

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**
Original Application No. 266 of 2017
With MA 241/2017

This the 17th day of August, 2020

CORAM :

HON'BLE SHRI JAYESH V BHAIRAVIA, MEMBER (J)
HONBLE DR A K DUBEY, MEMBER(A)

Sursing S/o Manabhai, (Retd. Signal Khalasi from Surat),
C/o Shri Nawnit Taneja,
D/29, Anand nagar Society,
Godhra – 389 001. ... Applicant

By Advocate Shri Nawnit Taneja

v/s

1	General Manager, Western Railway, Churchgate, Mumbai – 400 020.	
2	Divisional Railway Manager, Western Railway, Mumbai Central, Mumbai – 400 008.	... Respondents

By Advocate Shri A L Sharma

ORDER (ORAL)

Per Dr A K Dubey, Member (A)

- 1 This OA is preferred by the applicant seeking direction to the respondents to review the notice of penalty and grant a suitable percentage of pension (Compassionate allowance) and also seeking direction to the respondents to cancel the claim of Market rent imposed for the house occupied by him.
- 2 The counsel for the applicant submitted that while working as senior khalasi, the respondents framed charges of unauthorised absence from duty from 27.12.2006 to 20.06.2007 and non observance of proper medical

rules for obtaining leave and by these two acts, the applicant violated the provisions in the Railway Service (Conduct) Rules 1966. The applicant attended the inquiry. Respondents concluded that the charges had been substantiated. Reasons for imposing the penalty attached to the order dated 05.07.2009 (Annexure A/1) mentions that although the applicant was given a chance, but he remained absent from duty between 14.11.2008 to 04.12.2008 and from 12.12.2008 till the date 01.07.2009. Respondent also mentioned that "it is concluded that employee is not interested in present job. Thereafter, vide order dated 05.07.2009 (Annexure A/1), he was awarded penalty of removal from service. The counsel argued that while ordering the removal from service, the competent authority ought to have mentioned about the compassionate allowance. But he did not sanction or mention about the compassionate allowance because of which the applicant was left entitled only for the payments of his own contribution to PF and CGEIS. Besides, the applicant was charged penal rent for the quarter that he was occupying as an employee, which again, the applicant wished to get quashed.

3 Applicant has also preferred MA 241/2017 seeking condonation of delay. After hearing the learned counsel for applicant and going through the pleadings of MA 241/2017, the delay is condoned.

4 The counsel for respondent said that the respondent had already filed its written reply which had since been taken on record. Defending the action of the respondent, the counsel submitted that as was evident from the continuous absence of the applicant from duty, which became the basis

of the charge as well as non appearance in course of inquiry when chance to appear was afforded to the applicant, led the authorities to conclude that the applicant wasn't interested in the job and was awarded the penalty of removal from service. Although there was no request for grant of compassionate allowance, the suggestion was put up to the competent authority as per the extant procedure but was rejected vide the impugned order dated 26.09.2016. The counsel also submitted that the applicant continued to occupy the Railway Quarter which should have been vacated after he was removed from employment and therefore the penal rent was charged for such unauthorised occupation of the quarter. He also mentioned that the applicant had approached the Labour department for relief although without any success. He mentioned that by way of OA 156/2017 the applicant had approached this very Tribunal whereupon vide its oral order dated 07.04.2017, the OA was rejected with a liberty to approach this Tribunal for the same cause again if necessary. Ofcourse this rejection of OA in 2017 was due to the fact that it was barred by limitation since it was not accompanied by request for condonation of delay. The counsel for the respondents also mentioned that the Railway Retired Employees Association, Godhra had approached the Regional Labour Commissioner (Central) on this very issue but that effort did not succeed.

5 The counsel for applicant referred to the communication No.E(Settl.)789/0 Vol.XXI dated 09.10.2009 (Annexure A/2) and sought to draw our attention to para 3 where in terms of Railway Board's letters No.F(E)III/2003/PN1/5 dated 09.05.2005 & 4.11.2008, the competent

authority who removed or dismissed the Railway employee from service under DAR should have considered and recorded whether any Compassionate Allowance should be awarded, on the merits of the case. This para also makes it clear that there should not be any need to wait for a formal request to be made by the Railway employee who was removed or dismissed. The counsel argued that it was clear from the language of the provision that it was mandatory for the competent authority to make it clear whether the applicant was to be allowed any compassionate grant or allowance at the very time of ordering removal from service. In this case it has not been specified which clearly established that this provision was not complied with by the respondents. Therefore, there is an omission in performance of mandatory duty, the counsel of the applicant averred.

6 Heard Shri Nawnit Taneja, learned counsel for applicant and Shri A L Sharma, learned counsel for respondents and perused the order of removal as well as other documents placed before us.

7 A plain reading of the order of removal makes it clear that it does not contain anything about compassionate grant or allowance to the applicant and vide provision contained in para-3 of the Circular dated 09.10.2009 (Annexure A/2), it was mandatory for the competent authority to take a call on this issue. We also take note of the fact that on behalf of the applicant, the Railway Retired Employees Association had approached the Labour authority too in this matter for redressal of his grievance.

8 We have gone through the documents presented before us and after hearing the arguments of counsel for the applicant and respondent.

Although we would not like to intervene into the decision of removal taken by the respondent authority, we cannot ignore the fact that the requirement of taking a call on compassionate allowance as mandated in the letter No.E(Settl.)789/0 Vol.XXI dated 09.10.2009 (Annexure A/2) was not complied with. We therefore dispose of this OA by granting liberty to applicant and accordingly hereby order him to make a representation to the authority requesting for compassionate allowance within four weeks from the date of receipt of copy of this order and thereafter, the respondent, shall consider the same and shall take a decision after appreciating the gravity of the charges vis a vis the quantum of punishment and pass a speaking order on the issue of compassionate allowance to the applicant as well as on the issue of penal rent, within eight weeks from the date of receipt of representation of the applicant.

9 With the above direction, OA stands disposed of. There shall be no order as to cost.

(Dr A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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