

X

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

DATED THIS THE 5TH DAY OF APRIL, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (J)

OA/310/00976/2017

S. Govindaiah,
No.5, Ganga Apartments,
Kolathur,
Chennai-99.

...Applicant

-versus-

1. Union of India rep., by
The General Manager,
Southern Railway,
Park Town,
Chennai-3.
2. The Senior Divisional Commercial Manager,
Chennai Division,
Southern Railway,
Park Town,
Chennai-3.

...Respondents

By Advocates:
M/s Ratio Legis, for the applicant.
Mr. K. Vijayaragavan, for the respondents.

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ORDER

(Pronounced by Hon'ble Mr. T. Jacob, Member (A))

This OA has been filed by the applicant under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"...to call for the records related to applicant's removal from service in the Railways and the representation dated 25.05.2016 and further to direct the respondents to sanction compassionate allowance with effect from the date of removal and consequential arrears..."

2. The brief facts of the case, as stated by the applicant, are that the applicant joined the Railway service in the year 1976 and continued to discharge his duties till 2007 and thereafter did not turn up for duty. He was subjected to major penalty disciplinary proceedings for alleged unauthorised absence and was imposed with the penalty of removal from service by order dated 24.12.2007. The appeal and revision petition preferred against the order of removal were also rejected. His request for grant of compassionate allowance was also rejected by the respondents vide letter dated 27.10.2015 on the ground that no such order was made by the disciplinary authority while



issuing the penalty advice. The applicant again submitted a detailed representation dated 25.5.2016 but there was no reply.

3. The applicant has filed this OA on the following grounds:-

- (i) The applicant having served the Railways for more than 32 years, denial of compassionate allowance for unauthorised absence and consequential removal from service is in gross violation of Rule 65 of the Railway Services (Pension) Rules.
- (ii) Denial of compassionate allowance to the applicant with effect from the date of his removal from service is not in conformity with the letter No.F(E)III/2003/PNI/5 dated 04.11.2008 and unsustainable in law.
- (iii) Compassionate Allowance is sanctioned only to sustain one's life and delay in sanctioning the same from the date of removal from service is not in conformity with the letter No.FG(E)III/2003/PNI/5 dated 09.05.2005 and is against Art.14, 16 and 21 of. the Indian Constitution.
- (iv) The Railway Pension Manual, 1950 stipulates that only in the case of dishonesty, compassionate allowance

can be rejected and in the case of the applicant, removal was for the unauthorised absence and hence delay in sanctioning compassionate allowance is impermissible in law.

4. The learned counsel for the applicant has relied upon the following decisions in support of his submission:-

(a) Judgement of the Hon'ble Supreme Court in the case of Mohinder Dutt Sharma vs. Union of India & Ors., in Civil Appeal No.2111/2008 dated 11.4.2014.

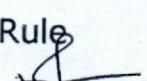
(b) Judgement of the Hon'ble High Court of Madras in the case of V. Sethuraman vs. Union of India & Ors., in W.P.3194/2017 dated 3.4.2017.

(c) Judgement of the Central Administrative Tribunal, Madras Bench in the case of S. Rajagopal vs. Union of India & Ors., in OA.640/2016 dated 6.4.2018.

5. Per contra, the respondents in their detailed reply statement have stated that the applicant while working as Head Ticket Examiner in the Ticket Checking Ofice at Chennai Egmore had remained absent unauthorisedly from 05.10.2005



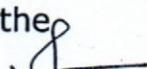
to 20.06.2007. He was issued with a Major Penalty Charge Memo dated 26.06.2007. The said Charge Memo was sent to his residential address by RPAD but it was returned by the postal department with the endorsement "No such person". A copy of the Charge Memo was thereafter pasted on the Notice Board of the Ticket Checking Office in Chennai Egmore on 06.07.2007. An Inquiry Officer was appointed. The applicant did not attend the enquiry held on 07.08.2007, 22.08.2007, 06.09.2007 and 25.09.2007. On the basis of the evidence on record and examination of the administrative witnesses, the Inquiry Officer submitted his Inquiry Report dated 12.11.2007 holding the charges as proved. A copy of the Inquiry Report was sent to the applicant vide letter dated 10.11.2007 along with a request to submit a representation, if any, in his defence within 15 days of receipt of the letter. Having not received any representation from the applicant, the disciplinary authority vide Penalty Advice dated 24.12.2007 imposed the penalty of removal from service on the applicant with effect from 24.12.2007. The applicant did not prefer any appeal against the order of the disciplinary authority as provided under Rule



18 of the Railway Servants (Discipline and Appeal) Rules 1965.

On 23.06.2015, the applicant submitted an online representation in the Public Grievance website seeking sanction of compassionate allowance. Based on the advice of the Railway Administration vide letter dated 28.07.2015, the applicant submitted another representation dated 04.08 2015 requesting the disciplinary authority to sanction compassionate allowance and other benefits and the disciplinary authority vide Memorandum dated 16.10.2015 rejected the request of the applicant for grant of compassionate allowance. Thereafter the Railway Administration issued a letter dated 27.10.2015 advising the applicant to submit his bank details for receiving the settlement benefits namely Provident Fund and Group Insurance but the applicant did not submit any representation dated 25.05.2016 as alleged by him in the OA.

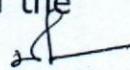
6. The learned counsel for the respondents would submit that the power of the disciplinary authority for or against granting of compassionate allowance is a discretionary power and exercised suo moto at the time of passing the order of dismissal or removal from service. He has relied upon the



decision of this Tribunal in OA.103/2017 dated 15.6.2018 in support of his submission.

7. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

8. Admittedly the applicant while working as Head Ticket Examiner was absent from duty from 05.10.2005 to 20.06.2007. Disciplinary action under the Railway Servants (Discipline and Appeal) Rules, 1968 was initiated and a Major Penalty Charge Memo dated 26.06.2007 was issued to the applicant. But since the applicant did not attend duty and was continuously absent, the Charge Memo was sent to his last known residential address but the same was returned undelivered by the postal department with the endorsement "No such person". Hence as per extant instructions, a copy of the Charge Memo was displayed in his work place. Since the applicant did not give any written submission denying the charges, an Inquiry Officer was appointed. The applicant did not attend the enquiry held on 07.05.2007, 22.08.2007, 06.09.2007 and 25.09.2007. On the



basis of evidence on record and examination of the administrative witnesses, the Inquiry Officer submitted his report dated 12.11.2007 holding that the charges against the applicant in Charge Memorandum SF 5 dated 26.06.2007 have been proved. A copy of the Inquiry Report was sent to the applicant vide letter dated 19.11.2007 but since the applicant did not prefer any representation against the Inquiry Officer's report, the disciplinary authority imposed the penalty of removal from service with effect from 24.12.2007 on the applicant vide Penal Advice dated 24.12.2007. The applicant did not prefer any appeal against the order of removal as provided under Rule 18 of the Railway Servants(Disciplinary and Appeal) Rules, 1968. No legal flaw can be fastened upon the decision making process in view of the rules having been systematically followed.

9. The applicant preferred an online representation on 23.06.2015 in the Public Grievances website seeking sanction of compassionate allowance. On advice, the applicant submitted a representation dated 4.8.2015 requesting the Disciplinary Authority to sanction compassionate allowance.



The said claim of the applicant was rejected by the disciplinary authority vide order dated 16.10.2015. Undisputedly, the grant of compassionate allowance is a matter of discretion of the competent authority. It is also seen on perusal of the records that at the time of imposing the penalty of removal from service on the applicant, the Disciplinary Authority had passed orders rejecting compassionate allowance to the applicant. However, the said decision of the Disciplinary Authority rejecting compassionate allowance had not been included by the Office Superintendent concerned in the Penalty Advice dated 24.12.2007 and also did not communicate the same immediately after the target date for preferring appeal was over. The said Office Superintendent had also retired from service on 01.01.2009 and hence no action could be taken against him. As per Railway Board letter 4.11.2008, the said decision is final and cannot be reviewed at a later stage. The order of rejection of the claim of the applicant for compassionate allowance was communicated to the applicant separately only on 16.10.2015.

10. Having regards to the above facts and circumstances of



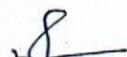
the case, the question that remains for consideration in this OA is whether the rejection of the claim of the applicant for grant of compassionate allowance under Rule 65 of the Railway Services (Pension) Rules, 1993 is sustainable in the eye of law.

11. For better appreciation of facts and understanding of the case, Rule 65 of the Railway Services (Pension) Rules, 1993 is extracted hereunder:-

Compassionate allowance – (1) 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.

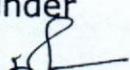
A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than three thousand five hundred rupees per mensem. Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13).

It is submitted that the Railway Board vide its letter dated 09.05.2005 had clarified that the power to sanction compassionate allowance or otherwise is a disciplinary power vested in the authority competent to remove/dismiss the railway servant to be exercised by the authority suo moto at



the time of passing order of removal or dismissal from service or immediately thereafter. Further as per letter dated 04.11.2008 of the Ministry of Railways, in the past cases where the Disciplinary Authority had not passed any specific orders with regard to grant of compassionate allowance, and if any such case appeared to be deserving, it could be reviewed by the Disciplinary Authority on receipt of representation of the dismissed/removed employees or the family members of the deceased employees, keeping in view the conditions laid down in the said letter of the Railway Board. Each case has to be considered on merits. In the instant case, on perusal of the records, it is seen that the Disciplinary Authority has passed orders removing the applicant from service but the said Penalty Advice dated 24.12.2007 did not dwell upon the sanction of compassionate allowance. The applicant cannot be held responsible for the mistake committed on the part of the respondents in not communicating the order of rejection of compassionate allowance to him as per the extant instructions in the matter.

12. Further the Hon'ble Supreme Court in the case of Mahinder



Dutt Sharma vs. Union of India & Ors. in Civil Appeal
No.2111/2009 dated 11.4.2014 while dealing with
compassionate allowance, has laid down the following
conditions:-

13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

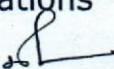
- (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.
- (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

14. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "...if the case is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications



delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.

13. If the above law laid down by the Hon'ble Apex Court is telescoped upon the facts of the case, none of above illustrations is present in the case of the applicant. The misconduct is with respect to the absence of the applicant from duty for a substantial spell. He having completed 32 years of service, he could have voluntarily retired in which event, he would have had the benefit of pension. That not having taken place, the fact of his having served loyally to the Railways for 32 years deserves due consideration from the point of view of



grant of compassionate allowance, while the penalty of removal is for the misconduct of unauthorized absence.

14. In the conspectus of the above facts and circumstances of the case, interest of justice does warrant that the case of the applicant be considered for grant of compassionate allowance for the blemish-free services of 32 years and thus, the respondents are directed to reconsider the claim of the applicant for compassionate allowance and take a judicious and rational decision untrammelled by the conduct of the applicant which culminated into his removal from service and pass a reasoned and speaking order based on the parameters laid down by the Hon'ble Supreme Court hereinabove within a period of three months from the date of receipt of a copy of this order and if the applicant is entitled to the compassionate allowance, further action in that direction be also initiated and concluded within a reasonable time.

15. The OA is disposed of accordingly. No costs.