

**CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH**

OA NO. 457/97

Bilaspur, this the 3rd day of February, 2005

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

1. Smt.Nathibai
Widow of late Shri Babu Mishru
R/o Bungalow No.58
Neemuch Cantt.
Dist.Mandsaur.
2. Ramesh
S/o Late Shri Babu Mishru
Address same as above.
3. Suresh
S/o Late Shri Babu Mishru
Address as above. Applicant.

(By advocate A.N.Bhatt)

Versus

1. Union of India through General Manager
Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager
Western Railway, Do Bhatti, Chouraha
Ratlam.
3. The Senior Divisional Commercial Supdt.
Western Railway, Ratlam.
4. Assistant Commercial Supdt.
Western Railway, Ratlam, Respondents.

(By advocate Shri Y.I.Mehta)

O R D E R

By Madan Mohan, Judicial Member

By filing this OA, the applicant has claimed the following main reliefs:



- (i) to quash the charge sheet Annexure A-3 and the impugned order of removal Annexure A-1.
- (ii) Direct the respondents to treat Babu Mishru as reinstated from the date of removal from service i.e. from 28.3.89 and that he was entitled to annual increments till his death on 29.8.89.
- (iii) Direct the respondents to pay arrears of salary and other pensionary benefits i.e. gratuity, pension and such other benefits of encashment of earned leave etc. with interest at the current market rate of 18% per annum till payment is made to the applicants.
- (iv) Declare that applicant No.1 is entitled to family pension on the death of Babu Mishru with arrears and interest.
- (v) Declare that either applicant No.2 or No.3 is entitled for appointment to railway service on compassionate grounds on the death of Babu Mishru in harness.

2. The brief facts of the case are that the late Babu Mishru, husband of applicant No.1 and father of applicants & 3 was appointed on the post of Safaiwala in 1960 and after some years was transferred to Neemuch when he was allotted residential quarter No.T/29-H Type for his family. Applicant No.1 was also appointed under Health Inspector on the post of Safaiwala. The husband of the applicant No.1 and applicant No.1 were illiterate employees and used to put their thumb impression instead of signature. Respondent No.4 issued a charge sheet dated 15.4.87 (Annexure A3) about the unauthorized retention of the aforesaid railway quarter. During August 1984, Babu Mishru was transferred from Neemuch to Hatundi and while carrying out the transfer order, he had applied for retention of quarter at Neemuch. Due to sickness, he was under treatment at Neemuch. Again he was transferred to Chitorarh in October 1985 and to Nimbaheda in Rajasthan in the year 1987. At none of these places, he was allotted any railway quarter. Shri Babu Mishru submitted his reply to charge sheet. The enquiry officer illegally proceeded ex-parte in the departmental enquiry against the applicant and without giving any opportunity of cross



examination of witnesses or permitting him to produce his defence witnesses and against all principles of natural justice submitted his enquiry report dated 19.3.89 finding him guilty without recording any evidence (Annexure A4). Respondent No.4 without giving any show cause notice or speaking order inflicted major penalty of removal from service by his order Annexure A1. Late Babu Mishru submitted appeal within limitation period but respondent No.3 denied its receipt taking advantage of Babu Mishru's death. The Tribunal ultimately came to the rescue of the applicants and on filing contempt proceedings, respondent No.3 admitted filing of appeal by Babu Mishru by a vague order dismissed the appeal. The removal from service of Babu Mishru was illegal. Therefore the applicants served notice to the respondents on 10.5.94 (Annexure A5). Applicants 2 & 3 are entitled to compassionate appointment because of their father's death in harness and considering their financial contingencies and status. The request was not entertained on the ground that their father was penalized by removal from service. Hence this OA is filed.

3. Heard learned counsel for both parties. It is argued on behalf of the applicant that the respondents have passed the order of removal from service of late Babu Mishru vide order dated 28.3.89. and OA No.33/95 was filed on behalf of the applicant and the Tribunal vide order dated 19.1.96 directed the respondents to decide the appeal but the respondents dismissed the appeal vide order dated 21.5.97. Then the present OA was filed which was also dismissed by the Tribunal vide order dated 14th September 2001 on the ground that the legal representative cannot challenge the order of removal of Babu Mishru. The applicant filed a writ petition before the Hon'ble high Court at Jabalpur and vide order dated 8th Nov.2004, the Hon'ble High Court quashed the impugned order passed by the CAT and remanded the matter to CAT. The learned counsel further argued that according to 1991 (15) ATC 445 Satyaprakash Vs. UOI



and 1990 (2) SLJ (CAT) Orissa 482 Pooranchandra Sahu Vs. State of Orissa, in both these rulings, it is held by the CAT that non-vacation of quarter by the allotted employee after his transfer despite orders of vacation does not come within the purview of misconduct and hence the punishment of removal was quashed. The respondents have not even started giving family pension to the applicant and they have not considered giving appointment on compassionate grounds to applicants 2 or 3 who are sons of deceased Babu Mishru. The order of removal of Babu Mishru is also bad in law. Shri Babu Mishru was frequently transferred by the respondents without any ground and just to harass him. Hence the OA deserves to be allowed.

4. In reply, learned counsel for the respondents argued that Babu Mishru was not illegally transferred to Hatundi, Chittaurgarh and Nimbahera. Late Babu Mishru did not challenge those orders of transfer. The applicants are not entitled to challenge those orders. He did not vacate the quarter at Neemuch and that created unnecessary problems to the respondents. He retained the quarter unauthorisedly for a few years. Hence according the disciplinary rules, A-1 order was passed. The appellate authority did not dismiss the appeal on limitation but on merits after the applicants gave the necessary records in December 96. On transfer to Hatundi the deceased did not make any application for retention of the quarter and even otherwise only as per rules a retention of the quarter by a transferred employee can be permitted. It amounts to misconduct. The deceased was proceeded because of non-cooperation. This fact is revealed from Annexure A4. Since the deceased did not file any reply to the charge sheet and the fact of occupying the accommodation at Neemuch even after transfers and for a few years is admitted by the applicant also. No evidence was required to be recorded. He was proceeded ex-parte rightly. None of the applicants is entitled for compassionate appointment as the



deceased expired after removal from service. The applicants knew that they were not entitled for compassionate appointment and they did not make any application. Our attention has been drawn to 2002 38 (3) ATJ, CAT (PB), New Delhi (Full Bench) Om Prakash Vs. UOI decided on 8th April 2002 in which in which unauthorized retention of staff quarter by a railway servant on his transfer comes within the purview of misconduct. Hence Babu Mishru, the deceased employee was rightly punished by the impugned order A-1. The action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for the parties and carefully perusing the records, we find that in the rulings^s of 2002 (3) (supra) it is held by the full bench of the Principal Bench – “(A) Railway Servants (Conduct) Rules. 1966 – disciplinary proceedings – residential accommodation – whether unauthorized retention of staff quarter by a railway servant on his transfer can be made the basis of a charge in disciplinary proceedings against him – held - yes - contention that initiation of disciplinary proceedings is a short cut method of coercing the railway servant to surrender quarter – contention rejected – further merely because a railway servant is liable to pay penal rent and is also liable to be proceeded for eviction under the PP Act does not mean that disciplinary proceedings in respect of same charges are barred”. Hence in view of the aforesaid decision, the action ~~of~~ ^{against} the deceased about ~~retention~~ ~~of~~ unauthorized retention of aforesaid quarter clearly comes within the meaning of misconduct and the disciplinary proceedings are permitted. The deceased employee was afforded an opportunity of filing representation against the charge sheet issued against him. We have perused Annexure A4 dated 19.3.89. Hence the argument advanced on behalf of the respondents that the deceased employee did not file any representation and the fact that he retained the railway quarter even after his transfer from Neemuch i.e. unauthorisedly, is not denied. The charge was proved. This is not a

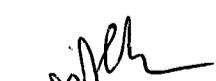


case of no evidence and the Tribunal cannot reappraise the evidence. So far as the frequent transfer of the deceased employee is concerned, it is argued on behalf of the respondents that the late employee had never challenged those transfers during his life time. Now the applicant cannot challenge this. This argument seems to be legally tenable. We have perused the order passed by the Hon'ble High Court in writ petition dated 8th Nov.04 in which it is held that the Tribunal should have entertained application filed by the legal representatives of the deceased Babu Mishru with a view to find out what benefits should be granted to the applicant after the impugned order of dismissal is set aside in their favour. So far as the A-1 order dated 28th March 1989 is concerned regarding late Babu Mishru, the applicants have cited two rulings i.e. the rulings of Orissa and Chandigarh Benches of the Tribunal while against these rulings, the ruling of Full Bench 2002 38 (3) ATJ 19 is cited in which the Full Bench has held that unauthorized retention of staff quarter of a railway servant on his transfer can be made the basis of a charge in the disciplinary proceedings against him. Hence it is a misconduct that the late employee did not file any representation against the charge sheet. Hence the proceedings were held ex-parte and ultimately the order of removal Annexure A1 was passed by the authorities. As the deceased employee was ordered to be removed from office, the applicants are not legally entitled to claim any of the reliefs claimed by them by filing this OA.

6. After considering all the facts and circumstances of the case, we find that the OA has no merit. Accordingly the OA is dismissed. No costs.



(Madan Mohan)
Judicial Member



(M.P. Singh)
Vice Chairman