

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 01st day of February, 2010

ORIGINAL APPLICATION NO. 456/2006

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Kamla Devi wife of Late Shri Moti Lal Saini, aged about 50 years, resident of Opposite Prem Kunj Kothi, Roopbas Road, Alwar (Rajasthan).

.....APPLICANT

(By Advocate: Mr. V.D. Sharma)

VERSUS

1. Union of India through General Manager, North West Railway, Jaipur.
2. Divisional Railway Manager, North West Railway, Jaipur.
3. Senior Divisional Mechanical Engineer (Establishment, DRM Office), North West Railway, Jaipur.

.....RESPONDENTS

(By Advocate: Mr. N.C. Goyal)

ORDER (ORAL)

The applicant is the widow of Late Shri Moti Lal Saini, who was removed from service vide order dated 04.08.2005 (Annexure A/1), pursuant to which another office order dated 24.08.2005 (Annexure A/2) was passed whereby the husband of the applicant was stated to removed from service w.e.f. 17.08.2005 when the order dated 04.08.2005 (Annexure A/1) was served upon him. It is these orders which are under challenge before this Tribunal. The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) By an appropriate order or direction the order dated 04.08.2005 and 24.08.2005 may kindly be quashed and set aside.
- (ii) By an appropriate order or direction the respondents may be directed to make proper fixation of the husband of the applicant's salary in 5th pay scale and benefit of AGI w.e.f. 96 may be accorded to him.
- (iii) by an appropriate order or direction the respondents may be directed to grant the pensionary benefits, PF gratuity, pension and family pension to the applicant.
- (iv) Any other order deemed fit and proper may be passed in favour of the applicant and cost may also be awarded in favour of the applicant.

2. Briefly stated facts of the case are that the husband of the applicant was issued charge sheet dated 14.05.2004 whereby the allegation was that he remained absent w.e.f. 19.03.2003 onwards. An inquiry in the matter was held and on the basis of the aforesaid impugned orders, the husband of the applicant was removed from service.

3. Notice of this application was given to the respondents. The respondents have filed their reply. In the reply, the respondents have categorically stated that the husband of the applicant was absent from duty and had never sent any information to the employer about his sickness as was required under the Railway Rules. According to the respondents, the husband of the applicant remained unauthorized ~~absent~~ without any information since 19.03.2003. Accordingly, the order of removal from service was passed. It is stated that husband of the applicant had received the copy of the NIP on 17.08.2005. Hence his removal from service was stated with effect from that date. It is, however, stated that earlier the husband of the applicant has also issued an application for voluntary retirement, which application was

withdrawn by the applicant's husband himself. Although in this application, the husband of the applicant has also raised grievance regarding not revising his pay pursuant to revision of pay w.e.f. 01.01.1996, this fact has been denied by the respondents. It is categorically stated that pursuant to Fifth Central Pay commission, the pay scales of the applicant's husband was revised to Rs.2550-3200 w.e.f. 01.01.1996.

4. The applicant has filed rejoinder. Alongwith the rejoinder, the applicant has annexed copy of the appeal dated 25.08.2005. It may be stated that husband of the applicant died on 01.01.2006. As such, this Original Application is filed by the widow of the deceased employee.

5. When the attention of this Tribunal was brought to appeal dated 25.08.2005, the copy of which has been annexed with the rejoinder, this Tribunal directed the respondents to ascertain the position and file an affidavit whether the appeal filed by the applicant was received in the Department and if so, what action has been taken on the appeal so filed by the applicant's husband.

6. The respondents have filed reply to the rejoinder and in the reply, the respondents have categorically stated that copy of the so called appeal was found not to have been filed nor such appeal has been sent to the office of the replying respondents. It is further stated that had such an appeal been filed, then the applicant should have annexed the copy of the same with the OA.

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7. We have heard the learned counsel for the parties and have gone through the material placed on record. The fact remains that the husband of the applicant has been removed from service on the basis of penalty inflicted by the Disciplinary Authority. As per the law laid down by the Constitutional Bench of the Apex Court in the case of S.S. Rathore vs. State of M.P., AIR 1990 SC 10, the OA is not

maintainable unless the remedy as available under the statutory rules is not exhausted. In this case, according to the applicant the appeal was filed whereas according to the respondents, no such appeal was filed. Be that as it may, the fact remains that husband of the applicant was regularized in the year 1978 and ~~was~~ removed from service in the year 2005 after a lapse of about 27 years. The allegation against the husband of the applicant is regarding his absence from duty. The allegations are not of such nature which may construe moral turpitude or ~~is~~ is guilty of financial impropriety. Prima-facie, it appears that the penalty imposed by the Disciplinary Authority is not commensurate with the mis-conduct committed by the husband of the applicant. Be that as it may, since the statutory remedy by way of appeal is available to the employee, the Appellate Authority can decide the question of quantum of punishment. We are of the view that it is a case which requires to be remitted and to be decided by the Appellate Authority keeping in view the quantum of punishment imposed upon the husband of the applicant. Accordingly the applicant is directed to file an appeal before the Appellate Authority within a period of two weeks from today. In case such an appeal is filed within the aforesaid period before the Appellate Authority under Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968, the Appellate Authority

shall entertain the same and pass reasoned & speaking order regarding quantum of punishment keeping in view the following observations, as reproduced by this Tribunal in Para NO. 5 of OA No. 325/2008, **Lallu Lal Yadav vs. Union of India & Others**, decided on 18.11.2009, which observation based upon the decision of the Apex Court, as recorded in the said Para and thus reads as under:-

"5. Now the question which requires our consideration is whether the penalty of removal from service, as imposed by the Disciplinary Authority and confirmed by the Appellate Authority, comes within the category of penalty proportionate to nature of misconduct committed by the applicant. From the material placed on record, it is evident that the applicant was appointed as Postman on 03.11.1980 and the order of removal from service was passed by the Disciplinary Authority on 28.01.2008. Thus before passing of the order of removal from service, the applicant has rendered more than 27 years of service. The effect of the removal from service is that the service of 27 years rendered by the applicant with the Department will not count as qualifying service for the purpose of pension. As already stated above whether in the facts & circumstances of this case, the punishment imposed by the authority can be said to be commensurate with the gravity of misconduct conducted/alleged to have been proved against the delinquent employee. In other words, from the facts & circumstances of this case, can it be inferred that punishment imposed by the Disciplinary Authority is shockingly disproportionate to the gravity of charge alleged & proved against the delinquent employee? Admittedly, the charge against the applicant is that he has not delivered Express Parcel Post No. 6 on 16.05.2005 to the address, Smt. Sarita Singh, the then Director Postal Services (HQ), Office of the Chief Post Master General, Rajasthan Circle, Jaipur. The misconduct that is alleged in our view would definitely amount to violation of discipline not expected of an employee but misconduct may not fit into the category of gross violation of discipline. It is well settled that the doctrine of proportionality is well recognized concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision maker to quantify punishment once the charge of misconduct stands proved, such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. The Apex Court in the case of **Chairman cum Managing Director, Coal India Limited & Another vs. Mukul Kumar Choudhuri & Others**, JT 2009 (11) 472 has held that award of punishment which is grossly in access to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review. One of the tests to be applied while dealing with the question of quantum of

punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment."

8. Thus in view of what has been stated above, the Appellate Authority is directed to pass appropriate order on the appeal to be filed by the applicant whether the order of removal from service of the husband of the applicant can be treated as compulsory retirement from service. Such an exercise shall be done within a period of three months from the date of receipt of the copy of the appeal from the applicant. In case the applicant is still aggrieved, it will be open for her to file substantive OA.

9. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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