannot obviously be interfered with by the Tribunal. In fact, even when the appellate orders are contested, the Tribunal cannot go into the question of quantum of punishment. On the same analogy the question of challenging the reply given by the respondents/^{on} a mercy petition cannot arise. If the application were to be taken also, as a challenge to the appellate order alone/^{on} the petition will suffer from the vice of delays and laches since that impugned order was passed on 16.11.1988 and the incident of termination took place on 28.8.1984. In view of the above, the application is devoid of merit and is rejected.


(K. Ramamoorthy)
Member (A)

ait.

5.2/97

SECTION-IX

D.No. 1890/95/Sec.IX
SUPREME COURT OF INDIA
NEW DELHI.

DATED:- 1st May
28th February, 1997

FROM:-

SECTION OFFICER,
SUPREME COURT OF INDIA,
NEW DELHI.

Central Administrative Tribunal
Ahmedabad Bench.
Record No. 3246
Date 14.03.97

TO:-

THE REGISTRAR,
CENTRAL ADMINISTRATIVE TRIBUNAL,
AHMEDABAD.

✓

CIVIL APPEAL NO. 1538 OF 1997
(From ~~Ex-Officio~~/Central Administrative Tribunal
Judgment and Order dated 17th August, 1994
in O.A.No.97 of 1990).).

SMT.JUBEDA MOHAMMED IQUBAL

..APPELLANT(S)

-VERSUS-

UNION OF INDIA AND ANR.

..RESPONDENT(S)

Sir,

In pursuance of Order XIII, Rule 6, S.C.R.1966,
I am directed to transmit herewith a certified copy
of the Judgment/~~Ex-Officio~~ dated the 21st February, 1997
in the appeal above-mentioned.

The certified copy of the decree made in the
aforesaid appeal ~~Ex-Officio~~ will be
sent later on.

Please acknowledge receipt.

Yours faithfully,

Signature
SECTION OFFICER

for perusal please
13/3/97
Encl:As above.
DKL(3)

Hon'ble Mr. K. Radhakrishnan, member (A)

160122

Certified to be true copy

10- March

Assistant Registrar (Judi.)

.....3.....3.....1997

Supreme Court of India

NON-REPORTABLE-22/97

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1538 OF 1997

(From the Judgment and Order dated 17.8.94 of the Central
Administrative Tribunal, Ahmedabad High Court in
O.A. No. 97 of 1990)

Jubeda Mohammad Iqbal

...Appellant

v.

Union of India & Ors.

...Respondents

THE 21ST DAY OF FEBRUARY, 1997

Present:

Hon'ble Mr. Justice B.P. Jeevan Reddy
Hon'ble Mr. Justice Suhas C. Sen

Jasbir Malik, Mahinder Singh Dahiya, Advs. for the
Appellant

N.N. Goswamy, Sr. Adv., Ms. Indu Goswamy and Arvind Kumar Sharma,
Advs. with him for the Respondents.

J U D G M E N T

The following Judgment of the Court was delivered:

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1538 OF 1997
(Arising out of S.L.P.(C) No. 667 of 1996)

Jubeda Mohammad Iqbal ... Appellant

Versus

Union of India & Others ... Respondents

JUDGMENT

Sen, J.

Leave granted.

Mohammad Iqbal used to work as a Cleaner under the Railways. He was employed in 1976. On 30.5.1983, disciplinary proceedings were commenced against him and he was removed from service on 28.8.1984 after holding an inquiry. Iqbal challenged the order of termination of service by filing a civil suit in the Court of Civil Judge, Rajkot. The suit was transferred to the Central Administrative Tribunal, Ahmedabad Bench. The Tribunal after hearing the case directed Iqbal to present an appeal before the Appellate Authority within fifteen days. The Appellate Authority was also directed to dispose of the appeal within three months. Iqbal

presented before the appeal to the Divisional Railway Manager on 28.8.1984, who was the Appellate Authority on 4.8.1988. The appeal was rejected on 16.11.1988. Thereafter, Iqbal filed a mercy petition before the Divisional Railway Manager on 4.12.1988. But before it could be decided, Iqbal died on 16.4.1989. Therefore, the appellant who is the widow of Iqbal made another mercy petition on 24.4.1989 which was rejected by the Divisional Railway Manager. Thereupon, Jubeda Mohammad Iqbal, the widow made an application to the Central Administrative Tribunal seeking a declaration that termination of service of her late husband Mohammad Iqbal was unlawful and should be quashed. She also prayed that the period between 28.8.1984, the date of termination of service of her husband and 16.4.1989, the date of death may be treated as period on duty. Full salary was claimed for that period and a prayer was also made for all consequential reliefs.

The case of the respondents on the other hand was that Mohammad Iqbal was charge-sheeted for his misconduct and a proper inquiry was held and full opportunity of being heard was given to him. The charges were found proved and thereafter, his services were terminated by a competent Disciplinary Authority. There was no infirmity in the order of dismissal. The appeal preferred by Iqbal was duly considered and rejected by the Appellate Authority on 16.11.1988,

during the lifetime of Iqbal. Iqbal did not challenge that order before the Central Administrative Tribunal, but decided to make a mercy petition to the Divisional Railway Manager which was also rejected and the order was communicated to the widow of the deceased, who is the appellant herein.

The counsel for the appellant did not appear before the Tribunal at all and, therefore, the case was disposed of on the basis of the arguments advanced on behalf of the Railways.

One member of the Tribunal (Dr.R.K. Saxena) took the view that Jubeda's petition could not be entertained because the right to claim relief against wrongful dismissal from service came to an end with the death of Iqbal and this right was personal and did not survive. The widow as the legal representative could not claim any relief after the death of her husband.

However, both the Members of the Tribunal agreed that on merits of the case, no relief could be given to Jubeda's application. One Member, Dr. R.K. Saxena was of the view that:

"Assuming for a moment that the view taken by the Division Bench of Karnataka High Court in the case cited above is correct, we do not find any ground on which the order of termination may be declared illegal. As such the question of consequential relief does not arise and the applicant is not entitled thereto."

The other Member Shri K. Ramamoorthy was of the view that -

"On the merits of the case itself, I agree with the conclusion the application being devoid of merit and is rejected for following reasons.

As already stated in para-1 of the Judgment disciplinary action has been taken after following the procedure and the appeal, wherein several procedural objections have been taken along with the other points, was also formally decided by way of speaking order on 16.11.1988, after a personal hearing.....given on 28.10.1988. It is obvious from the wording of the representation of 14.12.1988, that it is a mercy petition and reading the contents therein it is obvious that the applicant had accepted the appellate order but only sought for mercy on the ground of poverty and liability to support six family members. Thus, there is no formal order passed in a original capacity or in appellate capacity which is sought to be adjudicated. A mercy petition by its nature is a matter foradministrative decision by the department concerned and therefore, such a decision cannot obviously be interfered with by the Tribunal. In fact, even when the appellate orders are contested, the Tribunal cannot go into the question of quantum of punishment. On the same analogy, the question of challenging the reply given by the respondents on a mercy petition cannot arise. If the application were to be taken as a challenge to the appellate order alone also, the petition will suffer from the vice of delays and laches since that impugned order was passed on 16.11.1988 and the incident of termination took place on 28.8.1984. In view of the above, the application is devoid of merit and is rejected."

Therefore, it will not be right to say that the Tribunal dismissed the application filed by Jubela at the threshold without going into the merits of the case.

Although, there was some difference of opinion among the two Members as to the right of Jubeda to move the Tribunal, there was unanimity in the view that the order of dismissal could not be disturbed in the facts of this case.

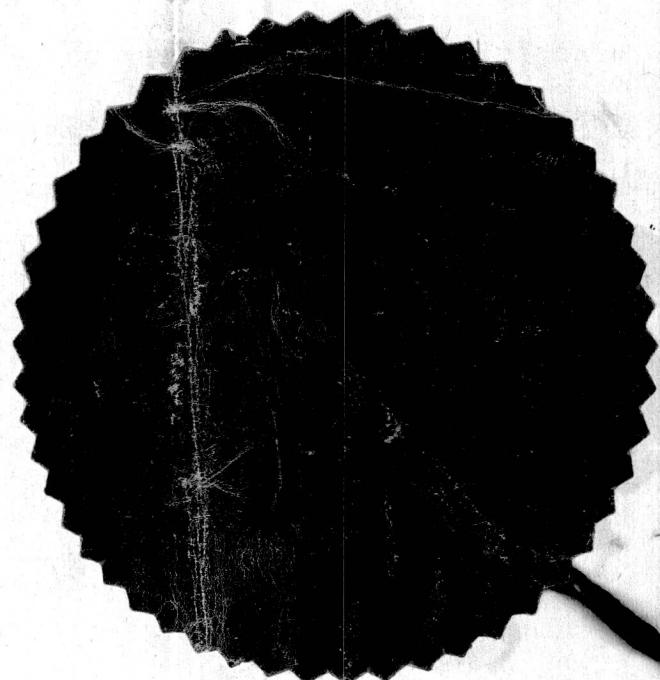
Therefore, it is not necessary to examine the right of a legal representative to raise the question of wrongful dismissal after the death of the employee. The application had been dismissed on merits and the order of the Tribunal does not appear to be erroneous on this point.

The appeal is, therefore, dismissed with no order as to costs.

Sd/- J.
(B.P. JEEVAN REDDY)

Sd/- J.
(SUHAS C. SEN)

New Delhi,
February 21, 1997.



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S/2197

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All communications should be addressed to the Registrar, Supreme Court, by designation. NOT by name. Telegraphic address:— "SUPREMECO"

**SUPREME COURT
INDIA**

Dated New Delhi, the 7th July 1997

FROM From: The Registrar (Judicial)
Supreme Court of India,
New Delhi.

TO To : The Registrar,
✓ Central Administrative Tribunal,
AHMEDABAD.

CIVIL APPEAL NO. 1538 OF 1997
C.A.T. O.A.No. 97 of 1990

Smt. Jubeda Mohammed Iqubal

Appellant

Versus

Union of India & Anr.

Respondents

Sir,

In continuation of this Registry's letter of even number dated the 1st March, 1997 I am directed to transmit herewith for necessary action a certified copy of the Decree dated the 21th day of February, 1997 of the Supreme Court in the appeal above-mentioned.

Please acknowledge receipt.

Yours faithfully,

K. Mainw
7-7-97
for Registrar (Judicial)

*to find
out file
8/1/97
21/7
22/7
Judicial*

*33
9/1/97
S/2197
20/7/97
Jubeda
15/7/97*

IN THE SUPREME COURT OF INDIA

Sup. C. 52

CRIMINAL/CIVIL APPELLATE JURISDICTION

Certified to be true copy

K. Mehta

Assistant Registrar (Judl.)

7-7-1997
Supreme Court of India

184471

No.

of

CIVIL APPEAL NO. 1538 OF 1997

ARISING OUT OF:

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 667 OF 1996

(Petition under Article 136 of the Constitution of India from the Judgment and Order dated the 17th August, 1994 of the Central Administrative Tribunal, Ahmedabad Bench in O.A.No. 97 of 1990)

Smt. Jubeda Mohammed Iqbal,
C/o Sh. Pirmohammed,
Behind Rukhadiya Colony,
Rajkot.

....Appellant

Versus

1. Union of India,
Owing Western Railway,
through the General Manager,
Western Railway,
Church Gate,
Bombay.

2. The Divisional Railway Manager,
Western Railway,
Kothi Compound,
Rajkot.

....Respondents

21st February, 1997

CORAM:

HON'BLE MR. JUSTICE B.P. JEEVAN REDDY
HON'BLE MR. JUSTICE SUHAS C. SEN

For the Appellant : M/s Jasbir Malik and Mahinder Singh
Dahiya, Advocates

For the Respondents : Mr. N.N. Goswamy, Senior Advocate
Ms. Indu Goswamy and Mr. Arvind Kumar
Sharma, Advocates with him.

The Petition for Special Leave to Appeal above mentioned being called on for hearing before this Court on the 30th day of September, 1996; UPON perusing the record and hearing counsel for the parties herein the Court took time to consider its Judgment and the appeal being called on for Judgment on the 21st day of August, 1997 THIS COURT while granting ^{in the resultant appeal} leave DOTH PASS the following ORDER:

THE HON'BLE CHIEF JUSTICE

"It is not necessary to examine the right of a legal representative to raise the question of wrongful dismissal after the death of the employee. The application had been dismissed on merits and the order of the Tribunal does not appear to be erroneous on this point.

The appeal is, therefore, dismissed with no order as to costs."

AND THIS COURT DOETH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Aziz Moshabber Ahmadi, Chief Justice of India, at the Supreme Court, New Delhi, dated this the 21st day of February, 1997.

(I.J. SACHDEVA)
JOINT REGISTRAR

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RECORDED IN THE CLERK'S OFFICE

SUPREME COURT
CRIMINAL/CIVIL APPELLATE JURISDICTION

No. *of 199*

CIVIL APPEAL NO. 1538 OF 1997

Smt. Jubeda Mohammed Iqbal

Appellant
Petitioner

Versus

Union of India & Anr.

Respondent

CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

O.A. NO. 97 OF 1996

DECREE DISMISsing THE APPEAL WITH NO ORDER AS TO COSTS.

ed the 21st day of February 1997

Dahiya,

cate on Record for the Appellant

Compared with

SHRI Arvind Kr. Sharma,

No. of folios

Advocate on Record for the Respondent

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SP/117