

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 159/1993

Date of Decision: .04.4.2003

Smt. Vidhata & anr.

Applicant(s)

Shri G.K. Masand.

Advocate for Applicants

Versus

Union of India & ors.

Respondents

Shri. S.C. Dhawan.

Advocate for Respondents

CORAM: HON'BLE SHRI A.V. HARIDASAN.
HON'BLE SHRI S.K. HAJRA.

VICE CHAIRMAN
MEMBER (A)

1. To be referred to the reporter or not? *Yes*
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. *Yes*

(Signature)
(A.V. HARIDASAN)
VICE CHAIRMAN

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 159/1993

THIS THE 04TH DAY OF APRIL, 2003

CORAM: HON'BLE SHRI A.V. HARIDASAN VICE CHAIRMAN
HON'BLE S.K. HAJRA. MEMBER (A)

1. Smt. Vidhata Wd/o late Ramnayan Vermaa residing at Railway Quarter No.MS/RS/II/115/2 Kurla, Bombay-400 070.
2. Shri Mayaram S/o late Ramnayan Verma residing at Railway Quarter No.MS/RS/II/115/2 at Kurla, Bombay-400 070. ... Applicants

By Advocate Shri G.K. Masand.

Versus

1. Union of India through the General Manager, Central Railway, Bombay V.T.,
2. Chief Workshop Manager, Central Railway, Loco Workshop, Parel, Bombay-400 012.
3. Chief Works Engineer, Central Railway, Bombay V.T. Bombay.
4. The Estate Officer in the Office of Divisional Rly. Manager (Works) 3rd floor, Annexe Building, Bombay V.T. ... Respondents

By Advocate Shri S.C. Dhawan.

O R D E R
Hon'ble Shri A.V. Haridasan. Vice Chairman.

The applicants 1 and 2 the widow and son of late Shri Ramnayan Verma, ex employee under the respondents have filed this application challenging the order dated 03.3.1992 by which Shri Ramnayan Verma was removed from service for some alleged misconduct without holding any inquiry and praying for a declaration that

the removal from service was illegal, arbitrary and unconstitutional; for a diction to the respondents to treat that late Ramnayan continued in service till the date of his death on 20.11.1992 and give to the first applicant on behalf of legal heirs of Ramnayan the arrears of pay and allowances from 03.3.1992 to 20.11.1992, the terminal benefits like gratuity, family pension, cash equivalent of earned leave etc., to consider the appointment of second applicant on compassionate grounds and not to evict the applicants from the railway quarter. When the case came up for hearing, the learned counsel of the applicant states that the claim for compassionate appointment need not be considered in this application and permission be granted to the applicants to seek relief in that behalf in another proceedings. He also stated that the grievance regarding eviction from quarter also does not subsists now as permission as sought is granted.

2. The facts lie in a narrow compass. Late Ramnayan B. Verma was working as Steam Crane Driver under the second respondent. He was placed under suspension by order dated 11.02.1992 stating that disciplinary proceeding was contemplated against him. Thereafter, without issuing any memorandum of charges and without holding any inquiry as required under Railway servants (Discipline & Appeal) Rules 1968 the impugned order Annexure-A dated 03.3.1992 was issued by

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the second respondent removing Ramnayan from service in exercise of powers vested in it under Rule 14 (ii) of the Railway Servants (Discipline & Appeal) Rules 1968. Ramnayan Verma submitted an appeal to third respondent stating that he had an unblemished service in the past 28 years, that he was not guilty of any misconduct that the impugned order removing him from service was issued without following principles of natural justice as there was no circumstance which warranted dispensation of inquiry contemplated under the service rules and praying that the order of removal be set aside. The appeal submitted by Ramnayan was not disposed off. Steps were taken for eviction of Ramnayan and his family from the quarter while so Ramnayan died on 20.11.1992. Ramnayan Verma was survived by a daughter aged 20 years and another son aged 18 years apart from the applicants. Since the appeal submitted by Ramnayan Verma was not disposed off and the removal of Ramnayan Verma from service was wholly illegal and unjustified. Thus, the applicants have filed this application for the reliefs as aforesaid.

3. The respondents contend that the application is bad for misjoinder of causes of action and misjoinder of parties and that cause of action in this case having died with Ramnayan, the legal heirs could not maintain this application as preliminary objection. The impugned order of removal from service of Ramnayan Verma invoking

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the provisions of Rule 14 (ii) of the Railway Servants (Discipline & Appeal) Rules 1968 is sought to be justified on the ground that in the Fact Finding Inquiry, it was found that Ramnayan had assaulted his superior Shri Bagade that the witnesses of incident were not willing to come forward to give evidence against Ramnayan fearing danger to their life and intimidation and that it was not reasonably practicable to hold an inquiry into the matter. The respondents also stated that the appeal Annexure-D did not seem to have been received in the office of the third respondent. The respondents thus contended that the application is liable to be dismissed in limine.

4. The Original Application was heard by a Division bench and it was disposed off by order dated 17th November, 1997 referring the matter to the ^{Honorable} Chairman for constituting a Full Bench to consider the question whether heirs or legal representatives of a deceased delinquent official can file or can continue a OA challenging the disciplinary order against a deceased delinquent official and to get consequential benefits. Accordingly, ^A Full Bench was constituted. The Full Bench consisting of three members vide its order dated 30th August, 1998 came to the conclusion that the legal heirs of deceased employee could not maintain the application under Section 19 of the Administrative Tribunals Act challenging the order passed in a

disciplinary proceedings against a deceased employee and seek consequential reliefs. The application was then placed before Division Bench for disposal. In the light of the finding by the Full Bench, the application was dismissed as not maintainable by the Division Bench by order dated 24th June, 1998. The applicant challenged the order before the Hon'ble High Court of Bombay in W.P. No.4856/98. The Hon'ble High Court noting that the ruling of the Full Bench in this case was reversed by a larger Bench of five members of the Tribunal in OA 501/94. Mrs. Chandrakala Pradhan Vs. Union of India & others relying on the judgment of the Apex Court in the case of Sudha Srivastava Vs. Comptroller & Auditor general 1996 (1) SCC 363 allowed the writ petition and set aside the order of the Tribunal and directed the Tribunal to decide the matter afresh on merits in accordance with law. Thus, the application is now before us for fresh disposal.

5. The learned counsel of the respondents again raised the question of maintainability of the application as to whether legal heirs of the Government servant can prosecute the application as the cause of action does not survive after the death of the Government servant. We find that the question whether the application is maintainable or not has been decided by the Hon'ble High Court holding that the application is maintainable. The only question therefore which

remains to be decided is whether the impugned order dated 03.3.1992 of the second respondent removing ^{deli} ~~Shri~~ Ramnayan from service without holding an inquiry is justified or not. G.K. Masand learned counsel of the applicant argued that the impugned order removing Ramnayan from service passed by the second respondent is violative of principles of natural justice ignoring the provisions of Article 311 of the Constitution and in contravention of Rule 9 of the Railway Servants (Discipline & Appeal) Rules 1968. Ramnayan was not informed of the charges and no inquiry was held in consonance with the principles of natural justice. Rule 14 (ii) of Railway Servants (Discipline & Appeal) Rules 1968 provides for a special procedure in certain exceptional cases and only if the conditions are existing then the action taken under Rule 14 (ii) can be justified. He argued that mere subjective satisfaction of the Disciplinary Authority based on no material at all is not sufficient to dispense with the inquiry. Inviting our attention to the averments in the reply statement that in the Fact Finding Inquiry it was learnt that Ramnayan Verma had assaulted Shri H.M. Bagade that the witnesses did not come forward to give evidence fearing danger to their ^{lives} ~~eyes~~ and intimidation and therefore the Disciplinary Authority decided to dispense with the inquiry as it was not reasonably practicable to hold it. Learned counsel of the applicant argued that the mere fact that no person came forward to give

evidence cannot be held as a valid reason to dispense with the inquiry denying constitutional guarantee and principles of natural justice to the applicant. Shri S.C. Dhawan the learned counsel of the respondents on the other hand argued that since eye witnesses have refused to give evidence fearing danger to themselves and their families the competent authority considering the relevant provisions of the rules took the decision to dispense with the inquiry and this decision cannot be challenged. However, we have carefully perused the file which lead to the impugned order which was made available for our perusal by the learned counsel of the respondents. A perusal of the file revealed the following: On 10.02.1992 Shri H.M. Bagade shop Superintendent Development Shop made a complaint to Chief Workshop Manager at about 1545 hours that he was assaulted by Ramnayan Verma and he sustained injury. He was taken to the hospital and a FIR was registered. The second respondent on that basis placed Ramnayan Verma under suspension. The second respondent directed Shri M.P.S. Verma to conduct a Fact Finding Inquiry. On 14.02.1992 Shri M.P.S. Verma submitted the report after holding fact finding inquiry. The report reads as follows:

" I was asked by Dy. CME (R) on 11.2.92 at 9.00 hrs to conduct the enquiry of the assault case of Shri H.M. Bagade and submit the findings as early as possible. Accordingly I tried to collect the information from various persons, but noted that nobody was prepared to give the witness. I had taken the statements

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of Shri S.C. Dixit SS, MWS, PR, Shri K.S. Borker, SS Crane (MWS) PR and Shri A.P. Kosambe, Chg, 'A' Crane Section Parel, but they were also not prepared to give the name of the person who had assaulted Shri H.M. Bagde on the plea that they were not present on the spot. But when I told them that it is natural for any one who came in the contact of assaulted person to ask the name of the person who assaulted him, they gave the name in their statements. But their statements are also heresay statements and not direct evidences.

I also tried from other persons to find out the facts, and came to know that it was the general feeling that when SS can be assaulted inside the shop, what about their safety if they came forward to give witness. Several workers, however, admitted that the persons who had assaulted was Shri RamNayan Verma, Steam Crane Driver.

I also contacted Shri Bagde to know the name of some eye witness, but he replied that since his eyes are operated and during the assault his glasses had fallen, he could not recognize the persons who could have been eye witnesses. He also told me that when he asked the persons present there to give witness, they replied that it was sufficient for them to have saved him from further assault, and they were not prepared to give any witness as they had their family and children to look after. Based on the written statements and the information, I received in discussion with various persons of the shop, I am of the opinion that Shri Ram Nayana Verma Sal. No.707806, Steam Crane Driver had assaulted Shri H.M. Bagde in M/C Shop horizontal boring Section and no one is coming forward to provide eye witness because of fear of personal safety."

(emphasis added)

On the basis of the above report, the second respondent considered whether an inquiry can be dispensed with or not. He came to the conclusion that holding of an inquiry is not reasonably practicable and therefore issued the order of removal of Ramnayan Verma from service under exercise of powers vested under Rule 14

(ii) of the Railway Servants (Discipline & Appeal) Rules 1968. The reason for dispensation with the inquiry was not communicated to Ramnayan Verma in the impugned order, but the same is seen recorded in the order dated 27.02.1992 and is available in the file. The note containing the reason read as follows:-

" I have examined the fact finding report submitted by AWM (EL). It is clear from the report that Shri Ramnayan B. Verma, Steam Crane Driver of Millwright Shop assaulted Shri H.M. Bagade, Shop Supdt. Development Shop on 10th Feb. '92 in Machine Shop at about 15.50 hrs. which resulted in serious injuries to Shri Bagade. It is noted that despite the best effort made by QWM (EL) to get statements of eye witnesses, he has not been able to get any one to give a statement, as the persons who were present on the spot fear reprisal. It is therefore unlikely that at the time of conducting DAR enquiry any witness would come forward to give evidence in this case.

As this is a case of serious breach of discipline inside the shops, I have come to the conclusion after careful consideration that it would be advisable to take action in this case under Rule 14 (ii) of the DAR Rules. Shri Ramnayan B. Verma, Steam Crane Driver is therefore removed from service with immediate effect."

(emphasis added)

6. A reading of the aforesaid finding of Fact Finding Inquiry and the reason recorded by the second respondent for dispensing with the inquiry clearly shows that there was no material at all on the basis of which it could be reasonably concluded that it was not reasonably practicable to hold an inquiry. We find that the decision to dispense with the inquiry was totally perverse. On the basis of the statement in the Fact

Finding Report no reasonable person can come to conclusion that under the circumstances it was not reasonably practicable to hold an inquiry into the alleged misconduct of late Ramnayan. The report of the fact finding inquiry shows that there was no eye witness of the incident. In the report of the Fact Finding Officer it had not been stated that any one of the witnesses told him that Ramnayan Verma or any other person on his behalf threatened the witnesses. The inquiry has been dispensed with only for the reason that it was not possible to get eye witness. The Apex Court in the ruling in Tulsiram Patel's case AIR 1985 SC 1416 (1985 SCC (L&S) 672) observed as follows: "The Disciplinary Authority is not expected to dispense with a disciplinary authority lightly or arbitrarily or out of ulterior motives or merely in order to avoid the holding of an inquiry or because the Department's case against Government servant is weak and must fail". In this case we find that the Disciplinary Authority has dispensed with the inquiry ^{on the ground} that there is no likelihood of eye witnesses coming forward ¹⁶ and give evidence. Even the fact finding inquiry authority has not stated in his report that any witness complained to him that Ramnayan Verma intimidated or threatened witnesses. The Disciplinary Authority also did not come to the conclusion that Ramnayan Verma threatened witness. ^{no other witness was available at least the alleged complainant could have given evidence} There was no situation which rendered holding an inquiry impracticable, going by the general standard of

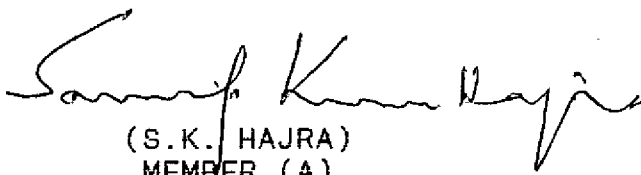
reasonableness. Hence we have no hesitation to hold that the decision of the Disciplinary Authority to dispense with the inquiry was totally perverse, arbitrary and illegal.

7. In the light of what is stated above, we find that the Disciplinary Authority ^{was} ~~is~~ not justified in dispensing with the inquiry and passing the order of removal of Ramnayan Verma from service and the impugned order is liable to be set aside. It is pertinent to mention that the respondents did not act bonafide when refuting in the reply statement the averment in the OA that Ramnayan Verma had filed an appeal. The learned counsel of the applicant has produced for our perusal a xerox copy of the appeal presented by ~~Shri~~ Ramnayan Verma on 27th March, 1992 which was initialled at the office of the second respondent.

8. Having found that the impugned order removing Ramnayan Verma is to be set aside, we will have to see what relief can be granted to the applicants in this case. As a consequence of setting aside the impugned order, Ramnayan Verma should be treated to have continued in service from the date of the impugned order till the date of his death on 20.11.1992. The applicants the legal heirs of Ramnayan Verma are therefore entitled to be paid the full salary and allowances which Ramnayan Verma would have received

during that period. On the death of Shri Ramnayan Verma, the applicants were entitled to be given all the terminal benefits and family pension.

9. In the result, in the facts and circumstances of the case, we set aside the impugned order dated 03.3.1992 removing Ramnayan Verma from service and direct the respondents to pay to the applicant No.1 the widow of Ramnayan Verma the entire pay and allowances which was due to ~~Shri~~ Ramnayan Verma from 03.3.1992 to 20.11.1992 and to work out the terminal benefits due to his death and to pay the first applicant the terminal benefits like gratuity, family pension, cash equivalent of earned leave, provident fund, arrears of salary etc. as nominee on behalf of the legal heirs. Arrears of salary, terminal benefits and family pension shall be made available to the applicant No.1 within a period of three months from the date of receipt of a copy of this order. There is no order as to costs.


(S.K. HAJRA)
MEMBER (A)


(A.V. HARIDASAN)
VICE CHAIRMAN

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