

Central Administrative Tribunal, Lucknow Bench, Lucknow
 Original Application No. 242/2007

This the 27th day of January, 2014

Hon'ble Sri Navneet Kumar, Member (J)
Hon'ble Ms. Jayati Chandra, Member (A)

Phoolmati aged about 32 years wife of late Hridwar r/o village Majhawaua, Post Khajuri, District- Basti

Applicant

By Advocate: Sri S.S.L.Srivastava

Versus

1. Union of India through Secretary, Ministry of Railways, New Delhi.
2. The General Manager (Personnel) Northern Eastern Railway, Gorakhpur.
3. The Divisional Rail Manager (Personnel), Lucknow Camp. Diesel Shed, Gonda.

Respondents

By Advocate: Sri B.B.Tripathi

(Reserved on 12.12.2013)

ORDER

BY HON'BLE SRI NAVNEET KUMAR, MEMBER (J)

The present Original Application is preferred by the applicant u/s 19 of the AT Act, with the following reliefs:-

Wherefore, it is most respectfully prayed that this Hon'ble Tribunal may kindly be pleased to set aside the impugned order dated 3.10.2006 passed by the General Manager (Personnel), North Eastern Railway, Gorakhpur as well as the order dated 3.10.2003 passed by Divisional Rail Manager (Personnel) Lucknow Diesel shed Gonda as contained in Annexure No. 1 and 2 to this O.A. with all consequential benefits and the Hon'ble Tribunal may also be pleased to pass any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper in the circumstances of the case in favour of the petitioner.

2. The brief facts of the case are that the applicant's husband was working as Ancillary Khalasi at Diesel Shed Gonda , expired on 20.4.2003 while he was in service. After the death of the ex-employee, the applicant approached the authorities for providing

her compassionate appointment under dying in harness rules. Subsequently, the applicant was informed through letter dated 31.10.2006 that the husband of the applicant was removed from service w.e.f.19.4.2001 before his death. Therefore, the applicant cannot claim appointment on compassionate ground. The learned counsel for the applicant has also pointed out that the said order of removal was never served upon the applicant and it was a concocted story of the respondents for not considering and depriving the applicant for her lawful claim of appointment under dying in harness rules and in conformity with the provisions provided under law. The learned counsel for the applicant has also pointed out that the rejection of the claim of the applicant vide order dated 31.10.2006 whereby it is indicated that the applicant's husband was removed from service w.e.f. 19.4.2001, is also illegal as no such order was ever served upon the applicant and for the first time, it came to the knowledge of the applicant vide impugned order dated 31.10.2006. It is also pointed out by the learned counsel for the applicant that the said order was passed on 23.9/3.10/2003 and since the husband of the applicant expired on 20th April, 2003, as such, no order of removal can be passed subsequent to his date of death.

3. The learned counsel appearing on behalf of the respondents filed their detailed reply as well as Supple. C.A. and through counter reply as well as Supple CA, the respondents have categorically pointed out that the applicant's husband who was earlier working with the respondents organization was removed from service w.e.f. 19.4.2001 and the said order of removal was also published in the news paper known as "Rastriya Sahara" on 7th July, 2001. The learned counsel for respondents has also annexed the copy of the paper cutting through which the published notice was published.

Not only this, it is also pointed out by the respondents that ex-

employee was served with the charge sheet dated 18.10.2000 and an ex-parte enquiry was conducted and by means of order dated 19.4.2001, the applicant was removed from service. Not only this, it is also pointed out by the learned counsel for the respondents that the notice was also pasted on the notice board and when the applicant failed to appear before the enquiry officer, the enquiry officer was left with no other option except to conclude the enquiry and order were passed accordingly.

4. On behalf of the applicant, Rejoinder Reply as well as Supple. RA were filed and through Rejoinder Reply /Supple.RA, mostly the averments made in the O.A. are reiterated. However, once again the applicant denied the service of order of removal on the applicant's husband and pointed out that the same was neither sent by post nor published in any news paper and rather it was denied by the applicant that the order of removal was ever pasted or communicated during life time of the applicant's husband. The learned counsel for the applicant has also filed Supple RA and through Supple. RA, the averments made in the O.A. are reiterated.

5. Heard the learned counsel for the parties and perused the record.

6. It is undisputed that the applicant's husband was working with the respondents organisation and died on 20th April, 2003. After the death of the ex-employee, the applicant applied for grant of compassionate appointment and when she received the decision of the respondents on 31.10.2006, she came to know that her husband who was working in the respondents organization was removed from service on 19.4.2001 as such the applicant came to know about the removal order of the applicant. Now the question which requires determination is whether the removal order which was passed on 19.4.2001 was duly communicated to the ex-employee or not. The bare reading and perusal of the entire record shows that the

applicant was served with the charge sheet dated 18.10.2000 and the order dated 19.4.2001, whereby he was removed from service. It is pointed out that the applicant's husband remained unauthorized absence from 8.1.2000 to 4.10.2000 and in pursuance of the said unauthorized absence, the charge sheet was given to the applicant and after the appointment of the enquiry officer, neither the ex-employee appeared before the enquiry officer nor he has submitted any information, as such an ex-parte enquiry was proceeded and enquiry officer submitted enquiry report. The enquiry report was duly communicated to the ex-employee, but since the ex-employee has not given any reply to the said enquiry officer's report, therefore, the disciplinary authority has taken a decision on 19.4.2001 and passed the order of removal. The said order of removal was also pasted on the notice board in presence of two witnesses as mentioned in Annexure S-2 to the Supple. CA filed by the respondents and the required publication was also published in the local newspaper named as "Rastriya Sahara" on 7.2.2001. The said publication is also available on record as Annexure S-1 to the Supple CA filed by the respondents.

7. As observed by the Hon'ble Apex Court in the case of **Union of India Vs. G. Annadurai reported in 2010 (1) SCC (L&S) 276**, "that if an employee failed to participate in the enquiry despite sufficient opportunity given to him, by sending notice, the disciplinary authority can pass the order."

8. As observed by the Hon'ble Apex Court in the case of State of Bikaner Vs. Nami Chand Nalwa reported in 2011 (4) SCC, 584, the scope of judicial review in functioning of disciplinary authority is hardly called for. The Hon'ble Apex Court further observed as under:-

"7. When a court is considering whether punishment of termination from service' imposed upon a bank employee is shockingly excessive or disproportionate to the gravity of the proved

misconduct, the loss of confidence in the employee will be an important and relevant factor. When an unknown person comes to the bank and claims to be the account-holder of a long inoperative account, and a bank employee, who does not know such person, instructs his colleague to transfer the account from "dormant" to "operative" category (contrary to instructions regulating dormant accounts) without any kind of verification, and accepts the money withdrawal form from such person, gets a token and collects the amount on behalf of such person for the purpose of handing it over to such person, he in effect enables such unknown person to withdraw the amount contrary to the banking procedures; and ultimately, if it transpires that the person who claimed to be account holder was an imposter, the bank can not be found fault with if it says that it has lost confidence in the employee concerned. A Bank is justified in contending that not only employees who are dishonest, but those who are guilty of gross negligence, are not fit to continue in its service.

9. The fact that the criminal court subsequently acquitted the respondent by giving him the benefit of doubt, will not in any way render a completed disciplinary proceedings invalid nor affect the validity of the finding of guilt or consequential punishment. The standard of proof required in criminal proceedings being different from the standard of proof required in departmental enquiries, the same charges and evidence may lead to different results in the two proceedings, that is, finding of guilt in departmental proceedings and an acquittal by giving benefit of doubt in the criminal proceedings. This is more so when the departmental proceedings are more proximate to the incident, in point of time, when compared to the criminal proceedings. The findings by the criminal court will have no effect on previously concluded domestic enquiry. An employee who allows the findings in the enquiry and the punishment by the disciplinary authority to attain finality by non-challenge, cannot after several years, challenge the decision on the ground that subsequently, the criminal court has acquitted him. "

9. Since the ex-employee was served with the charge sheet, he was given copy of the enquiry report and ex-employee failed to participate in the entire enquiry proceedings, as such respondents were having no other option to pass an order which was duly passed on 19.4.2001 and the same was published in the local newspaper as

well on 7.7.2001 and also pasted on the notice board, as such we do not find any reason to interfere in the present O.A.

10. Accordingly the O.A. is liable to be dismissed. No order as to costs.

J. Chandra

(Jayati Chandra)
Member (A)

Navneet Kumar
(Navneet Kumar)
Member (J)

HLS/-