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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

OA No.99/99

MA No.169/2000 in OA No.99/99

Date of Order 23/2/2001

Abdul Yusuf son of Late Nizamuddin Khan aged about 57 years, resident of House No.566, VIIth C Road Sardarpura, Jodhpur, last employed on the post of Ex Fireman in the office of S.S. Merta JN Northern Railway.

APPLICANT.

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
Divisional Railway Manager, Northern Railway, Jodhpur Division, Jodhpur.

RESPONDENTS.

Mr. J.K. Kaushik, counsel for the applicant.

Mr. Kamal Dave, counsel for the respondents.

CORAM

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(per Hon'ble Mr. A.P. Nagrath)

1. The applicant has filed this OA with the prayer to direct the respondents to grant pensionary benefits to the applicant or in the alternative to direct the

respondents to consider grant of compassionate allowance in accordance with rules, with all consequential benefits.

2. As per the applicant, he was appointed as Loco Cleaner on 15.7.58 and was further promoted to the post of Fireman B. In the year 1976 he fell ill remained sick till 14.4.1977. He presented himself for being taken on duty and submits that he was informed vide letter 8.6.77 that he had been removed from service. He claims that he was never served with any charge-sheet and has no information regarding any disciplinary proceedings against him. He submits that he made a detailed representation on 16.6.97 requesting for grant of compassionate allowance but there has been no response to the same. His grievance is that his case has not been considered by the respondents in accordance with provisions made in Railway Board's letter dated 3.5.1940, even though he fulfils the requisite conditions for grant of compassionate allowance. He also claims that he had completed more than 10 years of qualifying service and was entitled to pension and other retiral benefits admissible on Superannuation.

3. The applicant had filed MA No. 169/2000 seeking directions to the respondents to produce the file relating to disciplinary proceedings and his service file so as to establish that the applicant had in fact never been issued with any communication removing him from service. The respondents, in the reply to the averments of the applicant have expressed their inability to produce the relevant records relating to his disciplinary proceedings on the ground that the same have been destroyed. Respondents submit that such records can

be destroyed every 10 years or three years after final disposal of appeal of final judgment under the normal course of law.

4. It has been submitted by the learned counsel for the respondents that the applicant has not challenged his order of removal from service but has sought compassionate allowance. For determining the matter regarding admissibility of compassionate allowance the record relating ~~to~~ to disciplinary proceedings is not relevant. Learned counsel for the applicant, however, contended that the record was relevant as so as to see whether any removal order was passed at all or the applicant was ever communicated the order of removal.

5. We have considered the rival contentions. The applicant was admittedly out of employment since 1977, and apparently made no move to agitate the matter at any point of time earlier. The factum of removal is beyond challenge today and the charge of unauthorised absence on account of which the applicant was removed from service is also not in dispute. The only question which could be considered and which has been prayed for is whether any direction could be issued to the respondents to consider grant of compassionate allowance to the applicant. In that view of the matter, we do not consider it a necessary requirement to have the service record or the file relating to disciplinary proceedings of the applicant brought on record. Thus of the prayer made in the MA is/no consequence to arrive at a decision in the matter before us. MA is thus disposed off as of no consequence.

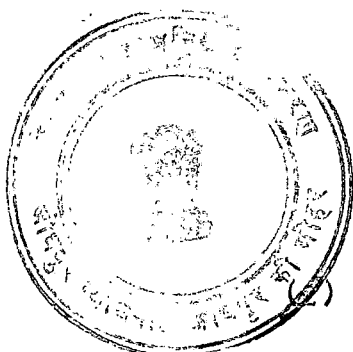
6. The only question to be considered by us now is whether any direction could be given to the respondents to consider the case of the applicant for grant of compassionate allowance. We find that the Rules 65 for grant of compassionate allowance to Railway Servants as incorporated in Railway Services (Pension) Rules-1993 reads as under:-

(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 hundred seventy five rupees per mensem.

A reading of this clearly bring out that it is the authority competent to dismiss or remove a railway employee from service may sanction compassionate allowance at his discretion, if he considers the case is deserving of special consideration. This would clearly be decided by the disciplinary authority removing the employee from service at the time the order of removal is passed. This cannot, give rise to a continuing cause of action as this is not a definite right accruing to any employee under the rules. It is a decision to be taken once whether a compassionate allowance is to be sanctioned or otherwise. Any employee aggrieved with non-payment of compassionate allowance is expected to

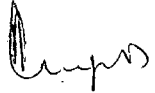


make a representation to the competent authority within reasonable time and it is left to that competent authority to take a view in the matter. In the instant case, the applicant was removed from service in 1977, he cannot claim consideration of his request for grant of compassionate allowance in the year 1999 and his case is hopelessly barred by limitation under Section 21 of Central Administrative Tribunal Act, 1985.

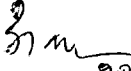
8. Having said so, let us also examine whether on merits any such directions should be given to the respondents, Government of India, orders in the letter dated 3.5.1940 have laid down some guidelines as to when compassionate allowance may be granted. It has been stated that Article 353 C.S.R. vests the Government with an absolute discretion to grant or not to grant any compassionate allowance (emphasis supplied) the only restriction being that if granted, it shall not exceed the maximum of two-thirds of the pension that would be admissible to the officer concerned on retirement. It has been further stated that it is practically impossible in view of the wide variation that naturally exist, in the circumstances of each case and to lay down categorically precise principles that can be applied to individual case (emphasis supplied). It further goes on to add that even poverty is not an essential condition precedent to the grant of compassionate allowance (emphasis supplied). It is obviously clear that it is left to the judgment and discretion of the competent authority to take a view in the matter. We would like to refrain from giving any direction to the competent authority to consider any case under this rule as that would result into sudden spurt in filing of such cases before the Tribunal only for seeking a direction to decide their representations. It

would become open  to all such employees, who are dismissed or removed from service and in whose favour compassionate allowance is not sanctioned, to file such applications and the entire process will become a mere ritual. We consider it only appropriate for the affected employees to approach the competent authority and seek redressal of their alleged grievance before such an authority. With these observations, we would like to state that the applicant before us has no merits in his case and his application is liable to be dismissed on limitation as also on merits.

9. We, therefore, dismiss the OA on grounds of limitation as also on merits. No order as to costs.


(A.P. Nagrath)

Admn. Member


(A.K. Misra) 23/11/2007

Judl. Member

Recd Am
Wesley
27/02/01

Part II and IN destroyed
in my presence on 21.3.07
under the supervision of
section officer as per
order dated 19/2.07

Section officer (Records)

R/copy
on 27/2
[Signature]