

(Reserved on 01.01.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/01914/2010

This the 10th day of January, 2018

HON'BLE DR. MURTAZA ALI, MEMBER (J)
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

1. Smt. Amarawati Devi, wife Late Shri Ayodhya Prasad, Ex. T.N. 9644 Ex. Copper Smith grade I Paint shop Mechanical work shop, North Eastern Railway, Gorakhpur.
2. Dinesh Kumar, son of Shri Ayodhya Prasad, Ex. T.N. 9644 Ex. Copper Smith grade I Paint shop Mechanical work shop, North Eastern Railway, Gorakhpur.
Both resident of village Raji Semara Post Office, Jangal Laxamipur, Distirct Gorakhpur.

.....Applicants

By Advocate: Shri A.D. Singh
Shri R.A. Prasad

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. Chief Works Manager, Mechanical Work Shop, N.E. Railway, Gorakhpur.
4. Dy. Chief Mechanical Engineer / Repair Mechanical Workshop, N.E. Railway, Gorakhpur.
5. Works Manager / Plant Mechanical Workshop, N.E. Railway, Gorakhpur.
6. Chief Works Manager (P), Mechanical Work Shop, Gorakhpur.
7. Assistant Works Manager/C, Mechanical Work Shop, Gorakhpur.

.....Respondents

By Advocate : Sri Prashant Mathur

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

This O.A has been filed by the applicants, who are the legal heirs of the deceased railway servant Late Ayodhya Prasad (referred hereinafter deceased employee), who was initially appointed as Khalasi and subsequently promoted from Class -IV to Class-III. Following main reliefs have been prayed by the applicants:-

1.to issue a suitable order and direction in the nature of certiorari quashing the impugned penalty order dated 24.1.2009 imposing penalty of compulsory retirement upon the deceased employee passed by Respondent no. 5 and appellate order dated 17.1.2009 passed by respondent no. 4 and revisionary order dated 24.3.2010 passed by respondent no. 3 confirming the penalty and rejecting the appeal of the applicant no. 1 shown as Annexure no. 1, 2 and 3 of compilation no. 1 to this original application .

2.to issue a suitable order or direction by way of mandamus directing the respondent to consider the case of applicant no. 2 for appointment on compassionate ground after quashing the aforesaid impugned order.

2. The facts of the case, as stated in the O.A, are that the husband of applicant no. 1 while working in the railways was issued a chargesheet dated 07.08.2008 which was served on him on 07.01.2009. The chargesheet was issued after the husband of the applicant no. 1 met with an accident on 22.05.2008 and during treatment, he expired on 08.04.2009. The main charge against the husband of the applicant No. 1 (referred as "deceased employee" hereinafter) was for unauthorized absence from 28.06.2007, but in the chargesheet the unauthorized absence has been mentioned as from 28.06.2008. Inquiry against the deceased employee in respect of chargesheet was started from 05.09.2008 when he was ill after the accident on 22.05.2008, about which he duly informed to the Inquiry Officer (in short IO). But the deceased employee was asked to appear before the IO to participate in the inquiry in spite of the illness. The deceased employee attended the inquiry on 15.11.2008 and informed the IO about his illness. Despite his request, the IO allowed one adjournment and decided to proceed ex-parte and submitted his report dated 27.11.2008 (Annexure A-7 to the O.A). It is stated in the O.A that the illness of the deceased employee was known to the railway administration since his treatment was going on in the railway hospital which had referred his case to K.G.M.C Hospital, Lucknow but due to heavy pain he could not go to the referred hospital and continued treatment in a private hospital. Unfortunately, he could not recover and finally died on 08.04.2009.

3. In the meantime, on the inquiry report, the disciplinary authority passed punishment order dated 24.01.2009 (Annexure A-1 to the O.A) imposing the punishment of compulsory retirement on the deceased employee. The deceased employee could not file appeal against the punishment order within stipulated time of 45 days after receipt of the order dated 24.01.2009. After his the death on 08.04.2009, the wife and children of the deceased employee, who are the applicants in this O.A, filed the appeal before the Appellate Authority which was rejected vide order dated 17.11.2009 (Annexure A-

2 to the O.A). Against this order revision application was filed with the appropriate authority which was also rejected vide order dated 24.03.2010 (Annexure A-3 to the O.A).

4. The main grounds on which the applicants are relying in this O.A are that the deceased employee remained absent w.e.f. 28.06.2008 till his death due to serious illness. It is also stated that despite his injury the IO asked the deceased employee to appear in the inquiry proceeding. When the deceased employee appeared before the IO on 15.11.2008 he denied the allegations of unauthorized absence. It is also stated that the IO proceeded with the inquiry ex-parte inspite of the request of the deceased employee on the ground of sickness and submitted the inquiry report which is against the rule 9(17), 9(19), 9(21), 9(22) and 9(25) of Railway Servants (D&A) Rules 1968. The appeal against the order of the disciplinary authority has also been rejected in a casual manner without verifying whether the punishment order was delivered to the deceased employee before his death on 08.04.2009. The Revisional Authority also did not consider the points raised in the revision application and rejected the same in an arbitrary manner.

5. Upon notice, the respondents filed Counter Reply (in short CR) stating therein that the O.A is not maintainable in view of rule 10 of the C.A.T (Procedure) Rules, since the relief prayed for in this O.A is to quash the punishment order and also to consider the applicant no. 2 for compassionate appointment. It is also stated that deceased employee did not prefer any appeal within stipulated time against the order of the disciplinary authority dated 24.01.2009. It was further stated that the charge leveled against the deceased employee has been proved through regular disciplinary proceeding and the deceased employee failed to prefer any objection against the inquiry report. Therefore, the punishment order passed by the disciplinary authority is justified. Since the appeal was not filed in time by the employee concerned, there was no other option for the Appellate Authority but to reject the appeal which was filed by the wife of the deceased employee after the time period stipulated under the Rule. Similarly, the Revisional Authority has confirmed the punishment order.

6. Regarding the facts of the case it is stated in the Counter Reply that the applicant was absent from 28.06.2007 which was reported to the Senior Section Engineer (Paint) vide letter dated 04.08.2008 (Annexure CR-1 to the CR). It is further stated in the CR that even if it is assumed that the deceased employee after meeting with the accident on 22.05.2008, informed to the railways still he remained unauthorizedly absent from 28.06.2007 to 21.05.2008 which has not been explained by the deceased employee. Basing on the letter dated 20.10.2008 of the charged officer, the IO postponed the inquiry to 15.11.2008, but he failed to attend the inquiry, as a result of which the IO had no other option but to proceed ex-parte on the basis of oral and circumstantial evidence and submitted his report to the disciplinary authority on 27.11.2008 (Annexure A-7 to the O.A). It is stated that the findings of the IO were based on oral, documentary and circumstantial evidences and the deceased employee was given sufficient opportunity to participate in the inquiry and also to prefer appeal.

7. Rejoinder filed by the applicants broadly reiterated the points made in the O.A, following points have also been mentioned: -

(i). The chargesheet dated 07.08.2008 was served on deceased employee on 07.01.2009 on the deceased applicant and it mentioned unauthorized absence to be from 28.06.2008.

(ii). During the inquiry, IO was informed about the sickness of the deceased employee through the letter of the deceased employee. On 21.11.2008, the IO conducted the inquiry in absence of the charged officer, who was confined to the bed and was under medical treatment. Therefore, the inquiry proceeding and the inquiry report are perverse, which is to be set aside.

8. Heard Shri A.D. Singh, learned counsel for the applicants, who firstly raised a technical point on the ground that the signature on the chargesheet was dated 07.08.2009. It was further submitted that the unauthorized absence as alleged in the chargesheet was from 28.06.2008, whereas the IO has conducted the inquiry with assumption of unauthorized absence from 28.06.2007, based upon which the disciplinary authority has passed the impugned punishment order dated 24.01.2009 (Annexure A-1). It was also submitted that the inquiry was conducted ex-parte without affording reasonable opportunity to the charged employee in violation of the principles of natural justice and in violation of the Railway Servants (Discipline and Appeal) Rules 1968 (in short DAR, 1968). He also submitted that the disposal of the applicants by the Appellate Authority and revision by the Revisional Authority was without application of mind and appreciation of the facts as mentioned in the appeal and revision. A written argument was filed by the learned counsel for the applicants enclosing copy of the Railway Board Circular R.B.E No. 115/2000 which stipulates that in the event of death of the railway servant during pendency of the proceedings, the disciplinary proceedings should be closed immediately. Copy of the judgment of Hon'ble Supreme Court in the case of Indrani Bai (Smt.) Vs. Union of India and others – 1994 SCC (L&S) 981 and copy of the judgment of this Tribunal dated 27.01.1995 in O.A No. 830/1991 and copy of the judgment dated 15.05.2014 of this Tribunal in O.A No. 1121/2005 are also enclosed with Written Arguments in support of the applicant's case.

9. Learned counsel for the respondents mentioned that the appeal filed by the applicants has been rejected because it was not filed within statutory period of 45 days by the deceased employee. The respondents' counsel also submitted that inquiry proceedings and the penalty orders dated 24.01.2009 have been passed by the disciplinary authority are as per rules since the deceased employee did not attend the inquiry, hence the IO had no other option but to proceed ex-parte to complete part of the inquiry in absence of deceased employee. It was also submitted that the proceedings against the deceased employee have been completed as per the procedure under the DAR, 1968.

10. We have considered the submissions and pleadings of both the parties in this case and also noted the limited scope this Court has in respect of the judicial review of the action taken by the authorities in disciplinary proceedings in the light of the decisions of Hon'ble Supreme Court in catena of cases. In the case of B.C. Chaturvedi vs. Union of India & Ors reported in 1995(6) SCC 749, Hon'ble Apex Court has observed as under:-

"18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while

exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case impose appropriate punishment with cogent reasons in support thereof.

.....

22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience."

In the case of Union of India Vs. S.S. Ahluwalia – 2007 Law Suit (SC) 950, the Hon'ble Apex Court has held as under: -

"The scope of judicial review in the matter of imposition of penalty as a result of disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved. In such a case the court is to remit the matter to the disciplinary authority for reconsideration of the punishment. In an appropriate case in order to avoid delay the court can itself impose lesser penalty."

Again in the case of State of Meghalaya Vs. Mecken Singh N Marak reported in 2009 Law Suit (SC) 1935, the Hon'ble Apex Court has also held as under:-

"A court or a tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment is not commensurate with the proved charges. In the matter of imposition of sentence, the scope for interference is very limited and restricted to exceptional cases. The jurisdiction of High Court, to interfere with the quantum of punishment is limited and cannot be exercised without sufficient reasons. The High Court, although has jurisdiction in appropriate case, to consider the question in regard to the quantum of punishment, but it has a limited role to play. It is now well settled that the High Courts, in exercise of powers under Article 226, do not interfere with the quantum of punishment unless there exist sufficient reasons therefore. The punishment imposed by the disciplinary authority or the Appellate Authority unless shocking to the conscience of the court, cannot be subjected to judicial review."

The Hon'ble Apex Court in the case of State of Orissa Vs. Binapani Dei – AIR 1967 Supreme Court 1269 has observed as under: -

"It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence.".

Further, the Hon'ble Apex Court in the case of M/s Mahabir Prasad Santosh Kumar Vs. State of U.P and others – AIR 1970 (Supreme Court) 1302 has held as under : -

“There is nothing on the record which shows that the representations made by the appellants was even considered The nature of the proceeding requires that State Government must give adequate reasons which disclose that an attempt was made to reach a conclusion according to law and justice.”

11. In the light of the decisions of the Apex Court as discussed above, we may formulate one issue to decide this case i.e. whether there is violation of the DAR, 1968 and violation of the principles of natural justice as submitted by the counsel for the applicants.

12. Before examining the facts of the case, the issue of violation of the Rule 10 of the CAT (Procedure) Rules, 1987 raised by the respondents may be decided first. The said Rule 10 states as under:-

“10. Plural remedies –

An application shall be based upon a single cause of action and may seek one or more relief provided that they are consequential to one another.”

Rule 10 permits the reliefs sought in an application which must be based upon a single cause of action. In this case, the application for compassionate appointment can not be considered by the respondents in view of the punishment of compulsory retirement imposed on the applicant. Unless this punishment order is set aside, the question of compassionate appointment does not arise. Both the reliefs i.e. to set aside the punishment order and to direct the respondents for compassionate appointment arise from out of a single cause of action, which is the punishment order in pursuance to the disciplinary proceedings against the deceased employee. Hence, there is no violation of Rule 10 of the CAT (Procedure) Rules, 1987 in this OA.

13. In this case, the chargesheet was issued by the respondents vide letter dated 7.08.2008 (Annexure A-4 to the OA) and the same was signed on 7.08.2008 (not 7.08.2009 as submitted by the learned counsel for the applicants). It is noted that the chargesheet is a long pre-printed form, where the name of the husband of the applicant no. 1 is mentioned. The charge framed as mentioned in Article-I of the chargesheet indicated unauthorized absence from 28.6.08 till date (i.e. 7.08.2008). The pleadings of the respondents did not indicate how the date mentioned in Article-I of the chargesheet is 28.06.2008 when the CR mentions unauthorized absence from 28.06.2007. The unauthorized absence alleged against the deceased employee has to be taken to be 28.06.08 as mentioned in the chargesheet dated 7.08.2008 (Annexure A-4 to the OA) which was duly served on the deceased employee. It is also noted that the deceased employee was absent from duty from 22.05.2008 on medical ground after he met with an accident. There is no corrigendum or amendment to the chargesheet available on record rectifying the period of unauthorized absence mentioned in the chargesheet. The matter has apparently been handled in such a manner by the respondents that the mistake in the chargesheet could not be detected or rectified during pendency of the disciplinary proceedings against the deceased employee.

14. The chargesheet was issued on 7.08.2008 after the deceased employee fell ill due to accident on 22.05.2008 after which he approached Railway hospital for treatment, which referred him to K.G.M.C.

hospital, Lucknow, as stated in the CR. The inquiry was started by the IO from 25.09.2008 when the employee was ill and in spite of his informing about illness to the IO, the inquiry was continued after one or two adjournment. The deceased employee appeared before the IO on 15.11.2008 when he again informed about his illness and ongoing treatment to the IO. That the contention of the deceased employee was true in view of the accident on 22.05.2008 and his treatment in Railway Hospital was known to the respondents and the IO, who in spite of the ill health and ongoing treatment of the deceased employee, decided to proceed with the inquiry ex-parte when the deceased employee could not appear on the next date i.e. on 21.11.2008, as stated in para 13 of the CR. The IO submitted his report on 27.11.2008. It would appear that the IO was in a hurry to complete the inquiry without giving a reasonable opportunity to the charged officer to defend himself against the charges and in the process he forgot to extend a reasonable opportunity to the deceased employee.

15. The paragraph 15 of the Master Circular No. 67 of the Railway Board specifies the points to be kept in view by Inquiry Officers. Paragraph 15(n) of the Master Circular No. 67 states as under:-

"While conducting the inquiry, the Inquiry officer should ensure that the principles of natural justice are not violated and there is no denial of reasonable opportunity to the charged official in defending himself.

(Board'sl etterN o.E-55R G6-20d t:4.2.56)"

Hence, it was necessary for the IO to extend a reasonable opportunity to the charged official to defend himself as per the instructions of the Railway Board. Paragraph 15(q) of the Master Circular No. 67 stipulates a time period of six months from the date of his appointment within which the IO should normally submit the inquiry report. In this case, the IO first issued notice to the charged official on 5.09.2008 (Annexure A-5 to the OA) and submitted his report on 27.11.2008 i.e. within less than three months, as against normal time of six months available to him as per para 15(q) of the Master Circular No. 67. The IO could have allowed further time to the applicant considering his ill health or could have decided another place for conducting inquiry to facilitate attendance of the deceased employee. Further, it is seen that the inquiry officer has treated unauthorized absence period from 28.6.2007, where as the same has been mentioned to be 28.6.08 in the chargesheet. As stated in the para 12 of the Rejoinder, during the period from 28.6.08 as stated in the chargesheet, the applicant was under treatment after his accident and this period can not be treated as unauthorized absence. Hence, there is no way in which the charge can be proved. The unauthorized absence has been wrongly treated by the IO to be from 28.06.2007 in stead of 28.06.2008 as mentioned in the chargesheet. This point has not been discussed in the inquiry report. Therefore, based on the facts of the case as stated in the para 4(13) and 4(14) of the OA and para 13 of the CR and the provisions of the Master Circular No. 67 of the Railway Board, we have no hesitation to hold that the IO did not afford a reasonable opportunity to the deceased employee to defend the charges in the inquiry and hence, the principles of natural justice as well as the instructions of the Railway Board have been violated by the IO.

16. The applicant has pointed out in para 4(16) of the OA that the inquiry report is not as per the stipulations of the Rule 9(25) of the DAR, 1968. As per the Rules, the inquiry report should contain the defence of the Railway servant, assessment of evidence and finding of the IO in each of the charges. However, the inquiry report does not indicate these.

17. Perusal of the Inquiry report at Annexure A-7 of the OA reveals that it has stated the charge to be unauthorized absence from 28.6.07, which is not consistent with the chargesheet served on the deceased employee in which the period of unauthorized absence is mentioned from 28.6.08. The inquiry report does not discuss or assess the evidence based on which the charge of unauthorized absence of the deceased employee from 28.6.07 is proved. Hence, the contention of the applicant that the Inquiry report violated the Rule 9(25) of the DAR, 1968 is correct.

18. The provision of appeal in the DAR, 1968 is important to ensure fairness of the disciplinary proceedings. But we are unhappy to see the manner in which the appeal filed by the applicants on behalf of the deceased employee after his death has been handled by the appellate authority in this case. The Rule 20 and 22 of the DAR, 1968 provide for the appeal and its consideration and state as under:-

"20. Period of limitation for appeals -

No appeal preferred under this part, shall be entertained unless such appeal is preferred within a period of forty-five days from the date on which a copy of the order appealed against, is delivered to the appellant:

Provided that the appellate authority may entertain the appeal, after the expiry of the said period, if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

.....

22. Consideration of appeal -

(1) In the case of an appeal against an order of suspension, the appellate authority shall consider whether in the light of the provisions of Rule 5 and having regard to the circumstances of the case, the order of suspension is justified or not and confirm or revoke the order accordingly.

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 6 or enhancing any penalty imposed under the said rule, the appellate authority shall consider :-

(a) whether the procedure laid down in these rules has been complied with, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe; and pass orders:-

(i) confirming, enhancing, reducing or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such directions as it may deem fit in the circumstances of the case:

....."

The instructions of the Railway Board contained in the Master Circular No. 67 in paragraph 19(d) states as under:-

"19. Appeal:

.....

d. The Appellate Authority has to consider three main aspects viz.

i. whether the procedure was followed correctly and there has been no failure of justice;

- ii. Whether the Disciplinary Authority's findings are based on the evidence taken on record during the inquiry; and
- iii. Whether the quantum of penalty imposed is commensurate to the gravity of offence.

After considering the above points the case should, if necessary, be remitted back to the Disciplinary Authority with directions; otherwise the Appellate Authority should pass reasoned, speaking orders, confirming, enhancing, reducing or setting aside the penalty. The orders of the Appellate Authority should be signed by the authority himself and not on his behalf.

(Rule 22(2) of RS(D&A) Rules & Board's letter No. E(D&A) 78/RG6-11 dt. 3.3.78)

Under the above provisions of the Rules and Master Circular No. 67, the appellate authority is to consider the date of receipt of the order appealed against by the charged officer for the purpose of limitation and can consider to condone the delay, if any. Further, the appellate authority has to see if the procedure as laid down under the Rules has been complied with and if not, then whether such non-compliance has resulted in violation of any provision of the Constitution of India or in the failure of justice. In this case the appeal dated 20.6.2009 (Annexure A-10 to the OA) filed by the wife of the deceased employee stated that the punishment order dated 24.1.2009 (Annexure A-1 to the OA) was not served on her husband when he was alive. Hence, request to appellate authority to condone the delay in filing the appeal was made in the appeal. Perusal of the appeal order dated 17.11.2009 (Annexure A-2 to the OA) shows that the appellate authority did not consider the point whether the punishment order was served on the deceased employee or not and if so, when was the date of such service and did not consider the request made in the appeal to condone the delay. He did not consider other grounds indicated by the applicant in the appeal. The impugned appeal order is clearly a non-speaking order which is in violation of the DAR, 1968 as well as the instructions of Railway Board in Master Circular No. 67. It may be noted that if the punishment order would have been properly served on the deceased employee when he was alive and if he had filed the appeal which was pending at the time of his death, then as per the circular of the Railway Board R.B.E No. 115/2000 dated 19.6.2000, the disciplinary proceedings which was pending at the time of death would have been closed. Hence, conclusion of the appellate authority that the appeal is not filed within the limitation period without ascertaining or considering the date of service of the punishment order on the deceased employee has caused gross unfairness and injustice to the deceased employee as well as to the applicants.

19. In the case of *Indrani Bai (supra)*, the case cited by the applicants' counsel in this case, Hon'ble Supreme Court has held as under:-

"6. Under these circumstances, it is clear case that the delinquent had not been afforded a fair opportunity, much less a reasonable opportunity to defend himself. That has resulted in violation of the principles of natural justice and fair play offending Article 41, 21 and 311(2) of the Constitution. The orders of dismissal as confirmed by the appellate authority are accordingly quashed. The respondents are directed to grant to the appellant the pensionary benefits according to rules and also to consider her case for suitable appointment on any post to which she may be eligible for rehabilitation, on compassionate ground. The respondents are further directed to pay the full salary payable to the deceased delinquent to the appellant from the date on which he was kept under suspension till date on which he would have attained superannuation or 28.02.1985, the preceding date of his death whichever

is earlier, with all consequential benefits after deducting the subsistence allowance already paid, right from the date of the suspension order till date of dismissal. The exercise should be done within three months from the date of the receipt of the order."

20. In view of above ratio of judgement of Hon'ble Supreme Court, not affording a reasonable opportunity to the charged officer to defend himself will result in violation of the principles of natural justice, which will vitiate the disciplinary proceedings. As discussed above, in this case a reasonable opportunity was not extended to the deceased employee by the IO to defend as a result of which there is violation of the principles of natural justice as well as violation of the DAR, 1968 in the disciplinary proceedings against the deceased employee in this case. Further, the appellate authority has dealt the appeal filed against the punishment order in a manner which is not as per the DAR, 1968 and which is considered to be unfair and unjust as discussed in paragraph 18 of this order.

21. As a result, the disciplinary proceedings against the deceased employee including the inquiry are vitiated in the light of the decision of Hon'ble Supreme Court in Indrani Bai (supra) and other cases discussed in paragraph 10 of this order. Therefore, the impugned orders dated 24.1.2009, 17.11.2009 and 24.3.2010 are set aside and quashed. After quashing of the impugned punishment order, the disciplinary proceedings will be treated as closed in the light of the Railway Board Circular R.B.E No. 115/2000 dated 19.06.2000 as the charged railway servant is dead since 08.04.2009. Respondents are directed to consider and dispose of the application for compassionate appointment as per the existing Rules and guidelines, if the same is filed by the applicants within one month from the date of receipt of a copy of this order.

22. O.A is allowed as above. No costs.

(GOKUL CHANDRA PATI)

MEMBER-A

Anand...

(DR. MURTAZA ALI)

MEMBER-J