

17th February, 2025
(D/L No.07)
Ct. No.4
(SKB)

W.P.C.T. 14 of 2025

Union of India and others
Versus
Gopa Khan

Mr. Soumak Bera,
Ms. Anamika Pandey,
Mr. Ghanshyam Pandey
....for the petitioners.

Mr. S. N. Sukul,
Mr. Sagnik Chatterjee,
Mr. Sayan Mukherjee
... for the respondent.

1. The present writ petitioners were the respondents before the Central Administrative Tribunal (in short ("Tribunal")).
2. The Tribunal has held that the disciplinary proceeding instituted against the deceased employee (husband of the applicant) was illegal, being in violation of the principles of natural justice and has passed a consequential direction to consider the case of the applicant in accordance with law for grant of consequential benefits by treating him (applicant's husband) as died in harness.
3. The brief factual matrix of the case is required to be noted for proper appreciation.

4. The applicant's husband was a Commercial Clerk in the respondents' organization. While he was in service, on 22.02.2002, on account of some psychiatric issues, he was decategorized and recommended by the Divisional Screening Committee for the post of Chowkidar as an alternative appointment.
5. Subsequently he has been proceeded against by a Charge Memo dated 05.09.2006. The Charge Memo alleges that he was unauthorisedly absent from 05.11.2003.
6. It is apparent from a plain reading of the order passed by the Enquiry Officer in the proceedings that a copy of the Charge Memo was sent to his home address twice. Both the articles came back with an endorsement "unclaimed".
7. The Enquiry Officer has, thus, passed the order *ex parte* and submitted a report dated 05.09.2006, consideration in which reads as follows:

"Sri S. S. Khan, Chowkidar had been absenting since 05.11.2003 without any authority. During the period from 05.11.2003 to 22.06.2007 he has not informed the authority concerned about his whereabouts. He did not bothered to inform the authority concerned about the reason of his absence from duty.

As above, I hold him guilty of the charge and decided to impose a permission of removal from duty with immediate effect."

8. The Disciplinary Authority after considering the said enquiry report has awarded the punishment

of termination/removal by the order dated 30.07.2007.

9. The facts noted above are not in dispute.

10. The applicant before the Tribunal had approached the Central Administrative Tribunal, Calcutta Bench earlier by filing O.A. No.1551 of 2015 seeking quashing of the impugned order of removal dated 30.07.2007 and for grant of all other consequential benefits.

11. The learned counsel representing the Railways in those proceedings submitted to the Tribunal that the applicant's representation was pending before the authorities.

12. In light of such submissions, the present applicant was given liberty to make a detailed representation within a period of one month, whereupon the respondent authorities were directed to consider the case and pass a speaking order within two months.

13. Pursuant to such direction, the speaking order has been passed on 16.05.2016 by the Assistant Electrical Engineer/TRD, Ranaghat to the effect that since there is no provision for pension or for grant of compassionate appointment to a removed staff, the relief cannot be granted to the applicant.

14. The respondents/authorities, however, found the applicant to be entitled to compassionate allowance in terms of the extant policy of the railway authorities in this regard as contained in a communication dated 31.05.2022 regarding compassionate allowance to the railway employees who are dismissed or removed from services.
15. Since the authorities did not accede to grant of family pension and other consequential benefits treating the applicant's husband as died in harness, she approached the Tribunal by filing O.A. No.1627 of 2019, which has been allowed leading to filing of the present writ petition by the railway authorities.
16. The learned counsel for the Railways submits that the Tribunal should not have entertained the application, since the CCS Rules provided for filing of an appeal against order passed by the Disciplinary Authority dated 30.07.2007.
17. There being a specific remedy provided in the CCS Rules invocation of the jurisdiction before the CAT was impermissible and, therefore, the order passed by the Central Administrative Tribunal is not sustainable. It is further

submitted that the applicant's husband has been paid amount admissible to him by way of compassionate allowance. He further submits that though notices were issued to the husband of the applicant, he has chosen not to appear or participate in the proceedings. In these circumstances, there was no occasion for him to complain regarding the order of removal and, therefore, the Tribunal should not have exercised jurisdiction in his favour.

18. Upon consideration of the rival submissions, we find that submission of the learned counsel for the Railway/respondents regarding issuance of notices to the applicant's husband is required to be viewed keeping in background the totality of the circumstances. It is not in dispute that on psychiatric grounds the applicant's husband was decategorised from the post of Commercial Clerk to Chowkidar in the year 2002 itself.

19. The applicant has produced material before the Tribunal in the O.A. to show that in the circumstances, for facilitating treatment of her husband who was severely mentally ill, she had proceeded to her paternal home where she stayed

for years together. The treatment thus continued with the help of her parents.

20. Further it is evident from a bare perusal of the enquiry report that two notices issued to the residential address of the applicant's husband had returned "unclaimed". Thereafter, the enquiry officer claims to have put up a notice on the Notice Board of the office.
21. The enquiry officer has not taken any steps to ensure issuance of notice by way of any paper publication or otherwise.
22. We further take notice of the fact that the applicant has brought on record before the Tribunal material to show that her husband was hospitalized for nearly six months prior to his demise on 17.06.2014. The demise is also in the hospital in the course of his treatment for his psychiatric illness. Under the above noted facts and circumstances, it is more than obvious that the petitioner and her husband were compelled by the circumstances to stay at the petitioner's paternal house. However, if the authorities wanted to proceed against him then the same was required to be done observing the requirement of natural justice by ensuring service of the charge memo.

23. Since the purpose of serving a charge memo is to give an opportunity to the employee to submit his reply, mere communication/issuance will not suffice actual service of charge memo was required to be proved, which has not been done.
24. The next issue which we consider is the submission of the learned counsel for the Railways that the applicant ought to have availed the remedy of appeal before approaching the Tribunal and since the same has not been done, the Tribunal should not have passed the impugned order.
25. In this connection, it is relevant to take note of the stand taken by the very same respondents in the earlier O.A. No.1551 of 2015 wherein they have raised the issue regarding representation filed on behalf of the applicant pending before the authorities.
26. It was under such circumstance that the direction was issued to consider the representation. The same led to issuance of the above noted speaking order dated 16.05.2016 rejecting the claim of the present applicant for quashing of the punishment order as well as grant of consequential relief.

27. The objection raised regarding the availability of an alternative remedy is to be considered within the scope of law settled through various pronouncements, which by now is very well settled. When the order of the Disciplinary Authority is without complying with the principles of natural justice or without jurisdiction then the same is vulnerable to judicial review and scrutiny by exercise of sound discretion by the court/forum.

28. In the present case, we find that it is very clear that apart from notice being issued, there was nothing before the Enquiry Officer to show that the Charge Memo had ever been served upon the applicant's husband. In fact, the Enquiry Officer has specifically recorded that since the two notices which have returned unserved, a notice has been pasted on the Notice Board of the Office. The same has been done knowing fully well that the applicant's husband has not been attending office for some years; and the fact of his decategorisation on psychiatric grounds. Thus, there was no scope for the authorities to conclude that the petitioner's husband had been served with the charge memo.

29. We have, therefore, no hesitation in holding that there was no compliance with principles of natural justice in the present proceedings.

30. Without serving a Charge Memo on the applicant's husband, the Enquiry Officer proceeded to conclude the proceedings *ex parte* that also by recording an order (extracted above), which lacks any consideration whatsoever regarding any material on record; and is a cryptic order. It is on the basis of such Enquiry Report that the Disciplinary Authority has passed the order of removal from service.

31. We, therefore, find the procedure to be in violation of principles of natural justice due to non-service of the Charge Memo; and the nature of the order passed by the Enquiry Officer and the Disciplinary Authority are not sustainable. The Tribunal, thus, has rightly set aside the order.

32. Since the infirmity in the decision making process has occurred at the very initial stage of the enquiry and the employee who was being proceeded against is no more alive, there was no scope for remitting the matter to the Enquiry Officer for proceeding afresh. We further take notice of the fact that the petitioners themselves have granted the benefit of compassionate

pension to the applicant under the communication dated 31.05.2022. The communication has been issued under Rule 65(1) of the Railway Services (Pension) Rules, 1993, relevant extract of which reads as follows:

“As per Rule 65(1) of Railway Services (Pension) Rules, 1993, a railway servant who is dismissed or removed from service shall forfeit his pension and gratuity; provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both, which would have been admissible to him, if he had retired on compensation pension, subject to a minimum of Rs.9,000/- p.m. (RBE 99/2016–PBC 112/2016).

It is reiterated that the decision for or against grant of compassionate allowance or gratuity or both, shall be taken without fail at the time of passing orders of removal/dismissal, provided (i) the employee has a minimum qualifying service of ten years, and (ii) had not been dishonest at the time of removal/dismissal. The decision to grant compassionate allowance, etc, shall be communicated through a separate order and shall not form part of the penalty advice.

The authorities higher to the authority which passed the order of dismissal or removal from service can also grant Compassionate Allowance even in cases where the dismissing/removing authority decided not to grant Compassionate Allowance. (PBC 78/2005).”

33. From bare reading of the policy under which the benefits has been extended to the applicant, it is apparent that such benefit has been extended by finding that she is deserving of a special consideration. We, therefore, find that the plea raised by the petitioners that the

applicant would not be entitled to any benefits, or that the order of removal has attained finality is a stand contrary to their own consideration, which forms the basis of grant of compassionate allowance to the applicant.

34. We, thus, find no reason to interfere with the order passed by the Central Administrative Tribunal. The writ petition is accordingly dismissed.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)