

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA-2450/2014

New Delhi this the 20th day of August, 2018

Hon'ble Sh. Pradeep Kumar, Member (A)

Brij Kishore aged about 33 years,
S/o Late Ganga Ram
(Ex-WR-II Workshop, NC Rly. Jhansi).

R/o –C/o Rajeev Verma,
C/30/C, Gulabi Bagh Railway Colony,
Jal Bihar Road Lajpat Nagar-1,
New Delhi-110024.

...Applicant

(By Advocate: Sh. H.K. Chakravorty) :

Versus

1. Union of India Through
The Chairman, Railway Board,
Ex-Officio Principal Secretary,
Government of India,
Ministry of Railways, Rail Bhawan,
New Delhi-01;
2. The General Manager,
North Central Railway,
Saraswati Pariasr, Subedarganj,
Allahabad U.P.
3. The General Manager,
Central Railway, Mumbai CST
(Maharashtra)
4. The Chief Workshop Manager,
North Central Railway, Jhansi
U.P.

..Respondents

(By Advocate :Sh. A.K. Srivastava)

ORDER (ORAL)

Heard the learned counsel for both sides. The instant case pertains to the father of applicant, who was appointed on 08.05.1963. Thereafter, a major penalty chargesheet was issued to him on 03.09.1991 for un-authorised absence in two spells from 01.07.1991 to 05.08.1991 and from 18.08.1991 to 30.08.1991.

On completion of this major penalty proceedings, he was removed from service on 13.01.1993. The employee made an appeal under the Provision of Rule 31 of DAR, 1968. While the appeal was still under consideration, the applicant unfortunately expired on 12.12.1994.

Thereafter, the matter in respect of a revision petition in this DAR case was being pursued by the widow but unfortunately widow also expired on 13.02.2004. This revision petition has not been decided as yet, which is the grievance in instant OA.

2. It is noted that the son, who is the applicant in the instant case, has since followed up the case for the decision in respect of the appeal and thereafter the revision petition. The applicant, whose date of birth is 28.10.1980 and who is only 8th class pass, was about 14 years of age at the time when his father expired and about 24 years of age when the mother expired.

3. The attention of the Court was drawn to a letter, written in connection with the consideration of late employee's appeal, by the then Chief Workshop Manager, Jhansi on 15.10.93 to the Chief Workshop Engineer which reads as under :-

"It will be recalled that the son and daughter of the abovenamed employee had sought an interview with you during your last visit to the workshop and requested for compassionate appointment.

Briefly, the case is as under :

Shri Gangaram MohanLal had been keeping indifferent health for a number of years and with the benefit of hind sight it is now known that his eye sight was also deteriorating. At that stage this fact was not known to the Workshop and after issue of SF-5 etc. he was finally removed from service on 13/1/93.

While the case for removal, which took over a year, was being processed by the concerned Section, Shri Gangaram Mohan Lal's eye sight and health was rapidly deteriorating and CMS JHS vide Certificate 19B No.068 dated 10/6/92 finally declared this employee unfit for C-1 and fit only for C-2 with glasses. Since C-2 category is practically not available in the Workshop, the employee gave his option for retirement and asked for his

final settlement. This case thus became eligible for appointment of his son under the compassionate appointment provision.

However, these two aspects of this case namely processing of his removal for his unauthorised removal and his medical decategorisation on account of health condition could unfortunately not get linked up and this letter is now being addressed with the specific request that his mercy appeal against the order of removal from service be viewed favourably and a decision be taken at CME's level for reducing his punishment. This step would enable me to take him on duty after which the subsequent process as required for medical decategorisation cases will be followed.

During the interview, it had been brought out that the case is required to be dealt at CME's level since his appeal has already been rejected at CWM's level. Employee's appeal is enclosed."

3.1 However, it was only after several reminders from the Workshop, that the decision on appeal could finally be communicated, vide Chief Mechanical Engineer letter dated 18.8.98, which reads as under :-

"There cannot be any DAR action or disposal of appeal after the death of the applicant.

4. The applicant, who is the son of the late employee, made a representation to the Hon'ble President of India through the Chairman, Railway Board vide representation dated 23.1.2013 (Annexure A-2 of OA). This representation is yet to be decided, which is the grievance in present OA.

In support of his contention and maintainability of the same, the applicant also brought out attention to RBE No. 313/85, which reads as under:-

" R.B.E.No.313/85

Subject: Revision petition against punishment- Whether it is necessary to decide after the death of the petitioner.

Reference: Your letter No.82 Admn./A/11, dt. 30-7-1985 on the above subject.

Pending revisions have to be necessarily disposed of on merits by the concerned Revising Authority although the petitioner concerned may have died in the meanwhile. This is also applicable to pending appeals."

5. This pending representation dated 23.01.2013 is on two aspects. Deciding the DAR case on merits and also for request for appointment on compassionate ground on account of medical decategorisation of late employee which is also brought out in letter dated 15.10.1993, referred in para 3 above. The applicant has further mentioned that at this stage he will be satisfied if directions are given to the respondents to take a considered view on this representation dated 23.1.2013.

6. The respondents brought out that this case is now time barred as the decision on the appeal was already given in the year 1998 (para 3.1 supra) whereas the OA has been filed in the year 2014. In support thereof, the respondents brought out the decision by the CAT, PB in OA 1100/2015 delivered on 21.11.2017.

In regard to the merits of the case, the respondents only drew attention to the decision on appeal as was communicated in the year 1998.

7. The matter has been heard at length. A reading of decision on appeal in 1998, reproduced in para 3.1 above, clearly indicates that the appeal was not even considered on the plea of death of employee. This is not tenable even in the least, and more so in view of extant instructions vide RBE 313/85 brought out in para 4 above.

8. In view of the typical circumstances, in that the applicant was only 14 years of age at the time of death of his father and he is only 8th class pass and the specific provision of consideration by the revising authority vide RBE No. 313/85 as brought out above, which has not been followed in this case, the present MA No.2054/2014 for condonation of delay is allowed.

9. Further, the OA is disposed off with the direction to the respondents to decide the representation dated 23.1.13, by treating the same as a revision/ mercy petition, on merits, within a period of three months from the date of receipt of a copy of this order. No costs.

(Pradeep Kumar)
Member (A)

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