

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/412/2020

Date of CAV: 23.03.2021

Date of Pronouncement: 01.04.2021



Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member

P. Swaminathan, S/o. late P. Devasahayam,
Aged about 74 years, Group C,
Ex-Firman/Loco/DNC/GTL Division,
(Now Asst. Loco Pilot),
R/o. H. No. 1-76-1, Darapalli Road,
Kurnool, Andhra Pradesh.

...Applicant

(By Advocate: Mrs. Rachna Kumari)

Vs.

1. Union of India rep. by
The General Manager,
South Central Railway, Rail Nilayam,
Secunderabad.
2. The Chief Personnel Officer,
South Central Railway, Rail Nilayam,
Secunderabad.
3. The Divisional Railway Manager (P),
South Central Railway, Guntakal Division, Guntakal.
4. The Sr. Divisional Personnel Officer,
South Central Railway, Guntakal Division,
Guntakal.
5. The Divisional Mechanical Engineer (P),
South Central Railway, Guntakal Division,
Guntakal.

... Respondents

(By Advocate: Sri M. Venkateswarlu, SC for Railway)

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

2. The OA is filed in regard to grant of compassionate allowance.

3. Brief facts of the case are that the applicant was appointed as casual labour in the respondents organisation in 1969 and regularised as



YKC/Gateman in 1974 and later promoted as Fireman–C in 1982. While working as Fireman–C, charge memo was issued imposing the penalty of reduction from fireman C to engine cleaner for a period of one year. After the currency of the penalty, applicant was not taken back to duty and hence OA 14/1986 was filed which was dismissed in 1989. Applicant's wife appealed to take her husband to duty and it was informed that the applicant was removed from service on 25.9.1987 vide letter 9/1994 and at this juncture of time applicant came to know respondents proceeded against him for unauthorised absence from 17.1.1984 without serving the relevant documents to the applicants. Applicant could not appeal due to health conditions and therefore the applicant's wife has preferred mercy appeal on 10.1.1995 for which there is no response. Hence, several representations were submitted to grant compassionate allowance, and finally it was rejected on the ground that relevant records were not available. Therefore, the OA.

4. The contentions of the applicant are that when the OA 14/1986 was being dismissed the respondents have not brought to the notice of the Tribunal that the restoration order dated 18.12.1985 was withdrawn vide letter dated 3.9.1986. The applicant was provided with a copy of the service register when sought under RTI and the information in the service register

is adequate enough to compute the qualifying service. However, R-1 has informed vide letter dated 17.2.2020 that the grievance of the applicant is being attended to by R-3, which gave a ray of hope.



5. Respondents' preliminary objection is that the OA has been filed after 33 years. The applicant while working as Fireman-C was imposed the penalty of reduction to the level of cleaner from Fireman - C for a period of one year in 1984 and the applicant without taking the order, has been on unauthorised absence since then. Thereafter, applicant was proceeded for unauthorised absence from 17.12.1984 and since the applicant did not attend the inquiry, ex parte inquiry was conducted and the applicant was removed from service by deleting his name from the rolls w.e.f. 25.9.1987. Applicant sought compassionate allowance and the same could not be granted since service records and DAR proceedings are unavailable. Representations of the applicant were answered appropriately.

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

7. I. The grievance is in regard to non grant of compassionate allowance to the applicant. The case details reveal that the applicant while working as Fireman-C was proceeded on disciplinary grounds and imposed the penalty of reduction to the level of engine cleaner for a period of one year on 3.7.1984. Applicant did not appeal but challenged the penalty in OA 14/1986 which was dismissed. The applicant did not take the penalty order imposed and was on unauthorised duty from 17.12.1984. Consequently respondents proceeded on grounds of unauthorised absence and conducted an inquiry which the respondents claim was not attended to by the applicant and hence based on ex-parte inquiry report applicant was



removed from service on 25.9.1987. The applicant is now seeking compassionate allowance for which dismissed and removed employees are eligible, provided certain conditions are satisfied. Respondents rejected the request for compassionate allowance on the grounds that the service records and DAR proceedings are not available. This does not appear to be correct since the applicant was provided with a copy of the service register when sought under RTI. Further the respondents have admitted in the reply statement that the applicant was removed from service for unauthorised absence and deleted his name from the rolls of the respondents organisation on 25.9.1987. Applicant was on unauthorised absence for reasons of poor health and therefore he did not appeal when the early penalty of reduction to a lower level was imposed, as explained by him in the OA. Unauthorised absence for factors beyond the control of the employee like ill health cannot be construed as misconduct by the Hon'ble Apex Court in ***Krushnakanth B Parmar and another Vs. Union of India*** reported in (2012) 3 SCC 178. On a reading of the judgment of the Hon'ble Supreme Court, it would make it vivid and its relevance to the present case, as presented below:

“17. If the absence is the result of compelling circumstances under which it was not possible to report or perform duty, such absence cannot be held to be willful. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalization, etc. but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.

18. In a department proceeding, if allegation of unauthorized absence from duty is made, the disciplinary authority is required to prove that the absence is willful, in the absence of such finding, the absence will not amount to misconduct.”

II. Further, the service record furnished by the respondents under RTI to the applicant would mean that the respondents have the service record with them. Yet, claiming that the service record is not available is unfortunate and we take a serious view of the same. Respondents need to be responsible in making averments under oath. We hope this would not be repeated.



Reverting to the issue, since the service record is available the respondents can easily compute the qualifying service to grant compassionate allowance. Honble Supreme Court has observed in ***Mahinder Dutt Sharma vs U.O.I & Ors*** on 11 April, 2014 in Civil Appeal No. 2111 of 2009 that compassionate allowance can be granted provided certain conditions are satisfied, as under:

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 levelled 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.

15. We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated 17.5.1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorized and wilful absence from service from 18.1.1995 to 4.12.1995 (i.e., for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices, that not taking stern action against the appellant, would create a bad impression, on the new entrants in the police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellant's behaviour was incorrigible. Thus viewed, there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified. For determining the question of compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in paragraph 13 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellant's behaviour, was not one which can be expressed as an act designed for illegitimate personal gains, from his employer. The appellant, cannot also be

stated to have indulged in an activity to harm a third party interest, based on the authority vested in him, nor was the behaviour of the appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in paragraph 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration.



16. *We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed, that the appellant had rendered about 24 years of service, prior to his dismissal from service, vide order dated 17.5.1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even though the charge proved against the appellant pertains to his unauthorized and wilful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial, that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brother's wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill-health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972.*

17. *None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view, that the consideration of the appellant's claim, was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17.5.1996, was legitimate. The basis, as well as, the manner of consideration, for a claim for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25.4.2005 (passed by the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28.2.2006, and the order passed by the High Court dated 13.11.2006, are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove.*

18. *Allowed in the aforesaid terms."*

The respondents have not averred that the case of the applicant was of moral turpitude, dishonesty, personal gains, harming third party interests

and being wicked, treacherous etc. The case of the applicant was a straight forward case of unauthorised absence without the affliction of any of the above attributes. Hence the applicant is eligible for compassionate allowance as per the above legal principle.



III. Lastly, the respondents stated that there was a delay of 33 years in filing the OA and hence, limitation operates. However, compassionate allowance is a form of pension granted to dismissed/removed employees, and pension is a cause of continuous action. Therefore, the limitation clause would not apply.

IV. In view of the aforesaid, we direct the respondents to consider grant of compassionate allowance based on the service register available with them and the DAR proceedings referred to by them in the OA, and in the light of the judgment of the Hon'ble Apex Court cited supra, within a period of 3 months from the date of receipt of this judgment.

V. With the above direction, the OA is allowed to the extent indicated, with no orders as to costs.

(B.V. SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

/evr/