

(Reserved on 09.01.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/01105/2013

This the **06th** day of **Februaru, 2019**

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Smt. Kiran, wife of Late Manoj Kumar, R/o 560-J, Railway Colony,
Jhakarkati, District - Kanpur.

.....Applicant

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Nawab Yusuf Road, Allahabad.
3. Assistant Commercial Manager, North Central Railway, Kanpur.
4. Deputy Chief Operative Manager, North Central Railway, Kanpur.

.....Respondents

By Advocate : Shri Rajesh Pandey

ORDER

DELIVERED BY:-

HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

The present original application has been filed by the applicant Smt. Kiran, wife of Late Manoj Kumar (hereinafter referred to as deceased employee), who is seeking quashing of impugned order dated 01.02.2008 (Annexure A-1) passed by the disciplinary authority ordering removal from service of deceased employee and the order dated 08.05.2008 (Annexure A-2) rejecting the appeal preferred by him. The applicant is also seeking appointment on compassionate ground as well as release of DCRG and family pension.

2. The case of the applicant is that her husband Manoj Kumar was working as Safaiwala and died prematurely on 26.12.2009 leaving behind her and four minor children. Prior to his death, the deceased employee remained absent from 23.08.2003 to 13.11.2003 without prior intimation. Consequently, a chargesheet was issued to him on 01.03.2004 (Annexure A-4) for unauthorized absence for the said period. According to the applicant, inquiry was conducted ex-parte without application of mind, examination of witness and documentary evidence and her husband being illiterate person had no knowledge about submitting reply and as such he could not defend himself properly. The inquiry report dated 25.10.2007 (Annexure A-5) found him guilty of charge whereupon the disciplinary authority passed the impugned order dated 01.02.2008 and ordered his removal from service. The appellate authority vide order dated 08.05.2008 confirmed the order of the disciplinary authority. The deceased employee did not file revision application and as such he stood removed from service. The applicant, therefore, was denied the benefit of retiral dues of the deceased employee as well as family pension, which are being sought through the present OA.

3. The respondents have contested the claim of the applicant. They have stated that the deceased employee was habitual absentee without prior intimation. It is stated that during 23.08.2003 to 13.11.2003 also, the deceased employee remained absent for almost three months without prior intimation and as such chargesheet dated 01.03.2004 was issued to him. The inquiry officer was appointed and inquiry was conducted. As per the respondents, the inquiry was not ex-parte and one witness was examined. The inquiry was conducted on seven dates, as given in the counter, ie. 15.11.2006, 22.11.2006, 28.11.2006, 15.12.2006,

10.01.2007, 05.09.2007 and 24.10.2007. The deceased employee himself participated in the inquiry and admitted the charge in writing. Accordingly, the inquiry officer submitted his report and based on the inquiry report, the disciplinary authority has passed the order dated 01.02.2008 which was confirmed by the appellate authority vide order dated 08.05.2008. The respondents have also stated that the last three years working report of the deceased employee is self explanatory and proves that he was a habitual absentee. They have further stated that though the deceased employee in his confession statement dated 24.10.2007 (Annexure-8 to the counter) has stated that he was absent without intimation due to sickness of his wife, but the applicant in the OA has stated that her husband was under treatment in Loco Hospital, North Central Railway, Kanpur, which are two contradictory statements. The counsel for the respondents has concluded that the deceased employee fully participated in the inquiry which was not ex-parte and confessed his being absent from duty and as such charge was proved. Accordingly, there is no case made out for grant of retiral dues or family pension to the applicant.

4. We have heard learned counsels for both the parties and have gone through the pleadings of the case. We have also given our thoughtful consideration to the entire matter.

5. We note that the basic facts of the case are not in dispute. It is true and admitted that the deceased employee remained absent from 23.08.2003 to 13.11.2003 without prior intimation for which he was issued chargesheet dated 01.03.2004. The inquiry officer was appointed and based on inquiry report dated 25.10.2007, the deceased employee

was found guilty of the charge by the disciplinary authority and he was removed from service vide order dated 01.02.2008. This order was confirmed by the appellate authority on 08.05.2008. The applicant did not file any revision petition and as such these orders became final.

6. We note that it is a fact that the deceased employee remained absent from 23.08.2003 to 13.11.2003. We further note that the chargesheet had only one charge i.e. his absence from duty for the said period without prior intimation. We also note that the inquiry report dated 25.10.2007 is very cryptic and of less than a page. It does not even indicate the seven dates on which the inquiry was held according to the counter given by the respondents. It has only one witness i.e. Chief Health Inspector stating that the deceased was absent without prior intimation and as such his salary for this period was cut. The inquiry report, in fact states that just at the beginning of the inquiry, the accused accepted the charge against him and stated that due to his wife's illness, he remained absent from 23.08.2003 to 13.11.2003 and that he will not make such mistake in future. The inquiry report is so short and cryptic that it is difficult to draw a conclusion that there is due application of mind or examination of records or witness. The whole case seems to be based on the on the admission of the deceased government servant.

7. We now come to the confession statement made by the deceased employee based on which the inquiry has been concluded. The statement per se is of about 7-8 lines and is written in Hindi in hand. It is also signed by the deceased employee Manoj. On going through the statement, we feel that it is an honest admission of absence without prior

intimation. The charged employee has stated that he will not repeat the mistake and has prayed for pardon. Perhaps by making this statement, the deceased employee expected lenient attitude by the respondents department, which did not finally materialized.

8. We now come to the order of the disciplinary authority and the appellate authority. The order of the disciplinary authority only states that the deceased employee remained absent for 291 days in the year 2003 on the ground that his wife was sick and has relied on his confession statement. The order also states that the official's absence in the last three years are for 288 days in 2005, for 224 days in 2006 and 73 days in 2007 and as such his working was not proper. Accordingly, the disciplinary authority found him responsible for the charge and passed the order of removal from service.

9. The order of the appellate authority is also very cryptic and just says that he agrees with the finding of the inquiry officer and the confession by the deceased official. The appellate authority has further stated that the charged officer is habitual of absconding from duty without intimation and hence penalty imposed by the Disciplinary Authority is justified. We note that although the disciplinary authority is relying on his absence from duty and is even taking note of subsequent absence in the years 2005, 2006 and 2007, the chargesheet did not contain any of these charges and was specific only for one period of absence from 23.08.2003 to 13.11.2003 and as such the charged officer could not have had the opportunity to defend himself against the charges not levelled against him in the chargesheet. Hence, the order of the

disciplinary authority as well as the appellate authority is not justified on this account.

10. We also note that the deceased employee in his confession statement has stated that he could not remain present due to illness of his wife. However, the department in the counter has stated that this statement is contrary as his widow has now stated that the deceased employee was himself under treatment in Loco Hospital. The respondents have stated that these being contrary, cannot be given any cognizance. We note that in the confession statement, the applicant's husband has clearly stated that he could not report for duty due to illness of his wife. This is also corroborated by the statement made by the applicant in the OA in para 4.2 wherein it is stated that due to her illness, her husband remained absent for some time in the year 2003. We note that this is the period of unauthorized absence for which the applicant's husband was chargesheeted and later his services were terminated. Later, in para 4.15 of the OA, the applicant has stated that her deceased husband 'himself remain under treatment before the Loco Hospital, North Central, Kanpur and all the records are available with the respondents department, but during the enquiry proceeding the enquiry officer did not considered and appreciated the said fact while submitting his cryptic and perverse report against her husband.....'. Thus, here the applicant is referring to her husband's sickness during the period of inquiry. We note that the chargesheet was issued on 01.03.2004 but the inquiry report was submitted only on 25.10.2007. Even, the seven dates for inquiry given in the counter affidavit by the respondents are all of November 2006 to October 2007. Hence, it is not difficult to conclude that the period being referred in para 4.15 by the applicant is of 2006 and 2007 and not of 2003.

Hence, there is no contradiction in two statements made by the applicant. In fact, the charged employee must have been unwell himself as he died in 2009 – that is shortly after award of punishment in 2008. He did not even submit a revision application which shows lack of alertness for his own or his family welfare. His wife has repeatedly stated that he was illiterate and could not properly defend himself. These statements of the widow are born out fully by the facts of the case, as discussed above.

11. In view of all the above, we feel that the case merits sympathetic consideration. Accordingly, we quash both the order of the disciplinary authority dated 01.02.2008 and the appellate authority dated 08.05.2008. We also note that as the charged employee has already expired, no further disciplinary proceedings can be initiated against him. We also note that the deceased expired in 2009 leaving his wife and four minor children behind and due to removal from service, the widow has not been able to receive any retiral dues for last ten years after his death. We, therefore, feel that no useful purpose would be served by referring the case back to the disciplinary authority for reconsideration and as such, we hold that the applicant is entitled for the benefit of service rendered by her husband in the respondents department and other consequential benefits. We, therefore, direct the respondents to grant consequential benefits including family pension and other retiral dues to be given to the applicant within a period of three months from the date of receipt of certified copy of this order. They may also consider the case of the applicant for compassionate appointment as per rules.

12. The OA is allowed in above terms. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...