

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

Original Application No. 142/2011

Jodhpur this the 2<sup>nd</sup> February, 2015

**CORAM**

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),  
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Smt Ameena W/o Late Shri Sikandar Khan Mandori, age 65 years, By caste Muslim, R/o Gandhi Chowk, Mandori Mohalla, Jalore. (Applicant's husband last work place Bhinmal, as Postmen working under respondent No. 5)

....Applicant

By Advocate: Mr Rakesh Arora.

**Versus**

1. Union of India through the Secretary, Ministry of Communication, Department of Post, Dak Bhawan, New Delhi.
2. The Director, Postal Services, Western Rajasthan Region, Jodhpur.
3. The Superintendent of Post Offices, Sirohi Division, Sirohi.
4. The Head Post master, Head Post Office, Jalore.
5. Deputy Post Master, Bheenmal, District Jalore.

.....Respondents

By Advocate : Ms K. Parveen.

**ORDER (Oral)**

**Per Justice K.C. Joshi, Member (J)**

The applicant has filed this OA against the order Annex. A/1 dated 16.06.1998 by which the respondent-department dismissed the husband of

the applicant from their service and Annex. A/2 dated 11.11.1998 by which appeal filed against order Annex. A/1 has been dismissed on the grounds of limitation.

2. The relevant facts for adjudicating the case, as stated by the applicant, are that the applicant's husband joined the respondent-department on 08.08.1974 as EDBPM and later while working on the post of Postman he fell ill on 15.06.1997 and proceeded on half day leave after submitting leave application alongwith station leave till 16.06.1997. The applicant's husband suffered from low blood pressure due to which he had trembling in his body and was unable to perform his own daily routine. He took continuous treatment from 16.06.1997 to 02.02.1998. The applicant's husband sent leave application from 15.06.1996 to 03.02.1998 alongwith medical certificate and on the same day i.e. on 03.02.1998 he also sent an application seeking voluntary retirement on the ground of his illness. It has been averred in the OA that it appears that though the applicant's husband sought voluntary retirement but the same was not granted and instead a departmental inquiry was instituted against him and ultimately vide order dated 16.06.1998 (Annex. A/1) a punishment of removal from service was imposed. The applicant's husband preferred an appeal before the respondent No. 2 against order dated 16.06.1998 which was dismissed vide order dated 11.11.1998 (Annex. A/2) on the ground of being barred by limitation without going into the merits of the case. Thereafter, the applicant's husband submitted a mercy petition to the President of India

through proper channel i.e. the Superintendent of Post Offices, Sirohi Division, Sirohi on 25.10.2001. The applicant's husband received a letter dated 16.08.2005 from the Supdt. Post Office, Sirohi Division, Sirohi asking him to supply copy of inquiry report and the applicant's husband replied the same stating that he never received copy of inquiry report and he only received the punishment order Annex. A/1. Thereafter nothing was heard from any corner and in such circumstances the applicant's husband filed an application before the Permanent Lok Adalat, Jalore seeking relief against the punishment order Annex. A/1 and treat him in service till 15.06.1997 and voluntary retirement may be granted to him with all consequential benefits. The respondents adopted dilly dally tactics and ultimately this application was disposed of by Permanent Lok Adalat vide order dated 24.10.2008 because the respondents stopped giving appearance and as such matter could not be decided in their present by the Permanent Lok Adalat. Thereafter, the applicant's husband died on 02.04.2010 while undergoing treatment at Goyal Hospital & Research Centre, Jodhpur. It has been averred in the OA that inquiry was proceeded ex-parte and no proper departmental inquiry was conducted against the applicant's husband before passing the impugned order dated 16.06.1998 (Annex. A/1) and his appeal was also dismissed on technical ground of limitation. His Mercy Petition appears to have been put in dustbin. The applicant has five daughters and she herself is an old aged lady. Her husband was working on the lowest post in the respondent-department and in such circumstance, it is now very difficult for the applicant to have two square meals a day for herself and her

family, therefore, she filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking following relief(s) :

“The applicant most respectfully prays that this application may kindly be allowed and the impugned orders dated 16.06.1998 (Annex. A/1) and 11.11.1998 (Annex. A/2) may kindly be quashed and set aside and the respondents may be directed to grant voluntary retirement to the applicant’s husband w.e.f. 03.02.1998 and accordingly, grant all consequential retiral benefits, pension and family pension etc. with interest thereon @ 18% p.a.”

3. By way of reply, the respondents have averred that the applicant’s husband late Shri Sikander Khan was working at Bhinmal LSG as Postman since 05.10.1990 (AN) and he remained willful and unauthorized absent from duty since 16.06.1997. The Sub Postmaster, Bhinmal who was appointing and disciplinary authority in this case issued letters dated 04.07.1997, 01.08.1997 and 26.08.1997 by Bhinmal Post Office registered letter No. 5152, 3992 & 285 respectively to the husband of the applicant but he neither attended the duty nor responded to the official communications. He had also failed to produce sick certificate to his controlling officer. Thus, Sub Postmaster, Bhinmal initiated the disciplinary action under Rule 14 of CCS (CCA) Rules, 1965 and issued charge sheet on 21.01.1998. Thereafter following the prescribed procedure of Rule 14 inquiry, the competent authority i.e. the SPOs Sirohi passed an order vide memo dated 16.06.1998 (Annex. A/1) of dismissal from service in respect of the applicant’s husband. The applicant’s husband preferred an appeal against the order Annex. A/1 before the Director Postal Services, Rajasthan Western Region, Jodhpur and the appeal was rejected without going into the merits of the case as being time barred. Thereafter, the applicant’s husband submitted a mercy petition

addressed to the Hon'ble President of India which was submitted to the Postmaster General, Rajasthan Western Region Jodhpur on 29.11.2001. The respondents have disputed facts averred by the applicant regarding submission of any leave application, sick certificate etc. by her husband late Shri Sikandar Khan. Thus, the respondents have prayed to dismiss the OA with costs.

4. Heard both the parties. Counsel for applicant contended that the applicant joined his services in the respondent-department in the year 1974 and while working on the post of Postman in the year 1997 he remained absent from duties and services were terminated in the year 1998. The inquiry was held in absentia and no opportunity of hearing was provided to the applicant's late husband and no inquiry report was submitted to the applicant's late husband and without following the due procedure of law, he has been removed from service in violation of principles of natural justice.

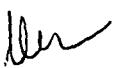
The applicant filed an appeal against the order of dismissal from service which was also decided by an entirely non-speaking order and simply on the ground of being barred by limitation, the appellate authority dismissed the same. Counsel for applicant contended that the valuable right of appeal available to the applicant's late husband has not been considered by the appellate authority and appellate authority rather than deciding the matter on merits, simply rejected his appeal on technical reasons which is per se illegal.

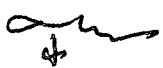
5. Per contra, counsel for respondents contended that order of the appellate authority (Annex. A/2) does not suffer from any illegality and the

appellate authority decided the same as per prescribed rules of limitation on the subject.

6. We have considered the rival contentions and perused the order of termination (Annex. A/1) as well as order of Appellate Authority (Annex. A/2) and looking to entire facts and circumstances of the case, we intend to dispose of this OA rather than deciding it on merits. Therefore, the order Annex. A/2 passed by Appellate Authority is quashed and set aside because it has not been decided on merits and it is always desirable to decide cases on merit rather than technicalities, as from a bare perusal of Annex. A/2, it appears that appeal filed by the applicant against the penalty order cannot be said to be inordinately delayed but it has been rejected on the ground of limitation, therefore, we quash order Annex. A/2 and set aside the same.

7. Accordingly, looking to the entire facts and circumstances of the case, OA is disposed of with the direction to the competent authority in the respondent-department to decide the appeal filed by the applicant's late husband Shri Sikandar Khan on merits, within a month from the date of receipt of this order and in the process, if required, the present applicant may be called for personal hearing. Thereafter, if any grievance remains to the applicant, she may approach appropriate forum, if so advised. There shall be no order as to costs.

  
 (MEENAKSHI HOOJA)  
 Administrative Member  
 Ss/

  
 (JUSTICE K.C.JOSHI)  
 Judicial Member