

**Central Administrative Tribunal, Lucknow Bench,**

**Lucknow**

**Original Application No. 218/2007**

This the 8th day of April, 2010

**Hon'ble Mr. M. Kanthaiah, Member (J)  
Hon'ble Dr. A.K. Mishra, Member(A)**

Bhagauti Aged about 33 years, S/o late Pyare, R/o Village Prreypur, Post Harchandpur, District Rai Bareilly (since deceased).

1/1 Sunita Devi, Widow of late Bhaguai.  
1/2 Km. Rekha, minor daughter.  
1/3 Km. Neha, minor daughter.  
1/4 Km. Pinki, minor daughter  
1/5 Km. Priya minor daughter

.....Applicants

By Advocate: Sri Siya Ram

**Versus**

1. Union of India through G.M., N.R. New Delhi.
2. Sr. Divisional Mechanical Engineer (O&F), N. R. Hazratganj, Lucknow.
3. Sr. Divisional Mechancial Engineer (C&W), N. R., Hazratganj, Lucknow.
4. Asstt. Divisional Mechancial Engineer, (Power), N.R., Lucknow.

.....Respondents

By Advocate: Sri Deepak Shukla for Sri Prashant Kumar

**ORDER**

**Delivered by Dr. A.K. Mishra, Member-A**

The original applicant has challenged the punishment order of removal from service dated 23.5.2003 of the disciplinary authority, the order dated 13.3.2006 of the appellate authority who summarily rejected his appeal taking the ground of limitation and the order dated 30.5.2006 of the 'revisional authority' who rejected his revision petition after hearing the original applicant in person.



2. During the pendency of the Application, the original applicant died and in his place his legal heirs have been substituted.

3. At the time of hearing, the learned counsel for the applicant canvassed three grounds: (i) the procedure prescribed under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1966 had not been strictly followed in the inquiry conducted against the original applicant who was facing the charge of unauthorized absence; it is his case that instead of asking the prosecution to complete the presentation of their case, the Inquiry Officer (IO) in one sitting completed the inquiry after recording the statement of the original applicant and coming to the finding that the original applicant had admitted to the charge of unauthorized absence, but pleaded some extenuating circumstances as responsible for such conduct; (ii) the specific plea of the original applicant that he was compelled to absent himself from his duties on account of illness of his wife and children was not given due consideration, neither by the disciplinary authority, nor by the appellate authority, nor by the revisional authority; the I.O. himself had mentioned about extenuating circumstances in the paragraph relating to 'special remarks' in the inquiry report submitted by him; the I.O. has mentioned that the applicant's wife was in advanced stage of pregnancy and his daughters were also sick and since there was no one to look after his family members, it was not possible for the applicant to attend to his duties; although he has given a finding of 'guilt' in respect of the charge brought against the applicant, he has at the same time mentioned in the 'special remarks' that the applicant's case should be considered liberally in view of the difficult circumstances through which the applicant was passing; and (iii) placing reliance on the judgment of Supreme Court in the case of **Bhagwan Lai Arya Vs. Commissioner of Police, Delhi & Others** reported at (2004) 2 UPLBEC 1294, he urged that the Tribunal was entitled to look into the proportionality of the penalty awarded to a government employee. In the cited case, the Supreme Court held that awarding the punishment of removal from service without caring to examine the medical aspects of the absence could not be justified, rather such punishment would be treated as excessive and disproportionate. He also placed reliance on the case of **Management, Coimbatore District Central Co-operative Bank Vs Secretary, Coimbatore District Central Co-operative Bank**



**Employees Association & Another reported at (2007 (114) FLR**

**236 (SC)** to argue that a Court of law can use the doctrine of proportionality to interfere with the order of disciplinary authority where dis-proportionate penalty has been imposed.

4. The learned counsel for the respondents submits that there was no denial of opportunity leading to violation of principles of natural justice in this case. A chargesheet was served upon the applicant. He presented himself before the I.O., admitted to the charge of unauthorized absence. He stated in unambiguous term that he had no documentary evidence to adduce, nor did he wish to engage a defence assistant. His only plea was that due to health problem of his family members, his presence was required at home and he could not attend to his duties. Notwithstanding this plea, the fact remains that he was continuously absent from 1.2.2002 to 27.4.2002. His absence was detected on 27.4.2002 during the course of physical verification conducted by the vigilance team. Neither had he given any intimation about his absence from duty, nor about the alleged plea of sickness of his wife or his children. The case cited by the learned counsel for the applicant in the case of Bhagwan Lal Arya (supra) can be distinguished on facts. In this case, the employee had applied for medical leave on the basis of medical certificate from a Government hospital; whereas in the present case there was no such leave application, nor any medical certificate either from the Railway Medical authorities or from the State Government hospital. The absence from duty was detected during the surprise check of vigilance official but for which the unauthorized absence of the applicant could have gone un-detected for a longer time.

5. As regards his plea of indifferent health condition of his family members, one certificate by private medical practitioner has been filed in this Application. It says that the wife of the original applicant was suffering from some fever from 1.2.2002 and was advised to take complete rest for three months. It does not specifically say the period for which she was under medical treatment. The original applicant had never submitted this medical certificate at any time when he was in service or during the course of inquiry. The I.O. could not have come to a finding about the genuineness of the plea of sickness of family members in absence of any material before him except for the

statement purported to have been made by the applicant. Therefore, according to him, there was no material illegality in not taking this plea into consideration. As regards proportionality of the punishment, he submits that the scope of judicial review is limited. It is for the respondent-authorities to take a view about the quantum of punishment considering the facts of the case. Since the charge of unauthorized absence was proved, it was for the respondent-authorities to pass appropriate penalty keeping in view the facts of the case. In the counter affidavit, the respondents have taken the plea that the original applicant was very indifferent about his duties, he was frequently absent from duty without intimation and he was also careless in not making any representation against the findings of the I.O. Therefore, keeping in view his over all conduct, the disciplinary authority took the view that the original applicant had no interest in his service and since the charge of unauthorized absence was established against him, he imposed the penalty of removal from service. The appellate authority dismissed the appeal simply on the ground of limitation. The revisional authority also took similar ground and observed that the unauthorized absence of the original applicant was proved through his own admission; he did not file an appeal on time; his conduct all along had been very irresponsible and, therefore, he was not entitled to any relaxation in the penalty imposed on him.

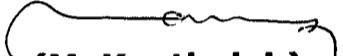
6. Although, the respondents have stated that the original applicant was in the habit of absenting himself from duty and acting in a very irresponsible manner, these allegations were not included in the chargesheet brought against him. From the facts on record, it appears that the applicant has been chargesheeted for his unauthorized absence from 1.2.2002 to 27.4.2002 when the fact of such absence was detected during vigilance raid. On the face of it, the removal from service cannot be justified because of one instance of unauthorized absence. We do not have the full service records of the applicant before us, so we cannot form any opinion whether there were many instances of unauthorized absence on the part of the original applicant. As regards genuineness of plea of extenuating circumstance, we find that the I.O. was convinced with the plea and incorporated it under the heading 'special remarks' although the basis on which such finding was made is not forthcoming from his report.



7. We find that the original applicant in the meantime has expired. It would be appropriate for us to remand this case to the revisional authority after setting aside his rejection order asking him to review the matter on the basis of the available service records and keeping in view the proportionality of the penalty imposed on the original applicant. The order of revisional authority is accordingly set-aside. The matter is remitted to him for reconsideration of the revision petition filed by the original applicant.

8. The O.A. is disposed of accordingly. No costs.

  
**(Dr. A.K. Mishra)** 874/10  
Member-A

  
**(M. Kanthaiah)**  
Member-J

Girish/-