

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/895/2019

Hyderabad, this the 13th day of March, 2020



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

K. Pullaiah, S/o. Sathaiah,
Aged about 56 years, Occ: Trackman (Removed),
O/o. Dy. Chief Engineer (Const.)
South Central Railway, Kadapa,
R/o. H. No. 13-C2-109, NFC Nagar, Ghatkesar,
Medchal District, Telangana State.

... Applicant

(By Advocate: Mr. K. Siva Reddy)

Vs.

Union of India, Rep. by

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Chief Administrative Officer (Const.),
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Deputy Chief Engineer (Const.)
South Central Railway, 1st Lane Arundal Pet,
Guntur.
4. The Deputy Chief Engineer (Const.,)
Kadapa.

... Respondents

(By Advocate: Mr. S.M. Patnaik, SC for Railways)

ORAL ORDER
{As per B.V. Sudhakar, Member (Admn.)}

2. OA is filed for non grant of compassionate allowance by ignoring a portion of the casual service rendered by the applicant.



3. Brief facts are that the applicant joined the respondents organisation as Casual Labour and after working as Gangman from 1982 to 1990, he was granted temporary status on 14.6.1990 and his services were regularised on 25.7.1997. Applicant was removed from service for unauthorised absence on 6.1.2009 and the appeal made was rejected on 24.5.2019. Consequently applicant applied for compassionate allowance, which was rejected for want of 10 years of qualifying service, ignoring the casual labour services rendered as Gangman. Aggrieved, OA is filed.

4. The contentions of the applicant are that the respondents have ignored the directions of the Hon'ble Supreme Court direction in Rakesh Kumar in regard to reckoning of 50% of casual service of 4031 days. Applicant states that due to severe health issues like paralysis and ulcers he had to be on unauthorised leave. Rules favour his case.

5. Primary objection raised by the respondents is that there is no cause of action to file the OA. Further, respondents while confirming that the applicant was removed from service for unauthorised absence on 6.1.2009 and while dismissing the appeal on 24.5.2019, appellate authority has also observed that since the applicant has rendered around 7 ½ years against 10

years of qualifying service he is ineligible for grant of compassionate allowance. Railway Board orders dtd.14.10.1980 & 28.11.1986 as well as Railway Pension Rules, 1993 permit only 50% of temporary status service and that too, if the employee's service in continuum is regularised, to be reckoned for working out pension. Applicant was informed of the rejection of his request vide letter dated 30.5.2019. Against the said rejection applicant instead of preferring a review application has directly approached the Tribunal. Besides, removal of the applicant was necessitated since he was working in the safety cadre and absence of safety category employees invariably leads to disruption of train services. Moreover, compassionate allowance is not a pension to be granted to the applicant. Hon'ble Apex Court verdict in Rakesh Kumar was based on Rule 31 of Railway Service (Pension) Rules 1993 wherein it was provided to consider 50% of the service for which payment is made from contingency fund, as qualifying service for pension. Rule 31 was issued consequent to the MOF instructions on 14.5.1968 and that these instructions were no longer applicable with the advent of CCS (Pension) Rules, 1972. Even rule 14 of the Railway (Pension) Rules, 1993 do not permit considering the casual labour service for working out pension.



6. Heard both the counsel and perused the pleadings.

7. I) The preliminary objection raised by the respondents that there is no cause of action is invalid since compassionate allowance, which is one form of pension, is a continuous cause of action permitting the applicant to



agitate at any interval of time. The other objection raised that without availing the alternative remedy of preferring a review application, applicant filing the OA is not sustainable for the reason that filing of review application is not mandatory and is only optional. In fact, Section 20 of the Administrative Tribunals Act only speaks of availing the alternate remedy of Appeal and that too, ordinarily, wherein the word ordinarily would mean that, if required, depending on the exigencies of the situation applicant can directly approach the Tribunal even without filing the appeal as observed by a Full Bench of this Tribunal, at Hyderabad in the case of ***B. Parameshwara Rao Vs. Divisional Engineer, Telecommunications & Others*** in OA No. 27/1990 wherein it has been held as under:

“The emphasis on the word “ordinarily” means that if there being extraordinary situation or unusual event or circumstance, the Tribunal may exempt the above procedure being complied with and entertain the application. Such instances are likely to be rare and unusual. That is why, the expression “ordinarily” has been used. There can be no denial of the fact that the Tribunal has power to entertain even within a period of six months after filing of the appeal as an exception, but such power has to be exercised rarely in exceptional cases.”

II) One another averment made by the respondents is that the compassionate allowance does not come under pension. This again is incorrect, since the respondents have themselves clarified in RBE No. 79/2005 dated 9.5.2005 that compassionate allowance is one of the classes of pension as under:



“In terms of para 3 of Railway Board letter 9.5.2005 (RBE No.79/2005) circulated vide CPO/SC’s Serial Circular No.90/2005-Annexure R2 “Compassionate Allowance being one of the classes of pension and a minimum qualifying service of 10 years is a prerequisite for sanction of any class of pension”. Before sanctioning compassionate allowance, it is absolutely necessary for competent authority intending to sanction compassionate allowance to a person on whom the punishment of removal/dismissal is imposed, to satisfy itself that such a person has rendered not less than 10 years of qualifying service”.

III) Besides, the Railway Board order vide RBE No.164/2008 states that the disciplinary authority keeping in view the service rendered, financial difficulties of the employee, condition of the children and spouse, can pass orders in regard to compassionate allowance while imposing the penalty. In the instant case, disciplinary authority has not passed an order in regard to compassionate allowance but the appellate authority has observed that there is shortage of qualifying service in his appellate order dtd. 24.5.2019 as under:

“Therefore, I confirm the penalty of removal from service imposed by Discipline Authority. Since ex-employee had put in 7 years 5 months 27 days qualifying service which is less than 10 years and as such he is not entitled to consider for grant of compassionate allowance also.”

IV) Thus, the issue under dispute is that the respondents claim that the service rendered by the applicant is only 7 years 5 months and 27 days (Annexure R-IV) against minimum 10 years of qualifying service to be eligible for pension. Applicant contends that 50% of casual service has to be reckoned for working out the qualifying service, as per Hon’ble Apex court judgment in ***Union of India v Rakesh Kumar & Ors*** in Civil Appeal No.3938/2017, the relevant portion of which is reproduced hereunder:

“55. In view of foregoing discussion, we hold :

i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.

ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.

iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

iv) It is open to Pension Sanctioning Authority to recommend for relaxation in deserving case to the Railway Board for dispensing with or relaxing requirement of any rule with regard to those casual workers who have been subsequently absorbed against the post and do not fulfill the requirement of existing rule for grant of pension, in deserving cases. On a request made in writing, the Pension Sanctioning Authority shall consider as to whether any particular case deserves to be considered for recommendation for relaxation under Rule 107 of Rules, 1993.”



Clause (ii) of the above verdict covers the case of the applicant.

Respondents have informed the applicant vide letter dated 29.10.2018

(Annexure A-3), when quarrried under RTI, that he has rendered 4031 days

of casual service. Fifty percent of which works out to 2015 days, which

would mean around 5.52 years. The shortage of qualifying service for

pension, as claimed by the respondents, is $(10-7.5) = 2.5$ years. By

telescoping the principle laid in **Rakesh Kumar** case cited supra, the

applicants qualifying service for pension would be around $(7.5 + 5.5=13)$

years surpassing the minimum of 10 years service required, thereby

satisfying the criteria laid down for grant of pension. Hence, no doubt can

be entertained about the eligibility of the applicant for grant of

compassionate allowance, which is one of the classes of pension as per

Railway Board order dated 9.5.2005 cited supra.

V) The other averments in regard to Rule 31, Rule 14 of Railway Service (Pension) Rules 1993 made by the respondents pale into significance in view of the binding principle laid down by Hon'ble Apex Court in Rakesh Kumar case.



VI) This Tribunal has allowed cases hinging on a similar dispute in OA 574/2017 & OA 452 of 2019 and hence, the said judgments are binding as per Hon'ble Supreme Court observation in *S.I. Rooplal And Anr vs Lt. Governor through Chief Secretary Delhi & Ors*, in Appeal (Civil) 5363-64 of 1997.

VII) In view of the aforesaid, the OA fully succeeds and the respondents are directed to consider as under:

- i) Sanction compassionate allowance to the applicant, effective from the date of removal with consequential benefits, if any.
- ii) To pay interest on the eligible compassionate allowance with prevailing GPF rate of interest from the date of removal till the date of payment.
- iii) Time allowed to implement the order is 3 months from the date of receipt of a copy of this order.
- iv) OA is accordingly allowed. No order as to costs.

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

/evr/