

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the 24th day of March, 2010

Original Application No.356/2005

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

1. Smt. Chandra Bai w/o late Shri Hajari Lal
2. Bahadur Singh s/o late Shri Hajari Lal
3. Lakhan Singh s/o late Shri Hajari Lal,
4. Miss Dropdi d/o late Shri Hajari Lal
R/o Taharpur, Tehsil Hindaun City.

.. Applicants

(Applicant No.2 present in person)

Versus

1. Union of India
through General Manager,
West Central Railway,
Jabalpur.
2. Assistant Divisional Engineer,
West Central Railway,
Kota Division, Bharatpur.
3. Divisional Engineer,
West Central Railway,
Kota Division,
Kota.

.. Respondents

(By Advocate: Ms. Sonal Singh, proxy counsel for Shri Tej Prakash Sharma)

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ORDER (ORAL)

The applicants are legal representatives of the deceased late Shri Hajari Lal who while working as Gangman was issued a chargesheet dated 13.8.1998 (Ann.A/2). The allegation against the deceased was that he remained absent from duty w.e.f. 11.4.1998 to 8.7.98 unauthorisedly and did not comply with the medical rules. Enquiry was held and the Enquiry Officer relying upon the statement of the deceased employee dated 9.9.2000 held the charges proved. It may be stated that in his statement as recorded on 9.9.2000 which has been placed on record as Ann.A/4, the deceased has specifically stated that he remained absent from duty as he was not feeling well and he was not aware about the rule position. Further, he could not approach the Railway Hospital because he was suffering from arthritis, as such, was unable to approach the Railway Hospital. Based upon the enquiry report, the Disciplinary Authority imposed punishment of compulsory retirement vide impugned order dated 11.10.2001 (Ann.A/1). In the speaking order annexed with the impugned order dated 11.10.2001, the Disciplinary Authority while agreeing with the findings given by the Enquiry Officer has also recorded that the deceased was habitual absentee as he unauthorisedly remained absent for 300 days in the year 1999, 304 days in 2000 and 207 days in the year 2001. The deceased employee has filed appeal dated 1.12.2007 (Ann.A/7) before the Appellate Authority whereby the deceased has taken the plea that the period of absence of 300 days, 307 days and 207



days in the year 1999, 2000 and 2001 was not part of the chargesheet and, as such, it could not have been formed basis for passing the order besides the fact that in view of the compelling circumstances mentioned in para 2 of the appeal, the NIP may be dropped. It may be stated that as per the stand taken by the respondents in the reply, the appeal filed by the deceased employee was decided by the Appellate Authority vide order dated 28.2.2002 (Ann.A/13) and the same was conveyed to the deceased on the address mentioned in the appeal. as can be seen from para 4.7 of the reply affidavit. However, the applicants did not challenge the order dated 28.2.2002 passed by the Appellate Authority till 10.8.2004 when the deceased employee expired. It was only in June, 2005 that the applicants, the legal representatives, had filed application thereby challenging the order of the Disciplinary Authority. An application for condonation of delay was also filed thereby making averment that although the deceased employee has filed appeal before the competent authority but the same has not been disposed of. This Tribunal taking notice of this fact condoned the delay. Subsequently, an application was filed for amendment thereby introducing fresh relief clause in para 8(iiiA). At this stage, it will be useful to quote the relief sought by the applicants in the amended OA, which thus reads:-

'In view of the facts and grounds mentioned in the above para No.4 and 5 the humble applicants pray the following reliefs:

- (i) That by an appropriate order or direction the impugned order dated 11.10.2001 Ann.A/1 be quashed and set aside and the applicants be ordered to be paid the

salary of the deceased employee Shri Hajari Lal till 10.8.2004 date of his death alongwith interest at the rate of 24% p.a.

- (ii) That in the alternative the applicants be paid the pensionary benefits since 11.10.2001 the date of compulsory retirement along with interest @ 24% per annum and the respondents be directed to make the payment of family pension after 10.8.2004 along with interest.
- (iii) That the respondents be directed to give the compassionate appointment to the son of the deceased employee i.e. the applicant No.2 Bahadur Singh who is handicapped person on appropriate post being 9th class pass.
- (iiiA) That the appellate order Ann.A 13 dated 28.2.2002 be quashed and set aside and the deceased Hajari Lal be declared to have been on duty till his death on 10.8.2004 as per Ann.A/8 with all consequential benefits and pension and other benefits. HE be also granted the interest at the rate of 24% p.a. on the arrears.
- (iv) Any other relief which this Hon'ble Tribunal deemed fit may also be granted to the humble applicants.

2. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have justified their action on the basis of the statement recorded by the Enquiry Officer during the course of enquiry whereby the deceased employee has himself admitted that he has neither submitted any leave application nor taken any treatment from the Railway Doctor. Thus, the deceased was unauthorisedly absent from duty. The respondents have also stated that the deceased has not put in 10 years of service and has only put in 6 years, 9 months and 6 days qualifying service, as such, he was not entitled to the pensionary benefits in terms of Rule 69 of the Railway Servants Pension Rules, 1993 and the deceased was only entitled for service gratuity

amounting to Rs. 13286/- and GSI amount which payment has already been made to the applicants. It is further stated that the deceased employee being habitual absentee and has continuously remained absent from duty even after issuance of the chargesheet, as such, the penalty imposed upon the deceased employee was commensurate with the misconduct committed by him. It is further stated that the deceased has been treated leniently by imposing punishment of compulsory retirement.

3. We have heard the applicant No.2, who was present in person and the learned proxy counsel for the counsel for the respondents.


4. The question which requires our consideration is whether the relief as prayed for by the legal representations of the deceased employee can be granted. As can be seen from the relief clause, reproduced in the earlier part of the judgment, relief 8(i) read with prayer 8(iiiA) is that the impugned order dated 11.10.2001 (Ann.A/1) passed by the Disciplinary Authority and the order dated 28.2.2002 (Ann.A/3) passed by the Appellate Authority may be quashed and set-aside and the deceased Hajari Lal be declared to have on duty till his death i.e. 10.8.2004 and respondents may be directed to pay salary of the deceased employee till 10.8.2004. The order of punishment is sought to be quashed on the ground that the chargesheet was not framed properly and the Enquiry Officer has held the deceased employee guilty on the basis of the statement as recorded in the ordersheet dated 9.9.2000 and no procedure as contemplated under the rules was followed. The appellate order is

sought to be quashed on the ground that the provision of Rule 22(2) of the Railway Servants (Discipline and Appeal) Rules has not been followed by the Appellate Authority as also the authority below has committed grave error in taking into consideration the absence for the period from 1999 to 2001 while imposing punishment, which was not part of the chargesheet.

5. We have given due consideration to the submissions made by applicants in the OA. We are of the view that the impugned orders Ann.A/1 and A/13 cannot be interfered, inasmuch as, it is admitted fact that the chargesheet against the deceased employee is for absence for 89 days w.e.f. 11.4.1998 to 8.7.1998 and for not complying with the requirement of the medical rules. Admittedly, the deceased employee remained absent for the said period. Hardly any medical certificate or any contemporary record has been placed on record to suggest that the deceased has given any intimation regarding his absence for the aforesaid period. Rather the deceased has himself stated before the Enquiry Officer on 9.9.2000 regarding the fact that he remained absent without any intimation and he was neither aware about the procedure of submission of medical certificate nor he appeared before the Railway Doctor. Thus, in view of the facts, as stated above, it would not have made any difference so far as charges levelled against the deceased employee are concerned. The fact remains that the deceased employee could not brought on record any justification for remaining absent or for not producing medical certificate for the aforesaid period which in any case was required to be attached

to

with the leave application and in such situation he could ~~not~~ have prayed for some lesser punishment. Thus, under these circumstances it cannot be stated that imposition of penalty of compulsory retirement is harsh on the deceased employee especially in view of the fact that the Disciplinary Authority while accepting the report of the Enquiry Officer has also relied upon the absence of the deceased employee for 300 days in 1999, 304 days in 2000 and 207 days in the year 2001. The contention raised by the applicants in the OA that the aforesaid absence during the year 1999, 2000 and 2001 was not a part of the chargesheet, as such the same could not have been taken into consideration by the Disciplinary Authority cannot be accepted in view of the law laid down by the Apex Court whereby the Apex Court has held that past conduct of the applicant can be taken into consideration to reinforce the order of penalty. At this stage, we wish to notice decision of the Apex Court in the case of Govt. of A.P. and Ors. Vs. Mohd. Taher Ali, [2007 (8) SCC 656]. That was a case where the Hon'ble Apex Court has rejected the contention that unless the past conduct is a part of chargesheet, it cannot be taken into consideration while imposing punishment. The Apex Court observed that "there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the charge sheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often necessary only to reinforce the opinion of the said authority." Thus, the contention raised by the applicants as noticed above, has to be rejected.



6. As already stated above, the Disciplinary Authority has taken this additional fact only in order to reinforce the decision so taken by the Disciplinary Authority on the basis of the enquiry report. Rather, from the facts and circumstances as stated above, it is clear that the deceased employee was a habitual absentee and under these circumstances imposition of penalty of compulsory retirement cannot be said to be harsh. At this stage, it will be useful to quote decision of the Apex Court in the case of L&T Komatsu Ltd. vs. N.Dayakumar, (2008) 1 SCC (L&S) 164 whereby the Apex Court has upheld imposition of penalty of dismissal from service in the case of an employee who was habitual absentee and according to the Apex Court, the factum of habitual absenteeism from duty is grave misconduct. In this case according to us, the deceased employee has been leniently dealt with, as such, the order of imposition of compulsory retirement cannot be said to be harsh.

7. That apart, the applicants are not entitled to the relief of treating the period from compulsory retirement w.e.f. 11.10.2001 till the death of the deceased employee i.e. 10.8.2004 as duty and making payment to applicants of the aforesaid period. Even if for arguments sake, it is assumed that the order of compulsory retirement is required to be quashed, the fact remains that the deceased has not performed duty during the aforesaid period, as such, even if the order of compulsory retirement is quashed and set aside, no monetary benefit can be given to the legal representatives of the deceased for the aforesaid period.

8. The matter can also be looked into from another angle, Even if we see any infirmity in the order passed by the Disciplinary/Appellate Authority or there is procedural defect while conducting the enquiry, in that eventuality, the matter has to be remitted back to the appropriate authority and the enquiry proceedings cannot be closed. Even on this ground, prayer of the applicants that respondents may be directed to make monetary benefit to the applicants from the date when the deceased employee was compulsory retired from service till his death and the said period be counted as qualifying service cannot be granted, more particularly, when the respondents have categorically stated in the reply that there was no leave in the credit of the deceased employee when the impugned order of compulsory retirement was passed and as such, payment of leave encashment could not be sanctioned in favour of the deceased employee.

9. Further, with regard to the alternative prayer 8(ii) that the applicant be paid pensionary benefits since 11.10.2001, i.e. the date when the deceased employee was compulsory retired from service, the deceased employee has put in 6 years, 9 months and 6 days qualifying service on the date of compulsory retirement vide order dated 11.10.2001. Thus, in view of the provisions contained in Rule 69 of the Railway Servants (Pension) Rules, for the purpose of grant of any kind of pension one has to put in minimum 10 years of qualifying service. Since the deceased has not put in minimum qualifying service, as such, no direction can be given to the respondents to grant pension to the applicants. Admittedly, the

service gratuity in terms of Rule 69 and other amount i.e. GSI amount has already been paid. Thus, the applicants are not entitled to the relief as prayed in para 8(ii) of the OA.

10. That apart, even if for arguments sake the order of compulsory retirement of the deceased dated 11.10.2001 is quashed and set aside and the deceased employee is treated to be in service till 10.8.2004 even then the deceased has put in less than 10 years of qualifying service, as per the stand taken by the respondents in the reply. Even on this account, the applicants are not entitled for pensionary benefits. Applicant No.2 who was present in person has submitted that in fact his father was absent in the year 1999, 2000 and 2001 on account of ailment and for that purpose the Doctor has also issued medical certificate. According to him, the respondents have not taken into consideration the aforesaid period of absence while computing the qualifying service which is totaling to 811 days. Thus, according to applicant No.2 the contention of the respondents that father of the applicant has only put in 6 years, 9 months and 6 days qualifying service cannot be accepted.

11. We have given due consideration to the submissions made by the applicant No.2, present in person. Even if the period of 811 days as mentioned above is also taken into consideration even then the deceased employee has not put in 10 years of qualifying service so as to entitle them for pensionary benefits. This is, not the case set up by the applicants that period of 811 days should be regularized and counted for the purpose of qualifying service, as such, the matter is not required to be examined on this aspect and

no relief can be granted to the applicants. In any case, it will be open for the applicants to raise this issue before the appropriate authority supported by contemporaneous record and the appropriate authority shall consider the same within reasonable time and decision so taken shall be communicated to the applicant(s).

12. The applicants have also prayed in para 8(iii) of the relief clause that the respondents may be directed to give compassionate appointment to applicant No.2. According to us, father of applicant No.2 did not die while in service. Admittedly, the death took place after father of applicant No.2 was no longer in railway service. No rule has been shown to us which stipulate that even a railway servant who has retired from service and died subsequently thereafter, wards of such employee are entitled to compassionate appointment. Accordingly, this prayer of the applicants can also not be accepted.

13. With the aforesaid observations, the OA stands disposed of with no order as to costs.


(B.L. KHATRI)
Admv. Member


(M.L. CHAUHAN)
Judl. Member

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