

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.704 of 2012

Date of CAV: 09.08.2018

Date of Order:20.08.2018

Between:

Smt. Pushpa Kale, W/o. Late Prakash Kale,
Aged about 43 years, Occ: Unemployee,
R/o. C/o. Anil Khargate, Siddhartha Nagar,
Purna Junction, Parbhani District,
Purna – 431 511, Maharashtra State.

... Applicant

And

1. Union of India, Rep. by its Secretary,
Ministry of Railways, Rail Bhavan, New Delhi.
2. The Divisional Railway Manager,
South Central Railways, Mechanical Branch,
Nanded Division, Nanded.
3. The Assistant Divisional Railway Manager,
South Central Railways, Mechanical Branch,
Nanded Division, Nanded.
4. The Senior Divisional Personnel Officer,
South Central Railways, Personnel Branch,
Nanded Division, Nanded.

... Respondents

Counsel for the Applicant ... Mr. Ratna Sudhakar, Advocate for
Mr. L. Praveen Kumar, Advocate

Counsel for the Respondents ... Mrs. KMJD Shyama Sundari, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar ... Member (Admn.)

Hon'ble Mr. Swarup Kumar Mishra ... Member (Judl.)

ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

The O.A has been filed by the widow of a Railway Safaiwala, [redacted] questioning the impugned penalty of compulsory retirement inflicted upon the deceased vide order dt 8.2.07, (Annexure A-1) based on the memorandum No. N/M/DAR/C&W/NED/PK/96/06 dt 26.10.2006 (Annexure-1) and concurred by

the appellate authority on 18.4.2007 (Annexure A-2) as well as by the Revising Authority vide Memorandum dated 01.11.2007 (Annexure A-4).

2. This OA was earlier disposed of by order dt. 29.6.12. wherein, this Tribunal reflecting upon the fact that the applicants husband died while appeal against the penalty of compulsory retirement was pending and theoretically there could be reversal of punishment, allowed the OA and the respondents were directed to consider the case of the applicant or her children for compassionate appointment based on merits, independent of the fact that the husband of the applicant was compulsorily retired.

3. Aggrieved by the said order of this Tribunal, the respondents preferred a Writ Petition No.39144 of 2012, which was dismissed by an order dt 20.12.12. A review petition filed against the said petition met the same fate on 24.6.13. Undaunted, the respondents took the matter to the Hon'ble Supreme Court vide Civil Appeal Nos. 2743-2744 of 2015 (SLP © No 21649-21650 of 2014).

4. The Hon 'Supreme Court made the following observations:

1. The Tribunal was oblivious of the fact that not only the appeal but the revision petition of late railway servant stood dismissed
2. As the compulsory retirement was being challenged, all that the Tribunal could have done was to examine the punishment imposed on merits as to whether it was bad.
3. Another moot point to reflect upon is whether the Tribunal can go into the merits of the issue of compulsory retirement at the instance of the widow of the late railway servant.
4. The applicant has not asked for compassionate appointment but the Tribunal has ordered it for consideration
5. With the above observation, the matter was remitted to the Tribunal for a fresh hearing and for passing appropriate orders in accordance with law.

6. Hon'ble Supreme court has also made it abundantly clear that no opinion has been expressed on the merits of the case or the contentions that may be urged by parties before the Tribunal.

In the background of the developments scribed above, the second round of litigation commenced which has to be dealt with according to the directions mandated by the Apex Court. And, the case was finally heard on 09.08.2018

5. Now the facts of the case in a silhouette form: Late Shri Late Prakash Kale, the spouse of the applicant, was appointed as Safaiwala in the Carriage and Wagons Dept. of the Railways on 6.11.1990 and posted at Nanded depot. He was issued with a charge memo on 26.10.2006 when he was undergoing treatment for cardiac disease. The sole charge is as under:-

Article I “That the said Prakash Kale Safaiwala/C&W/NED while functioning during year 2006-07 remained unauthorized absent 60 days in different spells 28-01-2006 to 19-10- 2006 which period (S) is / are neither covered by a regular Medical certificate issued by the Railway Doctor in form (M8 & M9) nor covered by leave sanctioned by the competent authority”

The proceedings under the relevant rules commenced in which the employee participated and as a result, the IO rendered his finding as under:-

“The charge of unauthorized absent for the period of 60 days in different spell during the period form 28-01-06 to 19-1—06 against Shri Prakash Kale Safaiwala/ C&W/NED are proved.”

6. The Disciplinary Authority, after forwarding a copy of the Inquiry Report and affording the employee time for filing representation against the same, ultimately, awarded a penalty of compulsory retirement vide the order dated 8-02-2007. This was challenged by the deceased husband of the applicant in the appeal on the specific grounds that he was suffering from cardiac disease for the last seven years and is undergoing treatment. For this purpose he had to regularly attend the

hospital for treatment. To attend the hospital he had to apply for leave which unfortunately was not sanctioned by the higher authorities and marked as absent. The appellate authority has, however, as per applicant argument echoing her late husband's concrete view rejected the appeal on 18-04-2007 with a closed mind (Annexure A-2). However, even the review filed by the deceased remained unsuccessful, vide order dated 01-11-2007 (Annexure A-4) which, according to the applicant is one of non-speaking in character in as much as it did not consider the health condition and the medical reports of her deceased husband. However, applicant of the deceased husband did make a further appeal (mercy petition) to the respondents on 23.11.07 to consider his case on sympathetic grounds.

7. In the OA, the Applicant claims that rejection of the appeal and revision preferred by the applicant had a telling effect on the health of her deceased husband leading finally to his death due to cardiac arrest on 16.4.08, leaving behind the applicant , 2 minor children and his old aged mother.

8. On the demise of her husband, the applicant pleads that she was placed in adverse pecuniary circumstances . Therefore, she had to perforce represent to the Respondents on 3.1.2011, for providing employment on compassionate grounds. Respondents received the representation on 10.1.11 as has been confirmed by the postal authorities and in the absence of any action, much less a favourable action, the applicant had to approach the Tribunal by filing this OA.

9. The Respondents in defense have drawn attention to the general conduct of the applicant's deceased husband. He was found to be coming up for adverse notice often on grounds of unauthorized absence.

The latest being the charge sheet under Rule 9 of RS (D&A) Rules, 1968 dt 26.10.2006, framed by the respondents for unauthorized absence from 28.1.06 to 19.10.2006, the subject matter of the present OA. It was served and acknowledged on 1.11.2006, as per Exh-R-1, by the deceased husband of the applicant, here in after referred to as late railway servant. As his explanation was not forthcoming, an Inquiry officer was appointed vide lr no N/M/DAR/C&W/NED/PK/96/06 dt 27.11.06 and the same was acknowledged by the late railway servant as per annex-R-2.

10. The Respondents claim that during the inquiry conducted on 9.12.06, the late railway servant admitted the unauthorized absence, as per annex – R-3 and that annex 4 &5 confirm that the late railway servant has neither applied for leave nor got it regularized after availing of the leave. The muster roll reinforces his unauthorized absence is their assertion.

11. Inquiry officer had concluded that the charge has been proved and the Inquiry report dt 27.12.06, has been received by the late railway servant on 3.1.07 as per annex—R-7.

12. Respondents, inform that the disciplinary case was taken to its logical conclusion by imposing the penalty of compulsory retirement w.e.f 9.2.07 vide memo N/M/DAR/C&W/NED/PK/96/06 dt 8.2.07. The appeal and petition preferred by the late railway servant were rejected by the appellate authority and the petitioning authority vide their letters No.N/M/DAR/C&W/NED/PK/96/06 dt 18.4.2007 and 1.11.2007 respectively enclosed as exhibits R-9 and R-10 to the reply statements.

13. The counsel for the applicant while contending in resonance with the material contained in the OA has reiterated that the medical certificates brought on

record testify the illness of the late railway servant. The applicant counsel submitted that the case may be decided on merits.

14. The counsel for the Respondents submitted that the claim of the late railway servant that he was having cardiac disease is not true and that he had only fever. Their being a railway hospital at the place he was working, the railway servant approaching other doctors is unexplainable. The widow demanding the removal of affliction of compulsory retirement imposed on her late husband is unacceptable. The contention of the applicant that the charge memorandum was not received by the late railway servant was far from the truth.

15. Arguments were heard and documents perused. Before, however entering into the merit of the case, the Tribunal is duty bound to deal with the mute point highlighted by the Apex Court – “*whether the Tribunal can go into the merits of the issue of compulsory retirement at the instance of the widow of the late railway servant.*”

16. The factors that can be reckoned in her favour are—

1. She is the legal heir of the late railway servant and thus she is entitled to any amount payable to her husband.
2. Terminal benefits have accordingly been paid to the applicant.
3. The legal validity of the order of the Disciplinary Authority, the Appellate Authority and the Revision Authority has to be tested on the touch stone of principles of natural justice. In the absence of the Railway Employee, it is his spouse that steps into the shoes of the deceased husband. If she is able to succeed in the OA, obviously, the result would be reinstatement of the spouse in which event, there may be some amount which the husband of the applicant would be entitled

to either by way of salary or by way of terminal benefits etc., In the absence of the spouse it is the applicant who could become entitled to such amounts.

4. Penalty of compulsory retirement is not a praiseworthy character and thus, the honour of the husband of the applicant had been tarnished by such penalty and in order to restore the same, the applicant being the immediate legal heir alone can approach the Tribunal against the orders which affected her late husband and telescopically herself and her family as well. Had her husband been alive he would have presumably continued his fight for justice and honour availing remedies prescribed by rules and the law of the land. In his absence she had to perforce take on this task of convincing the Railways, to redress the grievance of her late husband. The institution which was constituted to examine her grievance, in a speedy and cost effective manner was naturally the CAT and hence her first port of call. Legal heirs knocking at the doors of CAT in regard to various claims when their bread winner is no more is not uncommon. Family pension is a financial benefit but in this case it is more than that, the honour of an employee who could not continue his defense which he initiated because of the last call.

Thus, so far as the locus of the applicant to challenge the impugned orders, the applicant does enjoy the locus to challenge the impugned orders in order to right the wrong.

17. Now on merits:

It is pertinent to mention at this stage itself that the entitlement of the applicant for compassionate appointment either to herself or her ward is contingent upon various factors as under:-

(a) First, there are certain limitations in grant of compassionate appointment. For example, as held by the Apex Court in the case of **LIC vs Asha Ramchandra Ambedkar (1994) 2 SCC 718**, *The High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic consideration.*

(b) The conduct of the Railway servant during his service should be unblemished as held by the Apex Court in the case of **SBI vs Anju Jain (2008) 8 SCC 475** wherein it has been held as under:-

33. Compassionate appointment is really a concession in favour of dependants of a deceased employee. If during his career, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependants cannot claim right to the employment.

18. Keeping in view the above two aspects, the case of the applicant can be considered for compassionate appointment only when penalty imposed upon the husband of the applicant is quashed and set aside in order to avoid the stigma aimed at by the Apex Court in the case of Anju Jain (supra). And, once the penalty imposed is quashed and set aside, the applicant does not automatically become entitled to compassionate appointment on the basis of any benediction, but her case shall be under scrutiny under the prescribed parameters and norms in her own turn and subject to fulfilment of the norms and on the basis of comparative merit only does she become entitled to such compassionate appointment.

19. Now as to whether the penalty order is liable to be quashed and set aside.

20. One of the contentions of the applicant is that no documents have been served upon her husband. On verification, service of charge sheet, Inquiry Report,

and other requisite documents upon the husband of the applicant having been proved by the respondents with documentary evidence, this contention of the applicant that no such documents were served has no basis. To this extent the proceedings have been strictly followed by the respondents.

21. The spinal charge is as to the unauthorised absence of 60 days, of the husband of the applicant in different spells from 28.1.06 to 19.10.06 and the finding of the inquiry officer in his report (exh-R-6) is that the said charge stands proved. Whether this finding is justifiably proved by the prosecution. This calls for the verification of the records to ascertain as to whether the I.O. has played his part strictly in accordance with the extant Rules.

22. The inquiry is found to have been over in a single sitting. The delinquent had specifically made an assertion that he did request for regularization of his absence but his in-charge has declined his request. This averment of the individual, which is very pertinent to the inquiry was supposed to have been verified through the records, whether such a request was made by him before the concerned Authority and if so, the result thereof. Apparently, this aspect was not verified by the Inquiry Officer at all. In the absence of a Presenting Officer, when the IO performs the dual role, it was expected of him to ascertain from the Disciplinary Authority as to whether the delinquent did ask for regularization and if so, the result thereof. This drill not having been performed, the same is a grave legal lacuna. Had there been such a request for regularisation, the respondent ought to have communicated its decision to the delinquent. No document to the effect of such communication has been filed. This is a serious lacuna in the inquiry

performed by the I.O. The position of the IO has been reflected in the case of **State of UP vs Saroj Kumar Sinha (2010) 2 SCC 772** by the Apex Court as under:-

An inquiry officer acting in a quasi-judicial authority is in the position of a pendent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. State of U.P. v. Saroj Kumar Sinha,(2010) 2 SCC 772 :

23. The Inquiry Officer has a still more onerous and mandatory responsibility in terms of the provisions of Rule 9(21) of the Railway Servants (Discipline and Appeal) Rules,1968. The said Rule reads as under:-

(21) The inquiring authority may, after the Railway servant closes his case, and shall, if the Railway servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Railway servant to explain any circumstances appearing in the evidence against him.

The above is *pari materia* with Rule 14(18) of the CCS (CC&A) Rules, 1965.

24. Both the rules came up for consideration of the Apex Court in two different cases. In so far as the Railway Rules are concerned, the Apex Court dealing with the said rule in the case of **Moni Shankar vs Union of India (2008) 3 SCC 484**, where, the Apex Court has held as under:-

20. The enquiry officer had put the following questions to the appellant:

“Having heard all the PWs, please state if you plead guilty? Please state if you require any additional documents/witness in your defence at this stage? Do you wish to submit your oral defence or written defence brief? Are you satisfied with the enquiry proceedings and can I conclude the enquiry?”

21. Such a question does not comply with Rule 9(21) of the Rules. What were the circumstances appearing against the appellant had not been disclosed.)

Again, in the case of **Ministry of Finance vs S.B. Ramesh (1998) 3 SCC 227**, the Apex Court, dealing with the requirement of complying with the provisions of Rule 14(18) of the CCS(CC&A) Rules, 1965 has held as under:-

13. It is necessary to set out the portions from the order of the Tribunal which gave the reasons to come to the conclusion that the order of the Disciplinary Authority was based on no evidence and the findings were perverse. The Tribunal, after extracting in full the evidence of SW 1, the only witness examined on the side of the prosecution, and after extracting also the proceedings of the Enquiry Officer dated 18-6-1991, observed as follows:

"After these proceedings on 18-6-1991 the Enquiry Officer has only received the brief from the PO and then finalised the report. This shows that the Enquiry Officer has not attempted to question the applicant on the evidence appearing against him in the proceedings dated 18-6-1991. Under sub-rule (18) of Rule 14 of the CCS (CCA) Rules, it is incumbent on the Enquiry Authority to question the officer facing the charge, broadly on the evidence appearing against him in a case where the officer does not offer himself for examination as a witness. This mandatory provision of the CCS (CCA) Rules has been lost sight of by the Enquiry Authority. The learned counsel for the respondents argued that as the inquiry itself was held ex parte as the applicant did not appear in response to notice, it was not possible for the Enquiry Authority to question the applicant. This argument has no force because, on 18-6-1991 when the inquiry was held for recording the evidence in support of the charge, even if the Enquiry Officer has set the applicant ex parte and recorded the evidence, he should have adjourned the hearing to another date to enable the applicant to participate in the enquiry hereafter/or even if the Enquiry Authority did not choose to give the applicant an opportunity to cross-examine the witness examined in support of the charge, he should have given an opportunity to the applicant to appear and then proceeded to question him under sub-rule (18) of Rule 14 of the CCS (CCA) Rules. The omission to do this is a serious error committed

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15. On a careful perusal of the above findings of the Tribunal in the light of the materials placed before it, we do not think that there is any case for interference, particularly in the absence of full materials made available before us in spite of opportunity given to the

appellants. On the facts of this case, we are of the view that the departmental enquiry conducted in this case is totally unsatisfactory and without observing the minimum required procedure for proving the charge. The Tribunal was, therefore, justified in rendering the findings as above and setting aside the order impugned before it. (Emphasis supplied)

25. The disciplinary authority vide memorandum N/M/DAR/C&W/NED/PK/96/06 dt 8.2.07 claims that he has gone through the inquiry findings and comments that he has come to know from office records that the late railway servant is an habitual absentee besides making other observations based on inquiry report. Thus, what weighed the mind of the Disciplinary authority is the past conduct. The Apex Court has in the case of **MohdYunus Khan vs State of UP (2010) 10 SCC 539** has held as under:-

34. The courts below and the statutory authorities failed to appreciate that if the disciplinary authority wants to consider the past conduct of the employee in imposing a punishment, the delinquent is entitled to notice thereof and generally the charge-sheet should contain such an article or at least he should be informed of the same at the stage of the show-cause notice, before imposing the punishment.

35. This Court in Union of India v. Bishamber Das Dogra considered the earlier judgments of this Court in State of Assam v. Bimal Kumar Pandit, India Marine Service (P) Ltd. v. Workmen, State of Mysore v. K. Manche Gowda, Colour-Chem Ltd. v. A.L. Alaspurkar, DG, RPF v. Sai Babu, Bharat Forge Co. Ltd. v. Uttam Manohar Nakate and Govt. of A.P. v. Mohd. Taher Ali and came to the conclusion that it is desirable that the delinquent employee be informed by the disciplinary authority that his past conduct could be taken into consideration while imposing the punishment. However, in case of misconduct of a grave nature, even in the absence of statutory rules, the authority may take into consideration the indisputable past conduct/service record of the delinquent for “adding the weight to the decision of imposing the punishment if the fact of the case so required”. (Emphasis supplied)

26. Apart from the above, there has been a Ministry of Home Affairs Executive instruction to the following extent:-

Not appropriate to bring in past bad records in deciding the penalty, unless it is made the subject matter of specific charge of the charge-sheet itself :-

A question has arisen whether past bad record of service of an officer can be taken into account in deciding the penalty to be imposed on the officer in disciplinary proceedings, and whether the fact that such record has been taken into account should be mentioned in the order imposing the penalty. This has been examined in consultation with the Ministry of Law. It is considered that if previous bad record, punishment etc., of an officer is proposed to be taken into consideration in determining the penalty to be imposed, it should be made a specific charge in the charge-sheet itself, otherwise any mention of the past bad record in the order of penalty unwittingly or in a routine manner, when this had not been mentioned in the charge-sheet, would vitiate the proceedings, and so should be eschewed.

[G.I.M.H.A., OM No. 134/20/68-AVD, dated the 28th August, 1968].

Although the above instructions have been issued by the Home Affairs, the spirit behind the same could well be borrowed to apply to the Railways and the same read with the Apex Court decision cited above would go in favour of the applicant. Besides, it is against the Railway board order No (D&A) 68 RG 6-37 dt 23.9.68 which echo the spirit of rule 9(6) of railway servant(D&A) rules 1968.

27. Disciplinary Authority, as is seen from the Records, has not brought to the knowledge of the delinquent about the impact of the past conduct in deciding the current proceedings. This is a grave legal lacuna on the part of the Disciplinary Authority, which makes the proceedings totally vitiated.

28. The Disciplinary Authority is supposed to issue a speaking order wherein, he needs to consider and comment on the submissions of the charged official and any deficient conclusions of the inquiry officer, to present a balanced point of view, while imposing a major penalty of compulsory retirement which amputates the umbilical cord that held the charged official to the respondents over the years. Disciplinary authority by delving on this aspect and avoiding the mention of extraneous issues in imposing a major penalty would have made the order resonate

with the Railway Servant (D&A) rules 1968 cited in paras supra and also uphold the Principles of Natural Justice.

29. The weakness continues with the Appellate authority bringing in some more elements totally unconnected to the charge sheet like the late railway servant has absented himself for 161 days in various spells from 9.3.04 to 1.2.07, that he was removed and reinstated into service on 4.2.04, habitual absentee and rejects the appeal. Such action of the appellate authority is against the observation of the Hon'ble Supreme Court as under:

The appellate authority shall apply his mind to the entire case and ascertain to consider (1) whether the procedure laid down in the rules has been complied with; and if not, whether such non-compliance has resulted in violation of any of the provisions of the Constitution of India or in failure of justice : (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or remit back the case to the authority which imposed the same. Ram Chander v. Union of India, (1986) 3 SCC 103, Narinder Mohan Arya v. United India Insurance Co. Ltd.,(2006) 4 SCC 713 Apparel Export Promotion Council v. A.K. Chopra

30. It is no different with the Revision Authority, who rejects the petition by mentioning that the railway servant was removed from service earlier and taken back, a careless worker and did not attend to cleaning jobs properly, enquiries with those who supervised his work have indicated their poor estimation of his attendance to work, a habitual offender. None of them figure in the charge sheet.

31. As can be seen from above that the disciplinary/ appellate/ petitioning authority have strictly not adhered to the Railway servant (D&A) rules 1968 and the observations of the Hon' Apex Court, thereby giving an impression that the issue, as serious as compulsory retirement, was dealt in a routine manner, where by the career of the charged official was guillotined, who had another 14 long years to go.

32. The learned counsel for the respondent when questioned on this had no answer to the same. Her feeble response was to whether the widow of the deceased railway servant can agitate before the Tribunal against the compulsory retirement of her late husband.

33. The learned counsel for the respondents has also adduced that the late railway servant, if he was sick, should have gone to the railway hospital. Medical prescription records of the railway hospital have been submitted by the applicant and also the treatment he took from Govt. Vardhaan Health center, Purna etc. The fact that the late railway servant was thus ailing cannot be brushed aside. The medical certificates enclosed by the late railway servant did cover major periods of absence cited in the charge sheet. The late railway servant has repeatedly pleaded before the appellate/petition authority that he had to visit the hospital for treatment and that he applied for leave but the leave was not sanctioned by the higher authorities and marked absent. There is no document brought on record by the respondents to unearth the truth behind deceased railway servant's claim.

34. Consequently the drawbacks stated in the preceding paras makes the processing of the case bad in law, inviting judicial review.

Judicial review is a review of the manner in which the decision is made. to ensure that the individual receives fair treatment The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case (B.C. Chaturvedi v. Union of India, (1995) 6 SCC 749)

35. One of the most important welfare measure extended by the respondents to the employees is compassionate appointment to the legal heirs of those who die in harness.

36. In the present case due to sudden demise of her husband who belongs to the lower rung of the administration, she was obviously put to extreme financial strain. Respondents claim vide their reply statement that they have paid Rs 52,170 towards terminal benefits which includes DCRG, CGIS, P.F, Leave Salary, relief and a family pension of Rs 3500 per month. The issue is whether this sum will suffice to wade through the remaining part of her life is to be pondered upon. For the sake of survival she has none to go to but to come back to the organization seeking succour as per rules, if possible. One cannot deny such an effort because hope is the spark of life which keeps it going. Her specific request for compassionate appointment is mentioned at para 4(h) of the OA reiterating the circumstances under which she is seeking compassionate appointment.

37. For seeking compassionate appointment, the late railway servant employee died after being compulsorily retired and therefore it is a bar for the legal heirs to be considered for compassionate appointment.

38. To fight it out the late servant is no more. The burden of overcoming the hurdle of compulsory retirement rests on the applicant. Therefore being left with no other alternative, it is understandable that she had filed the present O.A Incidentally her fears have turned out to be true given the maladies noticed in the processing of the case. But for the O.A filed by the applicant, this deficiency in rendering justice to the late railway servant would

not have come to light. It would have been a case where justice would have been buried for ever along with the late railway servant. Thus, from the above discussion, it is found that the disciplinary authority as well as the appellate authority and the revising authority have not followed the principles of natural justice, thereby causing serious prejudice to the delinquent and thereby causing injustice to him. Hence, it needs interference by this Tribunal.

39. Therefore, this Tribunal is inclined to quash the impugned orders issued by the disciplinary authority vide Memorandum No. N/M/DAR/C&W/NED/PK/96/06 dt. 8.2.07, that of the appellate authority vide Memorandum No. N/M/DAR/C&W/NED/PK/96/06 dt 18.4.07 and also that of the Revising Authority vide Memorandum No. N/M/DAR/C&W/NED/PK/96/06 dt 1.11.07. To meet the ends of justice the family pension of the deceased Railway servant has to be worked out ,as if the servant were to continue in service in the same grade till his demise, including earning of increments etc , but for his demise. There shall however, be no payment of salary and other allowances for the period he could not work after compulsory retirement till the date of demise. The entitlement of the applicant in the above circumstances would be as hereunder:-

- (a) Notional Pay Fixation affording notional increment for years from the date of compulsory retirement till the date of demise.
- (b) Fixation of last pay drawn for the purpose of working out the extent of terminal benefits admissible to the applicant (the difference between the revised terminal benefits calculated on the basis of the last notional pay at the time of demise and the amount if any already paid)

(c) Fixation of family pension on the basis of the last pay of the applicant's husband arrived notionally as in (b) above and calculation of arrears thereof

(d) Compassionate appointment to the applicant/her ward in accordance with the extant rules and on her turn.

Time calendared to comply with the directions at (a) to (c) is four months from the date of this order, while as far as (d) above is concerned, as and when the turn of the applicant comes.

40. The OA is allowed accordingly. No order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (JUDL.)

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 20th day of August, 2018

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