

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.247 of 2015
IN
Civil Writ Jurisdiction Case No. 9636 of 2008**

- =====
1. The State of Bihar.
 2. The Director General of Police, Home Department, Government of Bihar, Patna.
 3. The Inspector General of Police, Patna Zone, Patna.
 4. The Deputy Inspector General of Police, Central Range, Patna.
 5. The Superintendent of Police, Nalanda at Bihar Sharif.
 6. Sub Divisional Police Officer -cum- Enquiry Officer, Hilsa, Bihar Sharif.
- Appellant/s

Versus

1. Shanti Kumari, W/o Late Mohan Lal (original writ petitioner since deceased represented through L.Rs.).
 2. Manoj Kumar Sinha, S/o late Mohan
 3. Manoranjan Kumar Sinha, S/o late Mohan Lal
 3. Priya Ranjan Kumar Sinha, S/o late Mohan Lal
- All are residents of Mohalla- Neemganj, Near Devi Asthan, Post- Bihar Sharif, District- Nalanda.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Anil Kumar Sinha, GA-1
Ms. Aditi Hansaria, AC to GA-1

For the Respondent/s : Mr. Mrigank Mauli, Advocate
Mr. Kumar Ravish, Advocate
Mr. Prince Kumar Mishra, Advocate
Mr. Sanjay Kumar, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 23-02-2018

In view of the order dated 8.8.2013 passed by the learned Single Judge on I.A. No.4025 of 2009 filed in CWJC No.9636 of 2008 as modified on 22.8.2013 as well as by this Court in its order dated 12.02.2015 allowing I.A. No.1301 of 2015, office is directed to carry out necessary amendment in the cause title, both in the writ petition as well as in the memo of appeal.



This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna has been filed by the State and its officials feeling aggrieved by the judgment and order dated 8.8.2013 passed by a learned Single Judge of this Court in CWJC No.9636 of 2008, whereby the writ petition was allowed, the disciplinary proceedings was held abated and the substituted heirs of the deceased Government servant were allowed the consequential benefits including the arrears of salary and pensionary benefits treating the deceased Government employee to have died in harness.

The essential facts necessary for disposal of the appeal is that the original writ petitioner, a Lower Division Clerk posted in the foreign section of the office of the Superintendent of Police, Nalanda at Biharsharif was proceeded against under the Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the '1930 Rules') which has since been replaced by the Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 (hereinafter referred to as the '2005 Rules').

The proceeding in question had been initiated against the writ petitioner for alleged acts of misconduct in not following the prescribed procedure for passport verification. He was put under



suspension on 28.1.2002 which was followed by the departmental proceeding in question and alongside an FIR was instituted giving rise to Biharsharif P.S. Case No.375 of 2001. The Enquiry Officer after holding enquiry submitted his report on 30.6.2006 holding the charge proved which was forwarded to the writ petitioner by the Superintendent of Police for his representation thereon vide Memo No.3385 dated 4.7.2006. Reply was filed by the petitioner on 24.7.2006 which did not satisfy the Disciplinary Authority and resulted in the order of dismissal bearing Memo No.447 dated 16.3.2007 passed by the Deputy Inspector General of Police, Central Range, Patna. The order so passed was communicated through District Order No.760/2007 dated 25.3.2007 of the Superintendent of Police, Nalanda. The writ petitioner preferred statutory appeal and which was also dismissed vide order bearing Memo No.959 dated 17.5.2008. Feeling aggrieved he moved this Court through the writ petition in question i.e. CWJC No.9636 of 2008.

While the writ petition was pending consideration that the writ petitioner deceased and was substituted vide order passed on I.A.No.4025 of 2009 filed by the legal heirs in the writ proceedings. The writ petition was allowed vide judgment and order impugned dated 8.8.2013. The learned Single Judge taking note of the



undisputed circumstances existing where the Disciplinary Authority who passed the order of dismissal had since been promoted to the rank of Appellate Authority and in that capacity had considered the statutory appeal of the deceased Government employee, to dismiss the same, held the order illegal on the settled principles that none can sit in appeal over his own order. Since the writ petitioner had deceased in the meanwhile that the learned Single Judge taking note of this fact as also that the appellate order in the circumstances noted, required a remand, held the disciplinary proceeding itself abated on such count. The writ petitioner was held to have died in harness. Reliance for the opinion, was placed on the judgment of this Court rendered in the case of **Ashok Kumar Singh vs. Bihar Industrial Technical Consultancy Organization Limited & Ors.** since reported in **2000(4) PLJR 471.**

The substituted heirs were allowed consequential benefits in the form of arrears of salary and pensionary benefits and it is feeling aggrieved by the judgment and order of the learned Single Judge that the State together with its official are before this Court.

The appeal was admitted for hearing on 2.4.2015 and interim order of stay passed on 12.2.2015 was made absolute. It is following the notices issued that the substituted heirs of the deceased writ petitioner are before this Court and the appeal has



been heard on merits.

A rather short submission has been made by Mr. Anil Kumar Sinha, learned Government Advocate No.1 to canvass that the opinion drawn by the learned Single Judge on the issue of abatement of the disciplinary proceedings on the death of the delinquent even at the appellate stage, is not strictly in tune with the legal position because it is the correctness of the order of penalty passed by the Disciplinary Authority which is to be tested by the Appellate Authority on merits of the order as well as the procedure followed. According to Mr. Sinha, it is the choice of the substituted heirs of the deceased employee whether or not to pursue the appeal preferred by the deceased Government servant and test the order of penalty. The submission of learned counsel is that the death of the delinquent during the pendency of the appeal in no manner would result in abatement of disciplinary proceeding because it has already attained finality.

Learned counsel while responding to the infirmity in the appellate order submits that even if it is the Disciplinary Authority who as the Appellate Authority has discharged the appellate function, it is only a case of a procedural default and not a default on merits and thus a simple remand of the appeal for fresh disposal by an authority competent to do so, as explained in rule



24(3) of the '2005 Rules', would have served the purpose. It is thus the submission of Mr. Sinha that even if the appellate order is wanting on discharge, the order of abatement of disciplinary proceedings held by the writ Court is unsustainable in law.

Mr. Mrigank Mauli, learned counsel has appeared for the substituted heirs of the deceased writ petitioner and while supporting the judgment impugned, has placed reliance on the judgment(s) reported in **(1998)8 SCC 194 (Basudeo Tiwary Vs. Sido Kanhu University)**, **2000(4) PLJR 471 (Ashok Kumar Singh Vs. The Bihar Industrial and Technical Consultancy Organisation Ltd.)** and **2015(3) BBCJ 156 (V) (Union of India Vs. Shri Gupteshwar Mishra)**.

Learned counsel has invited the attention of this Court to the memo of appeal, a copy of which is placed at Annexure 17 to the writ petition to submit that the issue raised by the delinquent in the memo of appeal cannot be resolved by the Appellate Authority rather would require a remand to the Disciplinary Authority because the issues raised therein go to the root of the matter. In reference to the issues raised he submits that a specific assertion is made by the delinquent that he was denied his right to cross examine the witnesses as well as to contest the evidence relied upon by the department. It is the submission of Mr. Mauli, learned



counsel appearing for the heirs of the deceased writ petitioner that in the nature of the dispute raised by the writ petitioner in appeal which has not been answered by the Appellate Authority in the order impugned before the writ Court, the matter requires a re-examination at the level of the Disciplinary Authority but since the delinquent is no more alive, a remand of the matter to the Appellate Authority or the Disciplinary Authority would not serve any purpose because the proceedings cannot be restored.

It is taking note of the arguments advanced before this Court by Mr. Mauli, learned counsel for the substituted heirs which went to the root of the contest that this Court vide its order dated 30.1.2018 directed Mr. Sinha, learned Government Advocate No.1 to produce the records of the disciplinary proceedings so as to confirm whether or not the delinquent had been given opportunity of cross examination of witnesses as well as examination of the evidence by the Disciplinary Authority and whether or not, the issue(s) raised in the statutory appeal did merit consideration.

It is following the order of this Court passed on 30.1.2018 and 7.2.2018 that an affidavit is filed by the Deputy Inspector General of Police, Central Range, Patna who happens to be the Disciplinary Authority of the deceased Government employee, who has candidly accepted that the records of the disciplinary



proceeding has gone traceless or has been destroyed by termites. In other words there are no records available to contest the specific assertion of the deceased delinquent that he was denied his right to cross examine the witnesses as well to contest the evidence.

We have heard learned counsel for the parties, perused the records and have considered the matter in the light of the circumstances noted hereinabove where the Disciplinary Authority admits either to the destruction of the records by termites or its traceless condition. In the extraordinary situation arising from the affidavit of the Disciplinary Authority, we are persuaded to consider the matter on its merits for even if the argument of Mr. Sinha that a disciplinary proceeding cannot abate by death of the delinquent at the appellate stage holds substance, yet a remand of the matter to the Appellate Authority would not serve any purpose in absence of records of the disciplinary proceeding because the issues raised by the deceased Government employee in his appeal at Annexure 17 definitely requires a verification on examination of the records.

Before we would proceed to consider the issues raised by the deceased Government employee in his appeal, we would definitely examine the opinion of the learned Single Judge which is the foundation for the present appeal and even though there is no



infirmity on the principles followed by the learned Single Judge to hold the appellate order unsustainable having been passed by the Disciplinary Authority himself while discharging appellate functions, his opinion as to the abatement of the disciplinary proceeding by virtue of death of the delinquent is strictly not in tune with the legal position nor is supported by the judgment rendered in the case of **Ashok Kumar Singh** (supra), on which he has chosen to rely.

A death of the delinquent at the stage of disciplinary proceeding and at the stage of appellate proceeding is vastly different. In fact if the death of a delinquent occurs in the midst of the disciplinary proceeding there can be no confusion that the proceeding would abate instantly. But the situation would be vastly different if the death takes place after the proceeding has concluded and the matter is resting with the Disciplinary Authority for final orders or after orders are passed or where the death takes place at the appellate stage.

In our opinion while there would be no contest with the legal position in case where the death of a delinquent takes place in the midst of the disciplinary proceeding which would abate the disciplinary proceeding, but if the death takes place after the enquiry is concluded in the disciplinary proceeding and the matter



is posted for orders or at the appellate stage, then the situation is different and there cannot be an abatement of disciplinary proceedings which has already attained finality. In such cases the right to sue survives and the legal heirs who wish to contest the finding of guilt in the punishment order passed by the Disciplinary Authority can pursue the appeal if already filed by the deceased delinquent or file appeal, in case he has deceased after passing of the order of penalty. In case while pursuing the appellate remedy the legal heirs are able to show that the matter would require reconsideration at the original stage of the disciplinary authority by remand, then the proceedings can be held abated, otherwise not.

The provisions of Order 22 rule 1 of the Code of Civil Procedure read with rule 11 thereof as well as section 394 of the Code of Criminal Procedure, are self eloquent of the right to sue, subsisting in the legal heirs who are fully entitled to pursue the cause at the appellate stage for testing the legality and validity of the order passed by the original authority i.e. the Disciplinary Authority, in the present context.

It is thus only in case where the Appellate Authority is of the opinion that the matter requires a remand to the Disciplinary Authority for fresh disposal after removing the lacuna that the issue of abatement would arise but not otherwise.



The judgment relied upon by the learned Single Judge rendered in the case of **Ashok Kumar Singh** (supra) as well as the judgment relied upon by Mr. Mauli, learned counsel appearing for the substituted heirs of the deceased writ petitioner in the case of **Basudeo Tiwary** (supra) and **Gupteshwar Mishra** (supra) are confirmation of the opinion expressed by us. In each of the cases the matter required examination at the original stage and it is in consideration of such a position that the Court(s) have held the proceeding abated but this essential ingredient of abatement, has escaped the notice of the learned Single Judge.

We are persuaded to reproduce the opinion expressed by the Court(s) in the judgment relied upon by learned Single Judge and learned counsel for the respondent-legal heirs which confirms our view and runs under:

The Supreme Court in the case of **Basudeo Tiwary** (supra) more particularly in the opinion expressed at paragraphs 13 and 14 of the judgment, has held as follows:

“13. Admittedly in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorized and ordering termination of his service. Hence the impugned order terminating the services of the appellant cannot be sustained.

14. The appellant has since demised during the pendency of these proceedings, no further direction either as to further inquiry or reinstatement can be given. We declare that the termination of the appellant by the respondent as per the notification



referred to by us is invalid. Consequently, it would be deemed that the appellant had died in harness. Needless to say that the appellant would become entitled to the payment of arrears of salary from the date of termination of his services up to the date of his death on the basis of the last pay drawn by him. Let the respondent take action within a period of three months from today to work out the arrears due to the appellant from the date of his termination till his death and pay the same to his legal representatives.”

A Bench of this Court in the case of **Ashok Kumar Singh**

(supra) at paragraphs 5 to 8 of the judgment has held as follows:

“5. It is submitted by the learned counsel for the petitioner that the impugned order of dismissal is vitiated on account of fact that the petitioner was denied of subsistence allowance during the inquiry and that the order of dismissal was passed by the authority who was himself the appellate-authority under the Regulation of the Company. In this regard, he referred to the judgment of this Court against the same Company filed by one Apurba Kumar Chanda being C.W.J.C. No.3468 of 1995 disposed of on 17.9.1999. It has been submitted that in view of the law settled by the Apex Court in the case of **State of Maharashtra vs. Chandrabhan and analogous cases**, reported in **AIR 1983 SC 803**, and in the case of **Fakirbhai Fulabhai Solanki vs. Presiding Officer and anr.**, reported in **AIR 1986 Supreme Court 1168**, denial of subsistence allowance during the inquiry has been held to be amounting to violation of the principles of natural justice and consequently vitiates the whole proceedings. He also submitted that this Court in the case of **Rama Kant Sharma vs. The Patliputra Central Cooperative Bank & others** relying upon the decision of the Apex Court in the case of **Surjit Ghosh vs. Chairman and Managing Director, United Commercial Bank and others**, reported in **(1995) 2 SCC 474**, held that where there is provision of appeal against the order of disciplinary authority and the appellate or higher authority against whose order there is no appeal, exercise the power,



such order shall vitiate. In view of the settled law, learned counsel for the Respondents has not been able to defend the order of punishment.

Writ petition is, thus, allowed. The impugned order contained in Annexure-33 is quashed.

6. However, a question arose as to for what relief the petitioner is entitled in the peculiar facts and circumstances of the case. It was submitted by the learned Counsel for the Respondent-Company that since the order of punishment has been quashed on technical ground in view of the settled principle such matter are normally remitted back for fresh consideration, but in the present case since the delinquent employee is dead the question of remitting the matter back to the competent authority may not be possible, but at the same time the order having been quashed on technical ground, substituted petitioner cannot be granted any relief. This Court is unable to accept the said submission of the learned counsel for the Company.

7. In this regard, learned counsel for the petitioner has relied on the decision of this Court in the case of **Sumitra Devi vs. Union of India**, reported in **1987 PLJR 714**, wherein under more or less similar circumstances, this Court quashed the order removing the original petitioner from service as being devoid and inoperative in law and further directed the Railway to pay to the legal representatives all salaries due to the concerned employee as if he continued in service till the date of his death and directed to pay them also other benefits admissible to the concerned employee including pension, etc. It has been submitted by the learned counsel for the petitioner that after the order of punishment goes and in the peculiar facts and circumstances, the matter cannot be remitted back to the disciplinary authority, the position as it stood before the order of punishment was passed stood restored and consequently the heirs and legal representative of the deceased employee will be entitled for all the benefits.

8. This Court finds substance in the said submission of the learned counsel for the petitioner. Having regard to the fact that the order of punishment against the deceased employee does not exist and after



his death no fresh inquiry can be held and order can be passed the position will stand revived as it stood before the order of punishment was passed. As such, this Court does not find any justification to deny the consequential benefit which view also stands supported by the aforementioned decision of this Court in the case of **Sumitra Devi vs. Union of India.**”

In an identical situation arising in a matter which fell for consideration before a Division Bench of this Court in the case of **Gupteshwar Mishra** (supra), the Division Bench at paragraphs 5 and 6 of the judgment has held as follows:

“5. Having considered the matter, in our view, the order of the Tribunal holding that there was serious flaw in the proceedings by non-examination of the Accountant General and the Deputy Accountant General cannot be said to be bad or perverse in any manner. However, even if we set aside the order of the Tribunal that would have necessitated remanding the matter to the Tribunal for fresh consideration or fresh enquiry which obviously cannot be done as the employee is dead. In our view, this writ petition would abate as has been held by the Apex Court in the case of **Basudeo Tiwary Vs. Sidho Kanhu University and others** since reported in (1998) 8 **Supreme Court Cases 194**. As held in that case, it would be deemed that the employee died in harness. We also supported by a decision of this Court in the case of **Ashok Kumar Singh vs. Bihar Industrial and Technical Consultancy Organization Limited and others** since reported in 2000(4) **PLJR 471**. There is yet another decision of this Court in the case of **Mohal Lall Vs. the State of Bihar** being **C.W.J.C. No. 9636 of 2008** disposed of on 08.08.2013 wherein again it was held that the employee would be deemed to have died in harness in such a situation.

6. Accordingly, we hold that this writ petition abates and the consequence being that the order of the Tribunal being for reinstatement of the employee, he



would be deemed to have died in harness and necessary consequence would automatically flow with regard to death-cum-retiral dues and payment of salary etc.”

In view of the legal position so well settled, we are persuaded to hold that the opinion of the learned Single Judge to hold the disciplinary proceeding abated on account of the death of the writ petitioner at the appellate stage and while the appeal was pending, is contrary to the legal position discussed above as well as to the judgments so relied upon and to the aforementioned extent we are in agreement with Mr. Sinha, learned counsel for the appellant, to respectfully disagree with the said conclusion drawn by learned Single Judge and which is accordingly set aside.

The fact remains that even if we do agree to disagree with the finding of the learned Single Judge on the issue of abatement of disciplinary proceeding as well for remand to the Appellate Authority, whether there would be any change in the outcome of the present proceedings or to the relief so granted to the substituted heirs by the learned Single Judge.

As we have noted, the records of the disciplinary proceeding is untraceable or destroyed by termites. Thus even a remand to the Appellate Authority would be a fruitless exercise because the issue raised in appeal definitely warrants an examination of records. We have thus proceeded to consider the



contest on its merits and in this direction we are persuaded to take note of the issues raised by the deceased Government servant in his appeal before the Appellate Authority, a copy of which is enclosed at Annexure-17 to the writ petition. Paragraphs 4, 7 to 11 and 20 of the appeal reproduced hereunder for ready reference, are a confirmation of our opinion that a remand of the present matter to either the Appellate Authority or the Disciplinary Authority, would serve no purpose in absence of the records and in absence of the delinquent because the issues raised by the deceased Government servant in these paragraphs go to the root of the matter:

“4. दोनो अभियोजन साक्षी का बयान मेरे पीछे में दर्ज किया, उन्हें प्रति परीक्षा का मौका भी नहीं दिया गया, संचालन पदाधिकारी ने भी दोनों अभियोजन साक्षियों से प्रति परीक्षण नहीं किया जबकि आरोपित के पीछे अभियोजन साक्षी का बयान दर्ज करने पर संचालन पदाधिकारी का यह दायित्व हो जाता है कि वह अभियोजन साक्षियों से प्रति परीक्षण करे कि वह सत्य बोल रहा है कि नहीं। एसी परिस्थिति में अभियोजन साक्षियों का बयान substantive/legal evidence नहीं माना जाएगा तथा उसे आरोपित के विरुद्ध प्रयोग नहीं किया जाता है। इस सिद्धान्त के लिए उच्चतम न्यायालय का निम्नलिखित निर्णय अवलोकन करने की कृपा की जाए:

“AIR 1969 SC 983 (Central Bank of India vs. Prakash Chandra Jain”

“AIR 1963 SC 1914 (Sur Enamoul Vs. Workmen)”

7. अ०नि० राम राज राम जो बिहार थाना में पदस्थापित थे तो आ० उपाधीक्षक (मु०) ने मौखिक आदेश दिया है कि



उत्तर संचिका अ०नि० राम राज राम को verification हेतु दे दीजिए तो मैंने वरीय पदा० के आदेश के तहत वह संचिका अ०नि० राम राज राम को द दिया मेरे कथन की पुष्टि के लिए तात्कालीन आ० उपाधीक्षक (मु०) जेड अहमद को परीक्षण करने की कृपा करना चाहिए था और मैंने अनुरोध भी किया था परन्तु मेरे अनुरोध के बावजूद उनका परीक्षण नहीं किया।

8. जब राजा राम अ०नि० ने verification कर संचिका वापस लौटाये तो मैंने उसे मुख्यालय आ० उपाधीक्षक के प्रस्तुत किया और उस संचिका पर आ० उपाधीक्षक (मु०) ने अग्रसारण कर दिये, इसकी प्रति मैं पूर्व में संलग्न कर चुका हूँ जो वि०का० की संचिका से स्पष्ट है इसलिए संचिका को ध्यान से अवलोकन किया जाए।

9. कुल 5 verification करने के लिए अ०नि० राम राज राम को दिया गया था परन्तु इस तथ्य की पुष्टि के लिए मैंने अ०नि० रामराज राम को परीक्षण करने का अनुरोध किया था वह भी नहीं किया गया।

10. आ० उपाधीक्षक (मु०) के आदेश पर ही verification को सील लिफाफा में मो० अकील को दिया गया इस कथन की पुष्टि के लिए तात्कालीन आ० उपाधीक्षक मु० श्री जेड अहमद को परीक्षण करने का अनुरोध किया था परन्तु परीक्षण नहीं किया गया।

11. प्रदर्शों की प्रति आपूर्ति नहीं की गयी है लेकिन उसे मेरे विरुद्ध प्रयोग किया जो illegal है इस सिद्धान्त के लिए उच्चतम न्यायालय तथा पटना उच्च न्यायलय का निम्नलिखित निर्णय अवलोकन करने की कृपा की जाए:

“AIR 1959 SC 1111 (Phulbari Tea Estate vs. Its Workmen)

“1967 SLR 759 (Trilok Nath Vs. Union of India)

“1983 BBCJ 33 (Dr. Rabindra Nath Singh Vs. State of Bihar)”

“2002 SCC (L&J) 62 (Pepsu Road Transport



Corporation Vs. Laxman Das Gupta”

20. आरोप प्रमाणित करने के लिए कोई विधिवत साक्ष्य नहीं है फिर भी surmises and conjecture पर निर्णय दिया गया है। मेरी 37 साल के अच्छे सेवाकाल को भी ध्यान में नहीं रखा गया मैं दया तथा सहानुभूति का पात्र हूँ।

अतः करबद्ध प्रार्थना है कि सेवा बर्खास्तगी के आदेश को निरस्त करने की कृपा की जाए।”

A perusal of the grounds so raised by the delinquent at paragraph 4 reproduced hereinabove, would confirm that a specific plea is taken by the delinquent that the prosecution witnesses were examined behind his back and that he was given no opportunity to cross-examine them. Similar plea is taken at paragraphs, 7 and 9 of the appeal. On the other hand paragraphs 8, 10 and 11 relates to examination of the documentary evidence and the plea of the delinquent is that those documentary evidence were not handed over to him for verification. These issues raised, indeed, would require a verification from the records of the disciplinary proceedings but which is not possible because as admitted by the Disciplinary Authority, the record is not available.

In the circumstances noted above, a remand of the matter to the Appellate Authority for fresh consideration upon verification of the specific plea taken by the delinquent at paragraphs 4, 7 to 11 and 20 of the appeal would become a futile exercise in absence of records. In fact, in case, the plea raised by the delinquent is upheld,



it would require a further remand to the Disciplinary Authority for proceeding afresh after removing the lacuna so pointed out which now, is not possible on account of death of the delinquent.

It is here that the judgments relied upon by Mr. Mauli would provide an answer. We are thus though persuaded to hold that the disciplinary proceeding would stand abated but for reasons so discussed which are other than the one expressed by the learned Single Judge.

The legal position as it stands is, that if a matter requires a remand to the Disciplinary Authority for proceeding afresh in the matter but the delinquent has deceased in the meanwhile, the disciplinary proceeding would abate as a whole. But if there is no procedural default by the Disciplinary Authority; the delinquent has been given opportunity to examine the evidence, both oral and documentary; and the order of penalty is to be tested on its merits by the Appellate Authority, then the death of the delinquent would not lead to abatement because the disciplinary proceeding has attained finality. The essential requirement in either situation is, that the records should be available.

In the uncontested circumstances noted where:

- (a) the disciplinary proceedings records are untraceable;
- (b) the Disciplinary Authority has passed the appellate order



bearing Memo No.959 dated 17.5.2008;

(c) the issues raised in appeal require a verification from the records;

(d) the delinquent has expired during pendency of appeal;

the appellate order as well as the order of penalty passed in the disciplinary proceeding No.92 of 2002 cannot be upheld and thus while quashing the order of penalty dated 16.3.2007 together with the appellate order bearing Memo No.959 dated 17.5.2008, we hold the disciplinary proceedings abated.

The appeal is dismissed. The writ petition is allowed with the direction to the appellants herein to provide the consequential 'in-service' benefits as found admissible to the legal heirs of the deceased Government servant together with the post retirement benefits, which should be provided to them within a period of three months from the date of receipt/production of a copy of this judgment and order.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	NAFR
Uploading Date	27-03-2018
Transmission Date	NA

