

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 955/94

Tribunal's order

Dated: 28.10.96

Heard Shri D.V.Gangal, counsel for the applicant. Shri V.S.Masurkar, counsel for the respondents.

The applicant has filed M.P. 662/95 praying that he is entitled to half the salary from 19.3.1984 to 28.3.92 as per Rules. Admittedly, the applicant has prayed for interim relief in the O.A. which has not been granted. In this connection the applicant draws our attention to Rule 5(4) of the Railway Servants (Discipline & Appeal) Rules 1968, where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Railway servant, is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement, was originally imposed, the Railway servant shall be deemed to have been placed under suspension by the Competent authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

It is relevant to note the observations made by the Tribunal vide its order dated 14.8.91. The Tribunal keeping in view the decision in Mohammad Ramzan Khan's case (supra) allowed the applications and the order of the disciplinary authority and

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appellate authority are quashed and set aside. We would clarify ~~that~~ this decision may not preclude the disciplinary authority from reviving the proceedings and continuing with it in accordance with law from the stage of supply of the enquiry report.

The learned counsel for the applicant submits that in <sup>view</sup> Rule 5(2), the applicant should be deemed to have been placed under suspension and the emoluments payable under law has not been paid to him. It is also stated that in Rule 5 read with Rule 2044 and 1344 of Railway Establishment Manual which states that " Where the removal or compulsory retirement of a Railway servant is set aside by the court solely on the ground of non-compliance with the requirement of clause 2 of Article 321 of the Constitution and where he is not exonerated on merits , the Railway servant shall, subject to the provisions of sub-rule (7) of Rule 2044 be paid such amount of the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Railway servant of the quantum proposed and after considering the representation.

: 3 :

The respondents in their reply stated that the period from the date of removal from service i.e. 19.3.1984 till he reported for duty is treated as dies-non. The respondents are directed to produce the order stating that the period has been treated as dies-non on the next date of hearing.

Adjourned to 9.12.96.

Copy of the order be given to the parties.

✓ 4/4  
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M.R.Kolhatkar  
(M.R. Kolhatkar)  
Member (A)

B.S. Hegde  
(B.S. Hegde)  
Member (J)

NS

9/12/96-34

(7)

Heard Shri D. V. Chandal for Applicant  
Shri V. S. Masurkar for the  
Respondents.

He has filed MP-662/95 for  
Interim Relief.

The prayer made in the OA  
and MP are one and the  
same. The OA has already  
been admitted.

MP will be taken up along  
with OA at the time of  
final Hearing. Matter is  
remitted to Sine-die-list.

  
(P.P. Srivastava)  
m(A)

  
(B.S. Hegde)  
m(G)

alp.

memo of appearance  
filed by Shri V. S.  
Masurkar for  
Respondents.

12/12

P.T.

The matter taken out  
from Sine-die-list.  
Fix for F.H. on 26.2.98.  
Issue Notice to Counsel  
for applicants and  
Respondents.

Barry  
012-811/58

Per Tribunal

Date: 26/2/98

Applicant in person by Mr. S. Marne  
Advocate / Respondent by Mr. Masurkar  
Counsel at the request of Mr. Marne  
The matter adjourned to 27/1/98  
for fixed hearing

Dy. Regd. Inst.

Notices issued to  
Applicant/Respondents or  
27.1.98

29/1/98

PT. 27-98

(10)

As no DB is  
available the matter  
is adjourned to  
09/9/98

for Dy. Registr 07/98

ST

10

Per Tribunal

Date: 9/9/98

Applicant in person by D.V. Gangal  
Advocate / Respondent by V.S. Masurka  
Counsel. Time is over  
The matter adjourned to 07/10/98  
for Final Hearing

Dy. Registras

ST  
18/98

Per Tribunal

Date: 7/10/98

Applicant in person by D.V. Gangal  
Advocate / Respondent by V.S. Masurka  
Counsel. Time is over  
The matter adjourned to 18/11/98  
for Final Hearing

Dy. Registras

Per Tribunal

Date: 18/12/98

Applicant in person by Mr. Gangal  
Advocate / Respondent by Mr. Meesurka  
Counsel. Time over  
The matter adjourned to 16/12/98  
for final hearing

Dy. Registras

PT. 16-12-98

As no DB is available  
the matter is adjourned  
to 23-02-99

for Dy. Registras

M.P. no 84/99

for J.R. final

on 29/2/99

(Urgent circulation  
(sent in e-mail))

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4) 5.2.1999

Shri D.V. Gangal for the applicant. Shri V.S. Masurkar for the Respondents.

M.P. No. 8199 for protection from eviction of the quarter which the applicant is in occupation, till 1.5.1999. The learned counsel for the Respondents opposes the M.P. and further says that the applicant is liable to pay penal rent as per rules.

After hearing both sides, we find that though this O.A. was filed in 1994, no interim order has been granted regarding quarters till today. But now the applicant has given an undertaking in the M.P. itself that he is willing to vacate the quarter on or before 1.5.1999. We have noted and recorded this undertaking. Even the learned counsel for the applicant today again submits, on instructions from his client, who is present in the court today, that the applicant is going to vacate the quarter on or before 1/5/1999.

In view of the undertaking and submission made at the bar, we direct the respondents not to evict the applicant till 30.4.1999. However, this order is without prejudice to the rights of the respondents to claim whatever normal or penal rent that may be recovered as per rules.

M.P. No. 8199 is disposed of accordingly.

The O.A. should be kept for final hearing on 23.2.1999.

DASTI

S. Bawali  
(D.S. Bawali)  
M.A.

R  
(R.G. Vaidyanatha)  
V/C

05

Per Tribunal

23/2/99

Applicant in person by D.V. Gangal  
Advocate / Respondent by Mr. Yashpal  
Counsel. None vs. *Shri Venkateswar*  
The matter adjourned to 4/5/99  
for first hearing

*Shri*  
By Registrar

order/Judgement despatched  
to Applicant/Respondent(s)  
on 5/2/99

5/2/99

Per Tribunal (53) Date: 16/6/99

Applicant in person by Mr. Ganguli  
Advocate / Respondent by Mr. Mervan  
Counsel / present on  
The matter adjourned to 26/6/99  
for trial hearing.

Dy. Registrar

M.P. no 348/99  
for legal heir,  
hearing 26/6/99

26. 12) 2.6.1999: Both counsels present.  
When the case is called  
out for final hearing, Applicant's  
counsel, Shri S.V. Mane  
submits that the applicant has  
since died and M.P. has been  
filed to bring the legal  
heir on record.

Perused the M.P.  
The M.P. be registered and  
remanded today itself.

After hearing both the  
counsel, the M.P. is  
allowed.

Place the O.A. for  
final hearing on 16.6.1999.

(S. Balaji)  
(D.S. Balaji)  
MCA

(R.G. Vaideyanatha)  
VTC

OS

Per Tribunal

Date: 16/6/99

Applicant in person by D.V. Ganguli  
Advocate / Respondent by M.S. Mane  
Counsel / present on  
The matter adjourned to 21/6/99  
for P.M.

Dy. Registrar

21-6-99

Present: Sh. D.V. Gangal, Counsel  
for the applicant.

Sh. V.S. Masurkar, Counsel  
for the respondents.

Arguments heard. Closed  
for orders.

To  
(K.M. Agarwal)  
Chairman

Re  
(R.K. Ahuja)  
Member (A)

Date: 21/6/99  
Applicant by: D.V. Gangal

Respondent by: V.S. Masurkar

Judgement/Order

Stated and Pronounced

I am open and by

Hon'ble Shri Justice M.K. Agarwal  
and Hon'ble Shri R.K. Ahuja

(P) in open Court today  
Court Officer

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No.: 955/94

Date of Decision: 22-6-99

Ms. Anardevi Munnalal Pawar and ors. Applicant's

**Sh.D.V.Gangal** Advocate for  
Applicant.

## Versus

U.O.I and ors. Respondent(s)

**Shri V.S.Masurkar** Advocate for Respondent(s)

**CORAM:**

Hon'ble Shri. Justice K.M.AGARWAL, Chairman

Hon'ble Shri. R.K.Ahooja, Member(A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to other Benches of the Tribunal?

( K.M.AGARWAL )  
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: MUMBAI

O.A. No.955/94

THIS THE 22<sup>nd</sup> DAY OF JUNE, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN  
HON'BLE MR.R.K.AHOJJA, MEMBER(A)

1. Ms. Anardevi Munnalal Powar,  
Parel Carriage & Wagon Workshop,  
Western Railway, Bombay-400 013  
R/o Matunga Labour Camp  
'C', Chawl No.2, Room No.17,  
Matunga, Bombay-400 019.
2. Sh.Ashok Munnalal Powar,  
Parel Carriage & Wagon Workshop,  
Western Railway, Bombay-400 013  
R/o Matunga Labour Camp  
'C', Chawl No.2, Room No.17  
Matunga, Bombay-400 019.
3. Sh.Shyamlal Munnalal Powar  
Parel Carriage and Wagon Workshop,  
Western Railway, Bombay-400 013  
R/o Matunga Labour Camp  
'C' Chawl No.2, Room No.17  
Matunga, Bombay-400 019.
4. Sh.Jogesh Munnalal Powar  
Parel Carriage and Wagon Workshop,  
Western Railway, Bombay-400 013  
R/o Matunga Labour Camp  
'C' Chawl No.2, Room No.17  
Matunga, Bombay-400 019.
5. Sh.Rajesh Munnalal Powar  
Parel Carriage and Wagon Workshop,  
Western Railway, Bombay-400 013  
R/o Matunga Labour Camp  
'C' Chawl No.2, Room No.17  
Matunga, Bombay-400 019.
6. Ms.Seema Ranachandra Ayyar  
R/o Matunga Labour Camp  
'C', Chawl No.2, Room No.17  
Matunga, Bombay-400 019.

Applicants

(BY ADVOCATE SHRI D.V.GANGAL)

vs.

Union of India, through

- 1.The General Manager,  
Western Railway, Churchgate.
- 2.Chief Workshop Manager,  
Lower Parel, Western Railway,  
Bombay-400 013.

*Km*



3. Dy.Chief Mechanical Engineer,  
Western Railway Lower Parel,  
Bombay-400 013. .... Respondents

(BY ADVOCATE SHRI V.S.MASURKAR)

ORDER

JUSTICE K.M.AGARWAL:

This O.A. was initially filed by one Mannalal Prabhulal Pawar for quashing the enquiry proceedings and the order of removal from service with consequential reliefs. He died during the pendency of this O.A. and, therefore, his legal representatives were brought on record, who are now prosecuting and continuing with the proceedings of this O.A.

2. In Ramsarup v. Union of India, (1991) 16 ATC 384; Saroja Chandrasekaran v. Union of India, (1993) 25 ATC 668; D.V.V. Varma v. The Superintending Engineer, Hyderabad, 1994 (2) SIR 479 (CAT); Jankidevi v. Union of India, (1994) 27 ATC 4; Gulzar v. Sardar Ali, AIR 1930 Lahore 703 (2); Syedna Taher v. State of Bombay, AIR 1958 SC 253; G.Jayaprakash vs. State, AIR 1977 A.P. 20; and Girijanandini v. Bijendra Narain, AIR 1967 SC 1124; claims personal in nature to the deceased were held to be hit by the maxim 'actio personalis moritur cum persona' and, therefore, could not be pursued by the legal heirs of the deceased. In O.A. No.159/93, Smt. Vidhata and another v. Union of India and 3 others, decided on 30.4.1998, a Full Bench of this Tribunal held that an application

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of the present nature filed by the legal heirs is not maintainable. However, the learned counsel for deceased applicant submitted that the aforesaid Full Bench decision of this Tribunal has been stayed by the Mumbai High Court. The present application was filed by the deceased employee, which is being continued by his legal heirs after his death, whereas according to the Full Bench, an application filed by the legal heirs was not maintainable. It was urged that the Full Bench said nothing about the right of the legal heirs to continue with the application filed by the deceased employee by his legal heirs.

3. In this background, without embarking upon the question whether the legal heirs can or cannot continue with the proceedings, we proceed to examine the merits of the case on the premises that the legal heirs of a deceased employee may continue with such an application.

4. The deceased Mannalal Prabhulal Pawar was an employee of Western Railway. On the ground of unauthorised absence from 24.3.1982 to the date of charge-sheet dated 28.6.1983, he was subjected to departmental enquiry, found guilty and accordingly removed from service by an order passed in the year 1984 by the disciplinary authority. The order was affirmed in appeal and, therefore, the deceased had filed O.A.No.149/89 which was decided by a

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common order dated 14.8.1991. The operative part of the order was as follows:-

"In the result the applications are allowed and the order of the disciplinary authority and appellate authority are quashed and set aside. We would clarify that this decision may not preclude the disciplinary authority from reviving the proceedings and continuing with it in accordance with law from the stage of supply of the inquiry report. There will be no order as to costs."

Pursuant to the aforesaid decision of the Tribunal in O.A.No.149/89, the deceased was served with a copy of enquiry report and thereafter asked to make his representation, but he refused to do so on the ground that he was not paid subsistence allowance and that he would not submit his representation unless his subsistence allowance was paid to him. Under these circumstances, the disciplinary authority again passed the impugned order of removal against him after re-considering the material before it. The appeal preferred against it before the appellate authority was dismissed and, therefore, this fresh O.A. has been filed.

58 The deceased employee or his legal heirs cannot be allowed to re-agitate the ground that the enquiry proceedings were vitiated. Even otherwise, on the material placed on record, we find nothing to hold that there was any irregularity in conducting the enquiry proceedings or that there

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was any prejudice caused to the deceased in the conduct of the enquiry proceedings for any reason whatsoever. The deceased could not and did not deny that he remained absent from duties with effect from 24.3.1982 as alleged. His defence was that he had fallen sick and, therefore, could not attend his duties. He did not apply for leave and he did not bring on record of the enquiry proceedings that he was prevented or precluded from applying for leave on any reasonable or lawful ground. Accordingly the misconduct was rightly found proved and, therefore, the order of removal cannot be said to be unreasonable or disproportionate to the misconduct found proved against him. The technical defect of non-supply of a copy of the enquiry report was cured after the case was remanded by this Tribunal. The deceased unnecessarily delayed the passing of the order after remand on one pretext or the other. If on his failure to cooperate with the disciplinary authority after supply of a copy of the enquiry report and, therefore, if an ex-parte order of removal was again passed against him by the disciplinary authority, he cannot have any reasonable grievance against any such order of penalty.

6. For the foregoing reasons, we find no merit in this O.A. Accordingly it is hereby dismissed. No costs.

*Km*  
( K.M.AGARWAL)  
Chairman

*Ahochay*  
( R.K.AHOCJA)  
MEMBER(A)