

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 21st day of Aug 2009

Original Application No. 804 of 2007

Hon'ble Mr. S.N. Shukla, Member (A)

Jai Singh Bahadur aged about 68 years son of Shri Jhuri Singh resident of Jai Singh Compound, near Police Chowki, Nainagarh, Jhansi.

...Applicant

By Adv: Shri R.K. Nigam

V E R S U S

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Chief Workshop Manager, North Central Railway Workshop, Jhansi.

...Respondents

By Adv: Shri S.S. Agnihotri.

O R D E R

This OA filed seeking following relief/s as under:-

8. Relief Sought:-

- i) *to issue a writ, order or direction in the nature of CERTIORARI quashing the impugned order dated 16.5.2003 (Annexure A-I);*
- ii) *to issue another writ, order or direction in the nature of MANDAMUS thereby commanding the Respondents to immediately grant compassionate allowance from the date of dismissal and continue the same till the end of the life of the petitioner, which has been granted in the similarly situated counterpart of the Workshop (Shri Ram Dayal), for which time bound direction is fervently prayed;*
- iii) *to issue any other suitable order in favour of the petitioner as deemed fit by this Hon'ble Tribunal in the facts and circumstances of the case;*

iv) *to award cost of the petition in favour of the humble petitioner."*

2. The fact as submitted in the OA are as under:-

(i) The applicant started his career in the Central Railway Workshop Jhansi with effect from 21.6.1957 as Trade Apprentice. After successful completion of training (5 years) the petitioner was appointed as skilled Fitter with effect from 1.12.1962. Thereafter, the applicant has been granted regular promotions right upto the stage of Grade I Fitter.

(ii) Due to misfortune, an altercation took place between the applicant and one Shri Jeevan Singh, Senior Time Keeper during the course of working in Shop Floor. Shri Jeevan Singh was an active leader of the Powerful Union (National Railway Mazdoor Union) (CP (I) and CP (M) sponsored. Shri Jeevan Singh was working on a responsible post and on his free-will the marking of duty was totally dependent so he forced the applicant to accept the duty of representative of the Union and collect subscription from Railway workers working in the Workshop, on his behalf.

(iii) The applicant declined to oblige Shri Jeevan Singh. On the next date the above Time Keeper Shri Jeevan Singh started creating false and frivolous absenteeism of the applicant even though the applicant was attending duties regularly.

(iv) On 28.7.1982 the above Union Leader (Jeevan Singh) who was the main incharge of marking attendance of the workmen including the applicant, did not allow the applicant to perform duties from 28.7.1982 under the pretext that his attendance card was misplaced. On the following day i.e. 29.7.1982 the applicant reached for duty at scheduled time 9 AM and punched his card along with four other workers of his group. All the five cards were placed together but after lunch when he went to punch his card again, he found that his card was missing from the place where the same are kept although other four card were lying there. On this ground the applicant was disallowed to perform his duties. The applicant tried to search the card and he found that the card was lying along with those of "Absentees" and only thereafter he was allowed to punch his card for presence showing 2 days as absence from duty. While punching the card along with his other counterparts Shri Jeevan Singh intervened and snatched the card from the hands of the applicant and gave a blow through steel ruler as a consequence of which the applicant sustained serious injury on his right hand thumb. The applicant in order to defend and save caught hold of the ruler tried to push him back so that he could not possibly attack/hit him (applicant) further. In this process Shri Jeevan Singh fell on the bench lying behind him, started bleeding in his teeth.

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(v) On 30.7.82 Shri Jeevan Singh prevailed upon the Disciplinary Authority of the applicant Dy. CME who hurriedly issued a show cause notice without realising that in this case the Time Keeper Shri Jeevan Singh was to blame and not the applicant who has been dragged in disciplinary proceedings in one sided manner. In response to the show cause notice dated 30.7.82 the applicant personally appeared before the Disciplinary Authority (Dy. CME) and requested him to hold a fair enquiry without being persuaded and overwhelmed by the injury of Shri Jeevan Singh who had massive support of Senior Union Leaders. Incidentally it may be stated that Shri Jeevan Singh simultaneously got lodged on FIR too but the Police found the same based on false allegations and no criminal proceedings were launched against the applicant.

(vi) However, the Dy. CME (Disciplinary Authority) who was badly pressurized by the union Leaders precipitately issued the summary dismissal order under the exceptional powers of rule 14 (2) of Railway Servants (Discipline & Appeal) Rules 1968 (herein after called DAR). Applicant preferred statutory appeal to the Appellate Authority but the same was rejected. Applicant made protracted correspondence, running pillar to post for mercy to the limited extent that for the survival of applicant and his family he be granted compassionate allowance which is mandatory as per Pension rules applicable in the Railways and ought to have

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been given automatically as the applicant was not given a single penny for the survival of the family.

(vii) Head of the Workshop Shri Pyoosh Bahadur, Chief Workshop Manager, Jhansi came to the rescue of the applicant who addressed a D.O. letter to the Chief Mechanical Engineer, Central Railway, Bombay VT (Shri H.N. Lal). While enclosing the above D.O. letter made a fervent prayer vide his statutory representation dated 3.3.2003 in which he had prayed for the simple relief of compassionate allowance as the applicant as well as his whole family was in dire need of handful amount of compassionate allowance which will at least provide bread to the poor kids of the applicant. The above representation was a statutory representation and not merely a mercy appeal duly addressed to the Competent Authority i.e. Chief Workshop Manager whose predecessor (Shri Pyoosh Bahadur) had earlier held that the applicant was not solely responsible for the incident and that the case of the applicant deserves reconsideration.

(viii) However, the matter was dealt in an isolated manner by the subsequent successor of the post who did not allow the statutory representation for grant of compassionate allowance which was to be considered in an objective manner and within the 4 corners of the Railway Pension Rules since the grant of compassionate allowance is automatic. More over no charge of moral turpitude was

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involved in the case. Head of the Workshop to the Chief Mechanical Engineer, Bombay VT for reconsideration of the whole issue, and rejected such a crucial and pathetic appeal of the applicant in a most cryptic, unkind and inhuman manner. It may be stated that while issuing the summary dismissal order it was the statutory duty of the Disciplinary Authority who issued the dismissal order to immediately grant compassionate allowance (which is automatic) realizing that a Senior Working having more than 25 years honest and faithful working (having unblemished career) was being rendered jobless summarily and his family members deserved compassion under the title of compassionate allowance which is automatic as provided in the Railway Pension Rules as has been granted in favour of one similarly situated person i.e. Shri Ram Dayal who was also dismissed and while dismissing him he was immediately granted compassionate allowance which has been continuing till today.

(ix) Applicant has been in protracted correspondence and he made several representations in which he quoted the analogy on grant of compassionate allowance to the counterpart of the same workshop in similar situation. At the moment the applicant is undergoing very costly treatment due to paralytic attack which is involving expenditure running into lakhs and his son who is a low paid employee is somehow fetching personal financial aid from various kiths and kins, struggling for the life of the

applicant. The applicant, therefore, is in need of handful amount of compassionate allowance. The appeal of the applicant was rejected and thereafter the legal remedy against dismissal order also did not yield any result.

3. In the counter affidavit submissions have been made by the respondents as follows:-

The applicant was involved in a serious misconduct and that he deserves the punishment which was meted out to him. The main preliminary objection of the respondent however, was on account of delay in approaching of this tribunal. It is submitted that the cause of action is not perpetual and as such the law of limitation shall apply squarely. The Applicant's appeal No. 'NIL' against the dismissal order dated 31.7.1982 was filed in the month of December 1993 i.e. after a gap of 10 years before the Chief Workshop Manager Jhansi, who had recommended the case of the Original application to the Chief Mechanical Engineer Central Railway Bombay (V.T.) and the same was also rejected as per Para 4.16 of the OA. From the record it appears that on 3.3.2003 the applicant moved an another application for grant of Compassionate allowance before the Chief workshop Manager Central Railway Workshop Jhansi who rejected the application on 16.5.2003. It is thus clear that the present applicant is a careless person and not diligent to his rights (if any). Even the present OA has been filed after 3 years of impugned order dated 16.05.2003 therefore, the present OA is liable to be dismissed.

4. Earlier applicant filed a delay condonation application along with the OA. In that delay condonation application the following submissions were made:-

1. *That the humble petitioner while working as Fitter Grade I in the Railway Workshop Jhansi was dismissed from service on and from 31.7.1982 invoking the exceptional powers of the President under rule 14 (2) of the Railway Servants (Discipline & Appeal) Rules 1968.*
2. *That the appeal as well as legal remedy against the said order did not yield any result.*
3. *That while dismissing a permanent employee, it was the boundant duty of the Disciplinary Authority to grant Compassionate allowance for the survival of the family.*
4. *That the petitioner has had to his credit more than 25 years of unblemished service at the time of his dismissal.*
5. *That the humble petitioner submitted statutory appeal dt. 3.3.2003 to the Competent Authority but Dy. CME did not place the same before the Competent Authority i.e. Chief Workshop Manager Accounts and conveyed the decision thereby rejecting the appeal for Compassionate allowance vide impugned order dated 16.5.2003.*
6. *That while rejecting the appeal, the authority concerned did not even realize that the head of the Workshop i.e. Chief Workshop Manager (Shri Pyoosh Bahadur) and he then was, as already committed in writing that the petitioner was not solely responsible for the unhappy incidence which led to his dismissal and, therefore, the matter deserved reconsideration.*
7. *That the whole family of the petitioner has been badly shattered and they have come to the stage of starvation.*
8. *That the humble petitioner moved several representations, the last being 4.2.2007 but no decision has been taken solely on the ground that the earlier representation dated 3.3.2003 was rejected vide order dated 16.5.2003.*
9. *That in the meantime the petitioner had severe paralytic attack which has rendered him totally incapable of movement and even movement of the various organs of his body and that he has to put his left hand thumb in the various pleadings.*

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10. *That the humble petitioner is in dire need of handful compassionate allowance which has been granted in favour of similarly situated person Shri Ram Dayal who was also dismissed summarily while working in Workshop itself on account of assault upon his Supervisor on duty."*

5. The learned counsel for the parties were given an opportunity to file written submissions. In response thereof the learned counsel for the applicant has filed a Judgment of Hon'ble Andhra Pradesh High Court reported in all India service law General V-20052 page 102 in the case of Mohd. Abdul Samad Vs. S.C. Railway represented by Shri G.M. Secuendrabad and others. For the shake of brevity some facts of that case are discussed in brief where even considered necessary in that case the petitioner was an employee in the Railways. He appears to have good records. He was suspended from service on 18.6.1968 on the ground of pilferage of some amount of commodity. On being charge sheeted an inquiry being held he was removal from service his appeal and revision were rejected and O.S. filed before City Civil Court, was also dismissed, filed with the Additional Chief Judge-Cum-Special Judge for SPE and CBI Cases, was also dismissed.

6. Thus this order passed by the disciplinary authority on 11.2.1969, attained finality. As the rules did not provide for grant of pension and gratuity for an employee who was removed from service petitioner was not paid any such benefit.

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7. Learned counsel for the applicant while placing reliance on the Hon'ble Andhra Pradesh. ~~His~~ decision highlighted the following extracts from the order.

"4. The Railways issued Circular No. 145/95 dated 1.12.1995 prescribing a detailed procedure for grant of compassionate allowance to employee who had either been removed or dismissed from service. Reference is made therein to Rule 65 of the Railway Servants (Pension) Rules 1963 which prescribes that a Railway servant, who had been dismissed or removed from service, should forfeit his pension and gratuity. However, under the proviso thereto, the Competent Authority is empowered, in deserving cases to sanction a compassionate allowance not exceeding 2/3rd of the Pension of Gratuity or both as is admissible to such employee if he had retired on compensation pension. The said circular also notes that the proviso to Rule 65 was not within the knowledge of many of its employees and that it was incumbent upon the authorities to intimate all Ex-employees of the existence of such a provision along with the order of dismissed removal. Petitioner would submit that, though he was removed from service with effect from 11.2.1969, he was not aware of such a provision that would enable the authorities to consider grant of compassionate allowance even in respect of an employee who had been inflicted with the capital punishment of removal or dismissal from service and there it was certain well-wishers in the department, who having noticed the deplorable financial condition of the petitioner, had informed him of the circular and had advised him to request the Competent Authority for grant of compassionate allowance. The petitioner submitted a representation on 22.2.1999 but it did not evoke any response necessitating his having to get a notice issued through his Counsel on 17.11.1990. No orders were, however, passed on his representations except informing him that his representation was forwarded to the 3rd respondent.

5. The petitioner filed W.P. No. 4800/2000. This Court, in its order in W.P. 4800 of 2000 dated 27.3.2000, noted that the petitioner had been dismissed from service in the year 1969 and that the order of dismissal had become final. After

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referring to Rule 65 of the Railway Service (Pension) Rules, 1993 and to the Circular of the Railway Service (Pension) Rules, 1993 and to the Circular of the Railways issued in the year 1995, whereunder the Railways, while directing its officers to consider the request for compassionate allowance, had observed that many of the employees could not avail the compassionate allowance in view of their ignorance of its existence, this Court took note of the submission made on behalf of the petitioner that this was one such case of ignorance on the part of the employee and observed thus:

".....However, the learned Counsel for the petitioner restricts his submission and says that the interest of justice would be met if the petitioner's representations dated 24.9.1998 and 22.2.1999 addressed to the Divisional Security Commissioner (RPF) are considered and disposed of. The submission of the learned Counsel for the petitioner cannot be said to be an unreasonable one, particularly, in the facts and circumstances of the case. The Circular itself issued by the Railways reveal that the management had recognized the ignorance of the employees about the Rule 65 of the Rules, under which even a dismissed employee about the Rule 65 of the Rules, under which even a dismissed employee is entitled for compassionate allowance, if a case is made out for grant of such compassionate allowance.

In the circumstances, I consider it appropriate to direct the Divisional Security Commissioner-3rd respondent to dispose of the application filed by the petitioner on 24.9.1998 followed by another representation dated 22.2.1999. This Court would not have directed the respondents herein to consider such representations but for the Rule 65, and the clarification made by the Railways vide its Circular Letter No. P/500/XVI dated nil-12-1995. The Circular read along with Rule 65 would undoubtedly confer right upon the dismissed employees also to seek compassionate allowance subject to satisfying the authorities that it is a fit case for grant of such compassionate allowance. The matter shall be examined by the respondents in accordance with law, and in the light of the Circular referred to herein above. An appropriate decision in this regard shall be taken by the respondents within three months from the date of receipt of a copy of this order. The writ petition is accordingly disposed of. No order as to costs.

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6. In supposed compliance of the order of this Court in W.P. 4800 of 2000 dated 27.3.2000, the 3rd respondent passed the following order on 28.6.2000:

"With reference to your representation dated 24.9.1998 and 22.2.1999, requesting for grant of compassionate allowance under Para 309 of Manual of Railway Pension Rules 1950. On perusal of the entire file, it is observed that you were charge sheeted under Rules 44 for pilferage of 45 kgs. of khus-khus seeds and 65 kgs. dry coconut and for attempting to sell them to a hotel owner who is a habitual receiver of stolen property. You were removed from service w.e.f. 15.2.1969 by AS/SC and your appeal was also rejected by Security Officer/SC and revision petition by CSO/SC.

As per the rules the compassionate allowance may be granted to the staff who dismissed and removed, in deserving cases and to take into account not only the actual misconduct or course of misconduct which led to removal/dismissal of the staff, but also the kind of service the employee has rendered. However, in view of the charge against you which led to your removal from service, it is not possible to accept your request. Your representation for grant of compassionate allowance is rejected."

7. Mr. Siva, learned counsel for the petitioner, would submit that the proviso to Rule 65 of the Railway Services (Pension) Rules, 1993 enables the Competent Authority, if the case deserves special consideration, to sanction compassionate allowance not exceeding 2/3 of the pension or gratuity which would have been admissible to an employee if he had retired on compensation pension. Learned Counsel would submit that, since the benefit of compassionate allowance is extended even to those employees who had been dismissed or removed from service, the said power conferred under the proviso to Rule 65, has to be exercised by the Competent Authority not merely on the basis of the order of punishment but on consideration of the entire service rendered by the employee concerned and other extenuating circumstances such as the financial hardship which an employee is facing etc., to decide as to whether an employee's case deserved special consideration for being sanctioned such compassionate allowance. Learned Counsel would submit that, since the maximum penalty which can be imposed under

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the Service Rules is "Removal and Dismissal from Service", in every case where such punishment is imposed, the charges held established against the delinquent employee are bound to be grave and serious in nature. According to the learned Counsel, since the proviso extends the benefit of compassionate allowance even to such employees, the mere fact that they have been imposed such a punishment or the grave and serious misconduct which has led to imposition of such a punishment, cannot form the sole basis for denying the employee the benefit of compassionate allowance. Learned Counsel would point out that, while the 310 respondent had himself noted that in addition to the actual misconduct or the course of misconduct which has led to the removal/dismissal of the employee the kind of service which the employee has rendered also required to be taken into consideration, he had however, denied the said benefit relying solely on the charges held established against the petitioner which had led to his removal from service and had not taken into consideration the kind of service which the petitioner had rendered prior thereto. Learned Counsel would submit that, since the Competent Authority has not taken into account relevant factors and was swayed away by irrelevant considerations, the impugned order dated 28.6.2000 was liable to be quashed."

8. Heard counsel for the parties and perused the pleadings on record. First of all coming to the preliminary objection of the respondents. In so far as i.e. the delay in filing of the OA is concerned it is to be noted that no such issue was raised by the respondents in their rejection letter dated 16.05.2003 in response to the applicants petition for grant of compassionate allowance under Rule 65 of the Railway Services (Pension Rules) submitted on 3rd March 2003. The question of latches has been raised for the first time in objection to the applicants petition for condonation of delay on the grounds of extremely poor health, in support thereof, certain medical papers have been filed along with the OA in the form of prescriptions from a Neurosurgeon,

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reports of MRI indicating Neurological problems, CT scans of the Head again indicating Neurological problems and several other prescription indicating serious Neurological disorders in the case of the applicant during the period 2005 onwards. This Tribunal therefore, is of the view that sufficient reasons existed which may be responsible for delay on the filing OA on the part of the applicant after rejection of his representation in may 2003. On facts this case is found fit for condonation of delay. The delay accordingly stands condoned.

9. The next issue for consideration is relating to the denial of any compensatory allowance to the applicant in response to his petition (Supra) vide the impugned order dated 16.5.2003.

10. A perusal of the impugned order which is in Hindi when transcribed in English means to convey "*that the applicant's case has been considered carefully and it has been found that there were grave charges against him resulting in to his removal of the* ~~dismissal~~ *disposal. It is also to be noted that at the revision stage also the applicant was not granted any relief considering the grave nature of the misconduct he was not considered fit for any relief under Para 309 and 310 of pension Rules of 1950. Under the circumstances there was no good reason to grant any compensatory allowance to the applicant.*"

12. The impugned order when ^{seen} ~~seen~~ in context of the judgment and order of Hon'ble Andhra Pradesh High Court (Supra) it leaves no doubt in mind that the order has been

passed purely on the consideration of misconduct of the applicant for which he was dismissed from the service. It may be pertinent to once again recall what Hon'ble Andhra Pradesh High Court had observed that while considering compassionate allowance in the cases of dismissal, no doubt the charges of grave misconduct must have been proved resulting into a grave punishment. However, while considering the compensatory allowance the authorities are required to consider the total service profile of the employee and several other factors by taking an over view of the over all conduct of the employee prior to his dismissal on account of grave Act of misconduct.

13. Authorities on the other hand, seem to have been influenced only by the misconduct of the applicant and have made no mention whatsoever of over all service of the applicant and his conduct in past. In this connection it may not be out of place to refer to a letter filed on Annexure 3 to the OA being a communication from the Chief Workshop Manager Jhansi, address to Chief Mechanical Engineer Central Railway V.T. written on 12.1.93. In this letter Para 4 is reproduced as under:-

"4. In the circumstances of the case and the decision to dismiss him under Rule 14 (2), it appears to me that the action against Shri Jai Singh Bahadur has been on the narration of incident of assault and highlighting the injury caused to Shri Jeewan Singh but the responsibility of incident has not been established as the service record of the Ex-employee and his general behaviour as reported upon by his colleague in the shop today has not been branded as quarrel some and habitual of pecking up quarrels. It is to my mind that the

indicate of a provocation background and that background must have had a responsibility on Shri Jeewan Singh's performance of duty or Shri Jeewan Singh must have been in a position to create circumstances for Shri Jai Singh Bahadur to behave abnormally."

14. The learned counsel for the applicant also place relevance of Delhi High Court in the decision on **2000 (1) ATJ 137 : Ex. CT. Daya Nand vs Union of India & others [C.W.P. No. 1877 and C.M.P. No. 2966 of 1999, Decided on 26.11.1999 Hon'ble (DELHI HIGH COUR)]**

15. In this case the operative part of the Hon'ble High Court is reproduced below:-

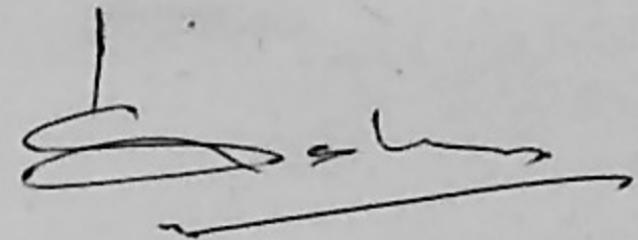
"The petitioner has admittedly served for more than 20 years, as point out above. His service came to be terminated without any grant of pension or gratuity. Under the circumstances, the petitioner deserves to be granted compassionate allowance under Rule 41 of the said Rules.

In the above view of the matter, the petition is granted. The respondent is directed to grant the compassionate allowance to the petitioner under Rule 41 of CCS (Pension) Rules, 1972 from the date of the discharge of the petitioner from service i.e. w.e.f. 21.5.1981 along with arrears. The respondents shall clear the dues of the petitioner within three months from today, failing which the petitioner will be entitled to 12% interest from the date the amount became payable till the actual date of payment by the respondent to the petitioner."

16. In the considered view of this Tribunal the case of the applicant is comparable to that the two cases cited above on all fours. The impugned order dated 16.5.2003 deserves to be quashed and set aside with direction to the Respondents/ Competent Authority to reconsider the case of the applicant in the light of his over all service profile, independent of his

misconduct leading to the dismissal, and pass a reasoned and speaking order as per provisions of the railway pension rules on his petition dated 3rd March 2003 (Annexure-4 to the OA) within 8 weeks of this order by taking a sympathetic view considering his old age, medical condition and abject penury.

17. With these observes the OA is allowed. The decision taken by the respondents shall be communicated to the applicant forthwith. No costs.



MEMBER (A)

/S.V/-