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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

O.A. No. 295/1996 198
T.A. No.

DATE OF DECISION 17.02.2000

SMT.PUSHPA DEVI Petitioner

MR.J.K.KAUSHIK Advocate for the Petitioner(s)

Versus

UNION OF INDIA AND OTHERS Respondent

MR.VIVEK GUPTA,ADV.BRIEF HOLDER FOR MR.RAVI BHANSALI Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. A.K.Misra, Judicial Member

The Hon'ble Mr. N.P.Nawani, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? No.
2. To be referred to the Reporter ~~or not~~? yes.
3. Whether their Lordships wish to see the fair copy of the Judgement ? yes.
4. Whether it needs to be circulated to other Benches of the Tribunal ? No.

(N.P.NAWANI)
Adm.Member

(A.K.MISRA)
Judl.Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,JODHPUR BENCH,JODHPUR

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Date of order :17.02.2000.

O.A.NO. 295/1996

Smt.Pushpa Devi Wife of Late Shri Purshottam Purohit aged about 50 years resident of Anant Ram Ji Ki Bagichi, Sardarpura I-C Road, Jodhpur. Her husband was last employed on the post of STore Khallasi in Railway Stores Northern Railway, Jodhpur.

.....Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Controller of Stores, Northern Railway, Baroda House, New Delhi.
3. Dy.Controller of Stores, Northern Railway, Jodhpur.

.....Respondents.

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Mr.J.K.Kaushik, Counsel for the applicant.

Mr.Vivek Gupta,Advocate,Brief Holder for
Mr.Ravi Bhansali, Counsel for the respondents.

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CORAM :

HON'BLE MR.A.K.MISRA,JUDICIAL MEMBER

HON'BLE MR.N.P.NAWANI,ADMINISTRATIVE MEMBER

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PER MR.A.K.MISRA :

The applicant has filed this O.A. with the prayer that the impugned order dated 18.10.1980 (Annex.A/1) inflicting the penalty of removal from service on the applicant's husband and the appellate order dated 10.10.1995 (Annex.A/2) confirming the order of the disciplinary authority, be declared nonest, illegal and be quashed. The applicant has also prayed that she may be allowed all consequential benefits i.e. the family pension etc. along with interest on arrears at market rate.

2. Notice of the O.A. was given to the respondents who have filed their detailed reply to which no rejoinder was filed by the applicant. The respondents have stated in their reply that the applicant is not entitled to any relief because the O.A. is highly belated and her husband was removed from service way back in 1980 by the impugned order Annex.A/1. The respondents have also challenged the applicant's right to appeal against the order of removal of her husband and consequently have claimed that decision of appellate authority would not confer on the applicant any right in this regard. The O.A. deserves to be dismissed.

3. We have heard the learned counsel for the parties and have gone through the record. Before we proceed to dispose of the case, it would be relevant to narrate the facts in brief relating to the applicant's claim.

4. From the file, it appears that applicant's husband Shri Purshottam Purohit was initially appointed on the post of Khalasi in the year 1958. This fact is not disputed by the respondents. It is alleged by the applicant that her husband fell sick in the year 1977 and could not attend his duties. He continued to send medical certificates to the authorities from time to time. The respondents have disputed this allegation and have stated that the applicant remained un-authorisedly absent from 24.11.1977 from his duties. The applicant has further alleged that in the year 1988 when the condition of the applicant's husband further deteriorated and both of his kidneys failed and he was put on dialysis for treatment, he applied vide his application dated 1.8.1988 for retirement on medical grounds. Thereafter, the husband of the applicant expired on 18.8.1988. The applicant vide her application dated Nil (Annex.A/4), informed the authorities about the said demise of her

husband and claimed retiral benefits and pension and also prayed for appointment of her son on compassionate ground. This application was received by the respondents on 25.8.1988. When the applicant did not receive any reply from the respondents, the matter was reagitated through the Northern Railway Mazdoor Union but she failed to evoke the decision of the concerned authorities. Thereafter, the applicant filed an O.A. which was registered at No. 448/1990 and was eventually decided on 7.2.1991. In that O.A., the respondents were directed to dispose of the applicant's representation dated 25.8.1988 within a period of three months. Thereafter, the respondents decided the representation by rejecting the same vide order dated 15.3.1991 and further informed the applicant that her husband was removed from service vide order dated 18.10.1980, therefore, she cannot claim any retiral benefits of the deceased and also the pension. On the aforesaid communication, the applicant again filed an O.A. which was registered at No. 37/1992 in which it was alleged by the applicant that the said removal order was never served on her husband and so long such order is not served on the Government servant, he continues to be in service, therefore, the order rejecting the claim of the applicant for grant of pensionary benefits and pension, was illegal and deserves to be quashed. This O.A. came to be decided by the Tribunal vide its order dated 1.2.1994. It was directed by the Tribunal that in case an appeal is filed by the applicant on behalf of her late husband within one month, the same should be treated to be within time and should be considered and disposed of by them on merits by a speaking order within three months of filing the appeal. Thereafter, in order to prefer appeal before the competent authority the applicant made a request for supply of documents for peparation of memorandum of appeal but she was not supplied with the documents as per her prayer, therefore, appeal was filed by the applicant on 8.3.1994 vide Annex.A/8. This

appeal was decided after an inordinate delay by the appellate authority vide its order dated 10.10.1995 and upheld the order of removal passed by the appellate authority which is under challenge.

5. The applicant has challenged both the impugned orders passed by the disciplinary authority and the appellate authority respectively on the ground that removal order was never served on the husband of the applicant at all as is clear from the facts of the case, therefore, the husband of the applicant cannot be said to have been removed from service. The order of removal which was not served on the husband of the applicant is nonest in the eye of law. The appellate authority had also not examined the inquiry proceedings as per the objections raised by the applicant and, therefore, the appellate order is also arbitrary and illegal. The alleged order of removal passed by the disciplinary authority was dis-proportionate to the alleged mis-conduct of the husband of the applicant and consequently these two orders deserves to be quashed.

6. The respondents in their reply have stated that the husband of the applicant never intimated the concerned authority about his illness. No medical certificates were ever submitted in support of his illness. The applicant's husband having received the memo of charges etc. remained absent and did not participate in the inquiry proceedings. Consequently, exparty proceedings were initiated by the inquiry officer who submitted a positive report to the disciplinary authority who agreed with the findings of the inquiry officer and passed the impugned order. In order to effect the service of the impugned removal order the removal order was offered to the husband of the applicant, he refused to receive it and refused to sign the order in acknowlegement of having received the same in presence of one Shri Sumender Bhaiya, therefore, the applicant cannot be heard to say that no such removal order was

served on her husband. The husband of the applicant inspite of specific information contained in the removal order did not file any appeal within the statutory time, therefore, the removal order became final as against him. The applicant has no right to file an appeal and there is no specific provision in this regard. Therefore, she cannot claim cause of action from the date of decision of the appellate order. She had no locus standi or legal right to challenge the same. The O.A. is ill-advised and deserves to be dismissed.

7. Both the learned counsels developed their arguments on the lines of their pleadings which we need not repeat here. It is to be decided whether order of removal was served on the husband of the applicant as claimed by the respondents so as to deprive her of her claims regarding terminal benefits of her husband and family pension.

8. Rule 12 of the Railway Servants (Discipline & Appeal) Rules, 1968, (for short "the Rules"), states that order made by disciplinary authority shall be communicated to the Railway servant who shall also be supplied with a copy of the report of the inquiry, if any, held by the disciplinary authority. Rule 26 of the rules states that every order, notice and other process made or issued under these rules shall be served in person on the Railway servant concerned or communicated to him by registered post. Both these rules go to show that the order passed under these rules, must be communicated and served on the person against whom the order is to take effect. In this regard, Railway Board has issued circulars from time to time for guidance of the concerned authorities. The earliest circular on the subject is reproduced below in extenso which is printed at page 295 of Bahri's compilation of Railway Servants (Discipline & Appeal) Rules, 1968,

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1997 6th edition.

"Service of Notice of Imposition of Penalty - So far as possible actual service of the orders/notice which seeks to impose penalty, is desirable. For this possibility may be explored to :

(i) When the Railway servant is present in office, the notice should be served on him in person. If he refuses or evades on one plea or the other signatures should be taken of 2 witnesses in whose presence attempt to serve the notice was made.

(ii) The notice shall be deemed to have come into effect on the date when it was attempted to serve notice on him, whether he received it or not.

2.(i) In case he is not present in office, notice will be sent per registered post A.D. at his last known address.

(ii) In case he accepts it, it shall come into force when he accepted it unless another date is specified in the notice itself.

(iii)If it is received undelivered with remarks like "not found" or "refused" to accept etc., it should be pasted on the Notice Board of the Railway premises where he was last working as well as in a place in the last known address. The notice shall be deemed to take effect from the date of issue unless it itself specifies another date.

(Rly.Bd's No.E(D&A)69 RG 6-29 dated 17.11.70 (NR 5174, 5533)".

In continuation of the aforesaid circular another circular was issued by the Railway Board which is also printed on page 295 of the Bahri's above edition which is also quoted in extenso as under:-

"ORDER OF RAILWAY ADMINISTRATION ON PART VII

(I) Service of notice of imposition of penalty- It has been laid down in Para 2(2)(iii) of Board's letter of even number dated 17.11.1970 that in case the Railway servant concerned does not accept the order/notice, and the same is returned undelivered by the postal authorities with the endorsement, such as "addressee not found"' "refused to accept"' etc., it should be pasted on the Notice Board of the Railway premises in which the employee concerned was working last as well as in a place in the last noted address of the Railway employee.

2. It has been represented to the Railway Board that it is difficult to paste the order/notice in a place in the last noted address of the Railway servant who resides far away from the place of his work; especially when such address given by the Railway servant at time of proceeding on leave happens to be a far away village/town/city.

3.In this connection it is clarified that the "last noted address" used in Para (2) (ii) of Board's letter referred to in preceding para means the local address of the employee i.e., the premises which the employee had been occupying before he proceeded on leave. In cases, where a last noted address of the employee who has proceeded on leave is in a distant town/village, the proper mode of serving would be to send the order/notice on the address of his home town/village by registered post and the question of pasting it in that place does not arise.

(Rly.Bd's No. E(D&A)69RG6-29 dated 19.11.1971;ER 7848, NR 5533, 7600, SC 328/71)."

From the contents of these two circulars, it is clear that if the Government servant is present in office he could be served in person but if he is not available in office then the notice/order should be served to the concerned Government servant by registered post acknowledgement due and on his refusl to receive the registered letter the substituted service of such order or notice is to be resorted to. There is no dispute that the applicant was absenting from duty, as per the claim of the applicant due to illness and as per the claim of the respondents un-authorisedly, therefore, the impugned removal order could not have been served on him in person in the office. Therefore, adopting the second mode of service as described in the circulars the respondents were supposed to sent the removal order by registered post to the delinquent Railway official i.e. Purshottam at his last noted address. But the respondents have not adopted this mode of communication for serving the impugned removal order of Purshottam. From the departmental record, we find that the respondents had in the past sent the memo in standard form No. 5 and accompanying documents to the husband of the applicant by a registered post at his local address which he had received, as is clear from the acknowledgement receipt. Subsequent commuications relating to the inquiry were also sent to him by registered post. One such communication was again received by him as is clear from the second acknowledgement receipt. The third such communication was returned to the respondents presumably

because name of the husband of the applicant was wrongly described as "Purshottam Das" instead of Purshottam. These facts go to show that the husband of the applicant was communicated various orders only through registered post. The husband of the applicant had received such registered communication in the past, therefore, the respondents could not have thought that removal order of Shri Purshottam from service would be refused by him if the same was sent by registered post. Thus, we fail to understand why this mode was not resorted to by the authorities in getting the impugned removal order served on the delinquent Railway servant. From the departmental file of inquiry, we find that the order of removal does not bear any despatch number. In the note-sheet we do not find any endorsement regarding removal order having been sent for service on Purshottam through Registered Dak. Strangely service of removal order through a messenger in presence of a witness was said to have been adopted in this case which is not a prescribed mode of service as per the circulars. No report regarding offer of removal order and refusal thereof is available either in the file or on the back of such removal order. Therefore, it is un-believable that removal order was offered to and refused by Shri Purshottam in presence of Shri Sumerder Bhaiya whose affidavit was filed in the earlier Original Appliation No. 37 of 1992 to establish these facts. It is further to be noted that the removal order is dated 18.10.1980 and on the very same day was said to have been offered to Shri Purshottam for service. We may repeat that there is no endorsement or order on the note-sheet that this mode of service be adopted. To complete the formalities as per the instructions in the said circular no notice was pasted on the Notice Board of the office where Shri Purshottam had last worked. In view of these facts, we are of the opinion that whatever Mr.Sumerder Bhaiya had deposed in his affidavits filed in the above noted O.A.is not factually correct.The facts as mentioned in the affidavits are not supported by any note-sheet or order in the inquiry file,

therefore, in our opinion, the fact of removal order having been offered to Shri Purshottam in presence of Shri Sumender Bhaiya, remains doubtful and so also the fact of pasting the removal order on the notice board. In our opinion, no weightage can be given to the facts as mentioned in the affidavits of Shri Sumender Bhaiya.

9. In view of the foregoing discussions, we come to the conclusion that the impugned removal order was never served on the delinquent Railway official. So long a Government servant is not served with a removal order he has every right to consider himself in service. At this stage, it was argued by the learned counsel for the respondents that the impugned removal order was effective as against Shri Purshottam on and from the date it was passed and its actual service was of no consequence. He has also argued that in any case Shri Purshottam had knowledge of impugned removal order having been passed against him on 18.10.1980 and, therefore, Shri Purshottam is to be taken to have been removed from the very same date.

10. We have considered this aspect. In our opinion, in view of the specific provisions in Rule 26 regarding communication of such order actual communication is important and not the knowledge thereof. The modes of communications have been described in the aforesaid rule and, therefore, mere knowledge of such removal order on the part of the delinquent cannot be taken to be sufficient in order to treat Shri Purshottam as having been removed from service. If for argument sake, such knowledge is taken to be of some consequence then also there is nothing on record to show that the husband of the applicant had any knowledge of such removal order till his death. In AIR 1966 SC 1313 - State of Punjab versus Amar Singh Harika, it is held :-

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"The mere passing of an order of dismissal is not effective unless it is published and communicated to the officer concerned. An order of dismissal passed by an appropriate authority and kept on its file without communicating it to the officer concerned or otherwise publishing it does not take effect as from the date on which the order is actually written out by the said authority; such an order can only be effective after it is communicated to the officer concerned or is otherwise published.

Held that the order of dismissal passed against the officer on the 3rd June 1949 could not be said to have taken effect until he came to know about it on the 28th May 1951."

11. Examining the inquiry file keeping in view the aforesaid ruling, we are of the opinion that there is no iota of evidence which may go to show that Shri Purshottam had knowledge of such removal order and, therefore, in our opinion the order had not achieved any finality as against him. If in the context of these facts, the present applicant states that for the first time, she came to know of her husband having been removed from service by respondents communication dated 15.3.1991 (Annex.A/5), there is nothing wrong in it. The removal order which was not served on the delinquent is ineffective and for all purposes nonest and cannot be taken shelter of for refusing the terminal benefits of Shri Purshottam and family pension to his widow. The arguments of the learned counsel for the respondents in this respect are devoid of any force and are hereby rejected.

12. If for arguments sake, we conclude that the removal order was effective as against Shri Purshottam because the same had come to his knowledge indirectly even then we have to examine whether the penalty of removal was in proportion to the mis-conduct of Shri Purshottam who was absenting from duty on account of illness as per the claim of the applicant and un-authorisedly as per the allegations of the respondents. In our opinion, for mere un-authorised absence from duty for about six months/removing the delinquent from service is quite dis-proportionate to the mis-conduct for which he was

charged. When the punishment as awarded to such delinquent is dis-proportionate to his mis-conduct and shocking to the conscience the same deserves to be interfered with, as has been laid down in various rulings. In 1996 SC 484 - B.C.Chaturvedi Vs. UOI and Ors. it has been laid down by the Hon'ble Supreme Court as under :-

> "Constitution of India, Arts. 226, 142 - Administrative Tribunals Act (13 of 1985), S.19 - Imposition of punishment on govt.servant by disciplinary and appellate authority - Interference by High Court/Tribunal - Punishment shocking conscience of High Court/Tribunal - It can direct authority to reconsider punishment - It may itself, to shorten litigation impose appropriate punishment with cogent reasons in support thereof.
>
> Ramaswamy, J. for himself and B.P.Jeevan Reddy.J. - Disciplinary authority and on appeals, appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

In 1983 (1) SLR _ Bhagat Ram Vs. State of Himachal Pradesh and Others, it was held that punishment - imposition of penalty disproportionate to the gravity of the misconduct of the delinquent employee - amounts to violation of Article 14. In 1994 (4) SLR - Neela Devi RAi versus State of West Bengal & Others, it was held that doctrine of disproportionality - punishment of dismissal from service on the ground of unauthorised absence from duty held to be disproportionate to the alleged misconduct . In view of these principles the impugned penalty of removal on Shri Purshottam was, in our opinion quite dis-proportionate and far too excessive than

his mis-conduct. If in the opinion of the disciplinary authority even absence of six months/of Shri Purshottam from duty did not justify his being taken back on duty then the penalty of compulsory retirement could have been awarded looking to his past long service of nearly 19 years. Shri Purshottam died in the year 1988, therefore, the question of re-inquiry and minor modified/punishment being awarded by the disciplinary authority is now out of question. Therefore, the case can not be remanded back to the concerned authorities for either re-inquiry or for awarding appropriate punishment. In view of this, it would be in the interest of justice to treat the impugned removal order as the order of compulsory retirement so as not to deprive the present applicant of her family pension and pensionary benefits of Shri Purshottam, as claimed by her.

13. It was also argued by the learned counsel for the respondents that the present applicant had no locus standi to file an appeal before the departmental authority. She has also no right to move the present Original Application, therefore, the decision of the appellate authority cannot be challenged by her. On the other hand, it was argued that rights of the applicant more specially her civil rights are vitally affected by the impugned removal order, therefore, she has a right to challenge the removal order before the departmental authority and through this Original Application.

14. We have considered the rival arguments. We have held that impugned removal order was never served on the applicant's husband nor the same came to his knowledge, therefore, he could not have filed a departmental appeal during his life time. The present applicant came to know of these developments only after her representation was decided by the respondents vide their

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communication dated 15.3.1991 as per the directions of the Tribunal.The applicant had filed departmental appeal as per the direction of the Tribunal given in the second O.A.,therefore,it cannot be said that the applicant had no right to file an appeal against the impugned removal order.It is to be noted that removal order deprives the concerned Government employee of his retiral benefits including pension and family pension and consequently puts the Government official and his family members to financial hardships and their civil rights are affected.

15. In 1995 (2) SLR Page 335 Christina versus Management of Karnataka State Road Transport Corporation, it was held as under:-

> "Locus standi-Right of widow to challenge the punishment awarded to her husband-Order of removal from service passed when the petitioner's husband was almost on his death bed-Since that order is being pressed into service against the petitioner(his wife)she has every right to challenge the order in question-Held that order of removal stands modified to the extent that it will have to be held that the petitioner's husband was liable to the punishment to the extent of loss of all his emoluments and benefits for the entire period of his absence from duty-The order of removal from service to that extent is legally untenable and is liable to be set aside."

In the aforesaid ruling, rule propounded in AIR 1982 SC 1473 - People's Union for Democratic Rights and Others Vs. UOI and Ors., more specially known as ASIAD Workers' Case, was followed, and It was held there in that -

> "Constitution of India, Arts. 226, 32 - Locus standi - Concept of - Espousal of cause of workmen engaged in Asiad Proects by a social organisation - Allegation of violation of various labour laws - Held, the organisation had locus standi to maintain writ petition."

Keeping the principles propounded in the aforesaid rulings in view, it can sefely be concluded that the rights of the applicants are affected, therefore, she had a right to seek redressal of her grievance departmentally by filing an appeal before the appellate authority and on failure to get relief, she has a right to file this Original Application. Therefore, it would

be grossly unjust to observe that such affected persons have no right to file appeal against the removal/dismissal order. The applicant, who is the widow of the removed Railway servant, is claiming these benefits on the ground that removal order was never served on her husband and he continued to remain in service till his death, which we have also found to be correct, therefore, her right to challenge the removal order in appeal cannot be denied. As such, the arguments on this point are required to be rejected.

16. It was next argued by the learned counsel for the applicant that the order of the appellate authority dated 10.10.95 though appears to be a long one but is devoid of any reasons as to why he did not find any substance in various grounds raised by the applicant in her appeal which she was directed by the Tribunal to file before the appellate authority. On the other hand, the learned counsel for the respondents supported the decision of the appellate authority as reasoned and detailed one.

17. We have considered the appellate order vis-a-vis the memorandum of appeal which the applicant had submitted to the appellate authority. In her appeal the applicant has raised the ground that the removal order was never served on her husband. She has also given many factual details challenging the stand of the respondents that the removal order was served on her husband. She has also stated in her memorandum of appeal that the removal order was not despatched at all and no despatch particulars of the order are available on the file. She has further stated in her appeal that her husband had no knowledge of such removal order but these points have not been dealt-with by the appellate authority and no finding whatsoever in respect of service of the removal order on Purshottam was given in his order after considering the departmental file and the points raised by the applicant in her memo of appeal. We have dealt-with this matter in detail in the

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foregoing paragraphs of our order and on the basis of our analysis on this point, we are of the view that the appellate authority had not applied its mind to this very important aspect of the case. The so called removal order does not bear any despatch number and this could have been verified by the appellate authority after seeing the relevant departmental file of inquiry. But this has not been done by him and no conclusion whatsoever in this regard was arrived at. He has also concluded that as per the DAR provision only delinquent employee can prefer an appeal against his removal. There is no provision for considering appeal by widow/wards of the employees. We find that this impression in the mind of the appellate authority prevailed over him in deciding the appeal against the applicant without due consideration of the various other points raised by the applicant. Rule 27(2) of CCS(CCA) Rules provides that in the case of an appeal against an order imposing any of the penalties specified in Rule 6, the appellate authority shall consider whether the procedure laid down in these rules has been complied with and if not whether such non compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. In view of this specific provision, the appellate authority was expected to examine the point of service of removal order on the delinquent and give its positive finding. But inspite of specific challenge by the applicant about the service of the removal order on her husband, this aspect was not attended-to by the appellate authority and, therefore, we have no hesitation in concluding that the appellate order is a result of non application of mind and is difficult to be sustained. At the cost of repetition we may mention here that denial of retiral benefits to the family members of a Government servant after his death on one ground or the other, affects their civil rights and, therefore, the family members, more specially the widow of the delinquent/deceased Government servant has a right to file an appeal. In such

circumstances, their right to live with dignity with the help of the retiral benefits are affected. The principles of natural justice also demanded that due consideration to this aspect should have been given and the matter of far reaching consequences should not have been so lightly attended-to.

18. Rule 27 (2) (b) & (c) of CCS (CCA) Rules, provide that appellate authority has also to examine whether the finding of the disciplinary authority was warranted by the evidence on record and to further examine whether the penalty awarded was adequate, in-adequate or severe. But, in our opinion, the appellate authority also failed to examine the impugned removal order passed by the disciplinary authority keeping these two aspects in mind. There is no documentary or oral evidence in the inquiry file supporting the fact of Shri Purshottam's continuous absence from duty. After all, he was serving under some officer who was supposed to have supervisory control over him. For recording the attendance of the concerned Government servant, attendance register is maintained in which absence of such Government servant is also recorded. Therefore, on the basis of such record, supervisory officer should have stated before the inquiry officer about Shri Purshottam's continuous absence. In other words, such supervisory officer should have given his statement before the inquiry officer and in support thereof the attendance record should have brought on record. But no such evidence was brought on record and if the case is examined by this angle, this is a case of no evidence but absence from duty is not disputed now by the applicant. Therefore, if for some reason procedural requirement of evidence is given a go bye even then it was necessary for the appellate authority to give its finding in respect of penalty awarded to the delinquent. We have also found that the penalty was dis-proportionate to the mis-conduct of the delinquent. In our opinion, the appellate authority

had failed to appreciate this aspect of the case and, therefore, it can again be said that appellate order is a result of non application of mind. For this reason also, the appellate order deserves to be quashed.

19. From the above discussions, we come to the conclusion that the impugned removal order and the impugned appellate order deserve to be quashed.

20. It was next argued by the learned counsel for the respondents that the O.A. is hopelessly time barred. The applicant has challenged the dismissal order passed against Shri Purshottam in October 1980 by this O.A. which she has filed in 1996, therefore, the O.A. deserves to be dismissed on this ground alone. We have given our thoughtful consideration to this aspect of the case. It is noted that soon after the death of her husband, the applicant applied for grant of pensionary benefits including family pension and thereafter continuously agitated her claim with the respondents through the intervention of the Tribunal and has also challenged the appellate order along with the impugned removal order. Facts giving rise to the present O.A. have been narrated in detail in our order, therefore, it cannot be said that the applicant was negligent about her rights. Her litigating in the Court and time consumed therein cannot be categorised as inordinate delay on the part of the applicant in seeking the relief. Looking to the facts of the case, it cannot be said that the claim of the applicant is time barred, therefore, arguments in this respect are liable to be rejected and are hereby rejected.

21. In view of the above discussions, we are of the view that the removal order was never served on the delinquent deceased Purshottam so as to deny the applicant pensionary benefits as claimed by her.

Due to non service of removal order on Purshottam, impugned order Annex.A/1 dated 18.10.1980, is liable to be declared nonest and Purshottam is entitled to be treated as a Railway servant till his death.

22. However, it may be noted that Shri Purshottam was chargesheeted for not coming to office since 24.11.1977 vide S.F.5 dated 20.5.1978 but was removed for continuous absence from duty upto the date of order. In our opinion, in passing the removal order the entire period of absence of Shri Purshottam from duty has been taken into account and thus extraneous facts have been taken into consideration while passing the impugned order which we find quite disproportionate to the misconduct of Shri Purshottam for remaining absent from duty for only about six months. For this misconduct ordering stoppage of increments would have met the ends of justice. Unfortunately, the delinquent Shri Purshottam is now no more to undergo such punishment, therefore, in the fitness of things, we consider it appropriate to convert the punishment of removal from service to that of compulsory retirement so that the present applicant may not be deprived of the retiral benefits of Shri Purshottam.

23. Consequently, the applicant is held entitled to all the retiral benefits of Shri Purshottam including the family pension with interest @ 12% per annum compounded annually as per the circulars of the Railway Board issued from time to time. The O.A. deserves to be accepted accordingly.

24. The O.A. is, therefore, accepted. The impugned removal order dated 18.10.1980 (Annex.A/1) passed by the disciplinary authority and the order dated 10.10.1995 (Annex.A/2) passed by the appellate authority, are declared nonest and are hereby quashed. Shri Purshottam is treated as having been compulsorily retired w.e.f.18.10.80.T respondents are directed to settle and pay all retiral benefits of

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late Shri Purshottam to the applicant with interest @ 12% per annum compounded annually. They are further directed to calculate and pay the family pension to the applicant as per the rate applicable for such family pension to a widow of a Government servant, within a period of three months from the date of this order, failing which the respondents shall be liable to pay interest at the simple rate of 12% on the arrears of family pension to the applicant. The parties are left to bear their own costs.

(N.P.NAWANI)
Adm.Member

17/11/2000
(A.K.MISRA)
Judl.Member

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R/Copy
22/2/2006

Counsel for
Copy for Resp. 1 to 3
Copy for Resp. 4
Vide Memo dtd. 22/2/2006

Part II and III destroyed
in my presence on 25.9.2006
under the supervision of
Section Officer (J) as per
order dated 23.8.2006

Section Officer (Record)

Reportable order
6 copies given on 21/2

Lib copy
for 21/2