IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7210 of 2016

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1. Smt. Jaya Devi Wife of Late Shambhu Kumar Bansfore Ex-Helper Safaiwala, Under Section Engineer (Carriage & Wagon), North East Railway, Siwan (Bihar) Resident of Village & Post - Sarsar, District - Siwan (Bihar).

.... Petitioner/s

Versus

1. The Union of India through the General Manager, North East Railway, Gorakhpur (U.P.).
2. The General Manager (Personnel), North East Railway, Gorakhpur (U.P.).
3. The General Manager (Mechanical), North East Railway, Gorakhpur (U.P.).
4. The Divisional Railway Manager, North East Railway, Varanasi (U.P.).
5. The Divisional Railway Manager (Personnel), North East Railway, Varanasi (U.P.).
6. The Senior Divisional Mechanical Engineer (Carriage & Wagon), North East Railway, Varanasi (U.P.).
7. The Senior Divisional Financial Manager, North East Railway, Varanasi (U.P.).
8. The C.D.O., North East Railway, Chapra (Bihar).
9. The Section Engineer (Carriage & Wagon), North East Railway, Siwan (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Munna Pd Dixit (M.P. Dixit), Mr. S. K. Dixit, Mr Sanjay Kumar Choubey, Mr. Shailendra Kumar & Mr. Sunil Kumar.

For the Respondent/s : Mr. Bindhyachal Singh

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 28-01-2017

Husband of the petitioner Late Shambhu Kumar Bansfore was an ex-helper Safaiwala working in North Eastern Railway posted at Siwan. The Court is informed that he was a compassionate appointee. He came to be dismissed from service vide order dated 22.02.2005 passed by the respondent authority of the railways after regular departmental proceeding was initiated against him for

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prolonged absence without proper information or leave granted to him. Since no evidence as way of defence was produced on behalf of the husband of the petitioner, the punishment of removal was held to be in order even by the appellate authority and the revisional authority. The revisional order was passed on 12.09.2007. It emerges from the order of the Tribunal that a fresh application which was a kind of mercy appeal was filed in the year 2008 which too was dismissed informing him that there was nothing pending before the railway authorities since all his appeal and revision stood disposed of years ago. Husband of the petitioner died on 12.12.2013. His wife was substituted by the order of the Tribunal on 25.03.2014.

2. Considering the submissions made and after giving due consideration to the materials produced, it emerges that the defence of the husband of the petitioner that he was absent because of compulsion of illness within his family or himself was not corroborated by any kind of proof of any treatment having been obtained from any quarter; muchless the railway hospital. Husband of the petitioner was given all the opportunities during the course of enquiry. He was tendered copy of the enquiry report as well. Thereafter the order of removal was passed on 22.02.2005.

3. The Tribunal has taken the factum of a belated kind of application filed as O.A. 273 of 2012 as also one of the grounds for

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rejecting the claim of the petitioner keeping in mind that last of the order in revision was passed in the year 2007 and mercy application or its rejection or information relating to disposal of the earlier application cannot give rise to a cause of action. Therefore, the delay of almost five years is quite unexplained.

4. The Tribunal has also noted that it was not a solitary case of indiscipline of un-authorized absence committed by the husband of the petitioner. Even in the past there are many instances of prolonged absence. Besides Caution and warning to the petitioner's husband, even minor punishments had also been imposed, to bring him around to abide by the discipline of the service but it seems that the same had had no sobering effect on him. The final straw which broke the camels' back was the last act of indiscretion when he went missing from 04.07.2004 to 01.11.2004.

5. Besides other submissions, one of the submissions made on behalf of the petitioner is that the petitioner has been left behind with nothing to find for herself with four minor children to look after and the punishment which has been imposed of removal from service is excessive in nature. Past cases of indiscipline could not form the basis for dismissal.

6. The authorities could have shown mercy provided the husband was careful towards his family. It is evident from the

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narration of facts that he never cared either for his future or future of his children and wife or else the indulgence shown by the railway authorities for past acts of such indiscretion and the caution and warning by way of minor punishment could have been a strong message to him to start taking his job and responsibility with utmost seriousness. But then the husband of the petitioner used to live in his own make-believe world where nothing mattered to him except his happiness and the state of highness which he used to remain in.

7. It is well settled law that past conduct as such of punishments, if it has been imposed, for aberrations should not form the basis for imposition of punishment. However, it is also well settled law that when the current punishment has been imposed on the basis of enquiry with regard to the current aberration and deviant behaviour, which led to holding of domestic enquiry, then the disciplinary authority surely can keep the service record of such delinquent into consideration as to the quantum and the nature of punishment which is required to be imposed.

8. May be, if the absence of the husband of the petitioner was first of its kind, then obviously the punishment of removal or dismissal would not have been passed but then the repeated acts of aberrations starting from 22.11.2000 till 13.04.2004 which was the absentee statement, produced before the Tribunal met the approval of

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the Tribunal as the records established total lack of seriousness and devotion to duty.

9. Since nothing has emerged from the records with regard to the infirmity in the enquiry as such and the husband of the petitioner had no defence but a lame kind of excuse of illnesses which was offered by him, the same can be treated as alibi to absolve himself of the guilt. But when the alibi fails, the conviction is the natural corollary. In the present case as well, since the husband of the petitioner failed to produce any acceptable defence with regard to the reasons for his prolonged absence relating to illness within his family or himself, the authorities did no wrong by passing order of removal.

10. The writ application has no merit. It is dismissed as such.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Amin/-

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