

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

Original Application No.21/865/2019

Hyderabad, this the 13th day of March, 2020



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

Mallaiah, S/o. Posaiah,
Aged about 54 years, Occ: Sr. Trackman (Removed),
O/o. Senior Section Engineer, P. Way, EE,
South Central Railway, Vijayawada Division,
R/o. H. No. 13-C2-109, NFC Nagar, Ghatkesar,
Medchal Dist.

... Applicant

(By Advocate: Mr.K. Siva Reddy)

Vs.

The Union of India, Rep. by

1. The General Manager,
South Central Railway,
Rail Nilayam, Secunderabad.
2. The Senior Divisional Personnel Officer,
South Central Railway, Vijayawada Division,
Vijayawada.

... Respondents

(By Advocate: Mr. T. Hanumantha Reddy, SC for Railways)

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

2. The OA has been filed challenging the decision of the respondents in not granting compassionate allowance.



3. Brief facts are that the applicant joined the respondents organisation on 14.6.1985 and after working up to 15.12.2006, fell ill while working as Sr. Trackman requiring treatment of brain related issues in a private hospital. Consequently, for not being able to attend to duty, the applicant was removed from service on disciplinary grounds for unauthorised absence, by the disciplinary authority, but no orders were issued in regard to compassionate allowance while imposing the said penalty. No appeal was preferred by the applicant in view of his mental illness. Applicant represented for compassionate allowance thereafter and as it was rejected, the OA has been filed.

4. The contentions of the applicant are that the Railway Board order vide RBE No. 164/2008 specifies that as per Rule 65 (1) of Railway Services (Pension) Rules, 1993, disciplinary authority in deserving cases can sanction compassionate allowance. The unauthorised absence of the applicant was due to precarious health condition. Rejection of the request is against the Railway Board orders on the subject. Besides, limitation does not come in the way of granting compassionate allowance.

5. Respondents did not file the reply though the OA was filed in September 2019 and ample opportunities were given to file the reply since then. As the issue pertains to compassionate allowance, it was taken up for hearing with both the counsel coming forward to place their submissions.



6. Heard both the counsel and perused the pleadings on record.

7. I) Ld counsel for the respondents has submitted that there is a delay in approaching the tribunal for seeking the relief sought and that the applicant did not make any effort to get the grievance resolved by taking up with the competent authorities. An applicant, who does not seek relief in time is not worthy of shown any sympathy to grant any relief whatsoever after a lapse of a long period of 12 years. Sr. Trackman is a safety cadre post and the long unauthorised absence of such an official would put into disarray the running of trains, which is a critical public service. Hence, the offence committed by the applicant is grave from the public point of view as well as the respondents organisation. Therefore, he vehemently submitted that the OA deserves to be dismissed.

II) The dispute is in regard to grant of compassionate allowance. Applicant admits that in view of his poor health he was on unauthorised absence from duty and that he could not even attend the disciplinary inquiry resulting in his removal from service. Applicant did not even prefer an appeal for reasons of mental illness. The only prayer of the applicant through this OA is to grant eligible compassionate allowance as per

Railway Board order vide RBE No.164 of 2008. Respondents rejected the request for compassionate allowance vide impugned order dated 4.9.2019 on the grounds that the applicant did not represent for compassionate allowance after removal on 11.12.2006 and that the delay in making a claim after 12 years cannot be condoned to grant the relief sought.



III) In this regard, it is to be adduced that the Railway Board vide letter dated 9.5.2005 has treated compassionate allowance as 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”.

Hence, compassionate allowance having been graded as pension, it would have a continuous cause of action. Therefore, the delay in making the claim after 12 years should not be a ground for rejection since non grant of the said allowance will be a continuous cause of injury to the applicant till it is taken to its logical end.

IV) Besides, in regard to preferring a representation to the administration, the Railway Board letter dated 4.11.2008 (Annexure A-4) stipulates that in cases where the disciplinary authority has not made any observation in regard to compassionate allowance, like in the case of the

applicant, then on subsequent receipt of representation the request can be examined if it satisfies certain provisos as per relevant portion of the letter, extracted below:



“The matter has, therefore, been considered by the Board in consultation with Department of Pension and Pensioners’ Welfare and it has been decided to reiterate that in cases where a decision has already been taken by the disciplinary authority not to grant compassionate allowance, such a decision is final, which should not be reviewed at any later stage. However, in partial modification of Board’s letter dated 09.05.2005, it has also been decided by the Board that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, if any cases appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/ removed employees or the family members of the deceased employees keeping in view the following conditions:

- (i) Only those past cases can be reviewed where records pertaining to D & A proceedings and Service records are available. D & A proceedings are essential to take a fair decision duly considering the gravity of the offence and other aspects involved therein and to confirm that the question of sanction or otherwise of compassionate allowance was not considered by the competent authority at any stage. Service records are essential to adjudge the kind of service rendered by the dismissed/ removed employee and to determine the net qualifying service for working out the quantum of compassionate allowance, if sanctioned.*
- (ii) Each case will have to be considered on its merits and conclusion reached on the question whether there were any extenuating factors associated with the case that would make the punishment of dismissal/ removal, which though imposed in the interest of the Railways, appear unduly hard on the individual.*
- (iii) Not only the grounds on which the Railway servant was removed/ dismissed, but also the kind of service rendered should be taken into account.*
- (iv) Award of compassionate allowance should not be considered if the Railway servant had been dishonest, which was a ground for his removal/ dismissal.*
- (v) Though poverty is not an essential condition precedent to the award of compassionate allowance, due consideration can be made of the individual’s spouse and children dependent upon him.”*

Evaluating the case of the applicant in the background of the above order, applicant was removed from service vide Memo dtd. 11.12.2006

(Annexure A-3) of the disciplinary authority for unauthorised absence and therefore he was not involved in any dishonest act. The absence was due to health reasons beyond the control of the control and hence, cannot be treated as misconduct, as observed by the Hon'ble Supreme Court in

Krushnakant B. Parmar Vs. Union of India & Anr [2012 (3) SCC 178], as



under:

“18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the absence is wilful, in absence of such finding, the absence will not amount to misconduct. “

The applicant has served for nearly 21 years and because of mental illness, he could not attend duty. Otherwise, someone, who has put in 21 years of service, would not risk losing his job. There is something beyond the control of the applicant, which prevented the applicant from attending duties or to go on authorised leave. Ld. Counsel for the applicant repeatedly pressed home the aspect of the mental illness of the applicant, which prevented him to attend duty, participate in the disciplinary inquiry and also prefer an appeal. The applicant is from the lower cadre of the respondents organisation with meagre financial resources and with his fragile health, he may not be able to meet both ends.

V) Similar cases were allowed by this Tribunal in OAs 452/2019 & 574/2017 covering a wide canvas in regard to grant of compassionate

allowance by touching upon law and the relevant rules of the respondents organisation (Annexure A-5).

VI) Therefore, keeping the aforesaid in view, the respondents are directed to consider grant of compassionate allowance from the date due with consequential benefits, if any, as per extent rules and in accordance with law, within a period of 12 weeks from the date of receipt of the order.



VII) With the above directions the OA is allowed with no order as to costs.

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

/evr/