



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 2126/2020

**Reserved on: 08.09.2021
Pronounced on: 07.10.2021**

(Through Video Conferencing)

Hon'ble Mr. Mohd. Jamshed, Member (A)

Smt. Neelam Kapoor,
W/o Late Sh. Ashok Kumar,
D-194, Anand Vihar,
Delhi-92.

... Applicant

(By Advocate : Mr. B.C. Nagar)

Versus

1. Union of India, through
The General Manager,
Northern Railway, Baroda House,
New Delhi.
2. General Manager (P),
Northern Railway, Baroda House,
New Delhi.
3. Dy. TMC/Line,
State Entry, Road New Delhi.

... Respondents

(By Advocate : Mr. Krishan Kant Sharma)



ORDER

The applicant's husband was working with the Railway as Head Clerk. A charge sheet was issued to him and punishment of removal from service was imposed vide order dated 04.03.2009. Subsequently on 13.11.2013, the applicant's husband passed away. A representation was made by the applicant for grant of Compassionate Allowance on 08.10.2015. An order for grant of Compassionate Allowance was passed by the competent authority on 23.04.2016 in favour of the applicant. The applicant has filed the present OA being aggrieved by non grant of compassionate allowance to her and also by the impugned order dated 04.11.2020 indicating that an amount of Rs. 4,02,018/- pending towards recovery from her late husband should be deposited by her or an undertaking be given that this amount shall be recovered from the compassionate allowance sanctioned in her favour by the competent authority.

2. The applicant is seeking quashing of the impugned order dated 04.11.2020 passed by the respondents towards the proposed recovery of Rs. 4,02,018/- in order to release compassionate allowance to her. The applicant also prayed for interim relief seeking stay of the proposed recovery in terms of Railway Board's letter dated 22.06.2016 and for directions to the respondents to release the compassionate allowance already sanctioned to her. Vide order dated 21.12.2020, this Tribunal



considered various averments made in the OA and directed the respondents to grant compassionate allowance already sanctioned to her within a period of four weeks and at the same time staying the recovery as proposed vide letter dated 23.04.2016 and 04.11.2020. The applicant claims that despite this order, compassionate allowance has not been granted in her favour. It is the contention of the applicant that her husband was working as Head Clerk with the Northern Railway and was removed from service vide order dated 04.03.2009 on account of alleged unauthorised absence. He subsequently passed away on 13.11.2013. As a result of order of removal, no pension or gratuity was admissible to him. After the death of her husband, the applicant made a representation for sanction of compassionate allowance to her on 08.10.2015. The competent authority vide order dated 23.04.2016 sanctioned the compassionate allowance in her favour notionally with effect from the date of removal of her husband from service and actually from the date of death of her husband. In the order, it was also stated that a recovery of Rs. 1,87,803.25/- outstanding against her husband may be recovered from the compassionate allowance. The respondents, however, did not take any action on grant of compassionate allowance for last many years and vide their letter dated 04.11.2020 advised her that an amount of Rs. 4,02,018/- is pending for recovery against her deceased husband which is required to be deposited by the applicant before the



compassionate allowance can be granted in her favour. The applicant relied upon the judgment of Hon'ble Apex Court in **State of Punjab & Ors. Vs. Rafiq Masih (White Washer)**, AIR 2015 SC 696 dated 18.12.2014 wherein conditions have been specified where such recoveries are not admissible. The applicant has also relied upon the DOP&T OM dated 02.03.2016 and the directions issued by the Railway Board vide RBE 72/2016 dated 22.06.2016 adopting the DOP&T OM. It is contended by the applicant that her case is squarely covered by the Hon'ble Apex Court judgment and that she being the wife of the deceased employee, the sanctioned compassionate allowance be paid to her without any recoveries. It is also submitted that her case is very different from retiring employee against whom recoveries are due and which can be adjusted from the retiral dues. It is submitted that the husband of the applicant was removed from service and, therefore, not entitled for either pension or gratuity. Once that punishment has been imposed and the husband of the applicant has passed away, no action towards recovery of an amount from the compassionate allowance is permissible under the law.

3. The respondents filed a counter affidavit stating that the husband of the applicant was removed from service vide order dated 04.03.2009 and has expired on 13.11.2013. In view of the punishment of removal from service, his pension and gratuity has been forfeited. On the representation made by the applicant,



the competent authority has sanctioned compassionate allowance in favour of the applicant from the date of death of the applicant's husband i.e. w.e.f. 13.11.2013. It has been indicated in the order granting compassionate allowance that a recovery of Rs. 1,87,803.25/- has to be made from this allowance. It is also submitted that subsequently an additional amount of Rs. 2,05,339/- was worked out towards over payment against the deceased employee and the earlier amount of Rs. 1,87,803.25/- was revised to Rs.1,96,679/-. Thus a total amount of Rs. 4,02,018/- is due to be recovered from the deceased husband of the applicant and it is proposed to recover the same from the applicant or to be adjusted from the proposed compassionate allowance. It is also submitted that the relied upon judgments and the DOP&T OM are to be referred in cases of retired employees and not those who have been removed from service.

4. Heard Mr. B. C. Nagar, learned counsel for the applicant and Mr. Krishan Kant Sharma, learned counsel for the respondents, through video conferencing.

5. This OA has been filed by the applicant whose husband was working as Head Clerk with the Railways in New Delhi and who passed away on 13.11.2013. The husband of the applicant was working as Head Clerk and on account of unauthorised absence, a charge sheet for major penalty was issued to him. It is stated that he did not turn up before the Inquiry Officer on a few



occasions and, thereafter, proceedings were initiated against him ex-parte. He was held responsible and a penalty of removal from service vide order dated 04.03.2009 was imposed upon him. His appeal was rejected by the Appellate Authority. As a consequence of punishment order of removal from service his pension and gratuity were forfeited. The applicant's husband passed away on 13.11.2013. The applicant is the widow of the deceased employee and in view of her extremely precarious financial condition with no pension or gratuity having been granted, she preferred a representation dated 08.10.2015 for grant of compassionate allowance in order to sustain her livelihood. The competent authority after taking into account Rule – 65 of Railway Service Pension Rule, 1993 and Railway Board's letter dated 09.05.2005 and 04.11.2008 decided the case of the applicant and sanctioned compassionate allowance vide order dated 23.04.2016. The relevant paras of the same read as under:-

“In view of the circumstances of the family, I feel justice will be met by sanction Compassionate allowance @ Rs. 3500/- notionally from the date of removal and family pension @ Rs. 3500/- (minimum family pension) and actual payable from the date of death of Shri Ashok Kumar i.e. 13.11.2013.

I have, therefore, decided to sanction Compassionate Allowance at the rate of minimum of pension admissible i.e. Rs. 3500/- which is less than 2/3rd in favour of Late Shri Ashok Kumar on notional basis from the date of removal from service. However, the family pension at the minimum i.e. Rs. 3500/- (equal to minimum of basis family pension) should be admissible in favour of the eligible family members as per rules, payable from the date of death of Shri Ashok Kumar i.e. w.e.f. 13.11.2013. However, recovery of pending amount to Rs 1,87,803.25 (Rs 66611+8%+10000) as advised by Finance letter No. 2003/PF/HQS/Transfer case/I dated 29.03.2008 is to be made from this allowance.”



6. The sanction of Compassionate Allowance by the competent authority also indicated that a pending recovery amount of Rs. 1,87,803.25/- is to be made from this allowance. It is evident that in last more than four years, the same was not sanctioned in her favour. The respondents have also not taken any action on the orders passed by this Tribunal providing interim relief of stay of recovery and grant of compassionate allowance to her. On the contrary after about four years the respondents vide impugned order dated 04.11.2020 advised the applicant that an amount of Rs. 4,02,018/- is pending for recovery from her deceased husband, which is required to be deposited by her. The impugned order reads as under:-

“In reference to above it is inform that Rs. 4,02,018/- is pending for recovery from Shri Ashok Kumar, Hd. Clerk/TMC which is to be deposited by you.

Please deposit the above said amount in the Station Earning and submit MR receipt in this office. If you are unable to deposit then submit your consent of recovery from the arrear of compassionate allowance sanctioned in your favour by the competent authority within a week time. So that further action can be taken accordingly.”

7. It has been clarified by the respondents that although the competent authority has passed the order for grant of compassionate allowance along with recovery of Rs.1,87,803.25/-, this figure has been corrected by the Accounts Department to be Rs. 1,96,679/-. In addition another recovery was found to be due from the deceased employee for Rs. 2,05,339/- and, therefore, the total recovery due against the



deceased employee is Rs. 4,02,018/-. In this connection, the respondents had also submitted a letter to the Railway Board seeking waiver of internal check for recovery of over payment of Rs. 2,05,339/- vide their letter dated 08.10.2018. This waiver of internal check was sought from the Railway Board as the period involved was more than ten years old. The Railway Board vide their letter dated 19.03.2019 advised as under:-

“The proposal for waiver of internal check of paid vouchers as clarified by GM/P, NR vide their above referred letter, has been approved by the Accounts Directorate.

Northern Railway may deal with the issue of recovery of over payment in terms of RBE No. 72/2016 Dt. 22.6.2016 vide which a circular No. 18/26/2011-Estt. 9Pay-I) of DOP&T Dt. 2.3.2016 wherein Hon'ble Supreme has observed “Recovery from the retired employees, or employees who are due to retire within one year....is not permissible in law.”

Further necessary action in this regard may be taken accordingly. It is also requested that any further correspondence on the issue may be made with the Accounts Directorate.”

8. From the above letter, it is obvious that although approval was granted for waiver of internal check, respondents' attention was also drawn to the Hon'ble Supreme Court's observations as contained in DOP&T OM dated 02.03.2016 that recoveries from the retired employees, or employees who are due to retire within one year is not permissible in law. It is obvious that all along the respondents are considering the compassionate allowance as pension and seeking recovery out of the same. The fact remains that the husband of the applicant, an employee of Northern Railway was removed from service in the year 2009 and his pension and gratuity were forfeited as a consequence of the



punishment of removal. He has passed away in the year 2013. It is a settled law that disciplinary proceedings abate in the event of death of the charged official. In the case of the deceased employee, the punishment of removal imposed on him was for unauthorised absence and till that time no recoveries were instituted against him or claimed. The recovery of an amount of Rs. 2,05,339/- is said to be for the period from 03.06.1977 to 31.10.2004. The applicant is the widow of the deceased employee, who has been granted compassionate allowance by the competent authority in the year 2016 with a recovery of Rs. 1,87,803.25/-. However, she has not yet been paid the compassionate allowance as sanctioned and is suffering on that account. It is also intriguing to observe that the recovery amount has varied from Rs. 1,87,803.25/- to that of Rs. 1,96,679/- and, thereafter an additional amount of Rs. 2,05,339/- for the period from 03.06.1977 to 31.10.2004 has been added.

9. The Railway Board while sanctioning the permission of waiver of internal check has also drawn the attention of the respondents to the Hon'ble Supreme Court as contained in the DOP&T OM which prohibits any such recovery from the retired employees. It is thus evident that the respondents have levied recovery of Rs. 4,02,108/- on the applicant without application of mind and in violation of the extant guidelines. The recovery of an amount of Rs.2,05,339/- for the period 1977 to 2004 cannot be made from the compassionate allowance sanctioned to the



applicant, who is the widow of the deceased employee. The husband of the applicant was removed from service and thereby his pension and gratuity had been forfeited. A compassionate allowance sanctioned is purely for the reason of sustaining the livelihood of the applicant. The amount indicated in the order granting compassionate allowance for recovery of Rs. 1,87,803.25 later on corrected to Rs. 1,96,679/- alone is allowed. No other recovery shall be made from the compassionate allowance so granted. Ratio of the judgment of the Hon'ble Apex Court in **State of Punjab & Ors. Vs. Rafiq Masih (White Washer)**, AIR 2015 SC 696 dated 18.12.2014 is squarely applicable in this case. Needless to mention that the respondents have shown total apathy in the matter of granting compassionate allowance to the applicant sanctioned way back in 2016 and even failed to make payments despite Tribunal's interim order.

10. In view of the above, the OA is allowed. The impugned order dated 04.11.2020 is set aside to the extent that no recovery for an amount of Rs. 2,05,339/- shall be made. The respondents shall grant compassionate allowance as decided by the competent authority vide order dated 23.04.2016 with effect from the date of death of the applicant's husband. Only the corrected amount towards PF recovery of Rs. 1,96,679/- shall be adjusted from the arrears of the compassionate allowance to be paid to the



applicant. After adjusting the amount of Rs. 1,96,679/- from the arrears, the respondents shall make the payments of the remaining arrears and also ensure that monthly compassionate allowance as due is paid to the applicant regularly every month. This shall be done within a period of two months from the date of receipt of a copy of this order. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

Vinita/ankit