

CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH, JODHPUR

ORIGINAL APPLICATION NO.: 39/2002

DATE OF ORDER: 05.02.2003

Kishan Lal S/o Shri Mangal Ram, aged about 53 years, resident of Railway Qtr. No. 401-I, Double Story, Near Railway Hospital, Abu Road, last employed on the post of A/Khallasi in the office of Senior Section Engineer (DL), Abu Road, Western Railway.

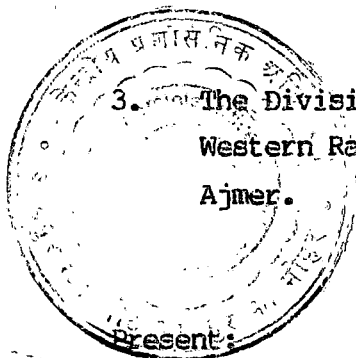
....Applicant.

V E R S U S

1. The Union of India through General Manager,
Western Railway, Churchgate, Mumbai.

2. The Divisional Railway Manager,
Western Railway, Ajmer Division, Ajmer.

3. The Divisional Personnel Officer,
Western Railway, Ajmer Division,
Ajmer.



....Respondents.

Mr. B. Khan, counsel for the applicant.

Mr. Salil Trivedi, counsel for the respondents.

CORAM:

HON'BLE MR. JUSTICE G.L. GUPTA, VICE CHAIRMAN.

....

... 2 ...

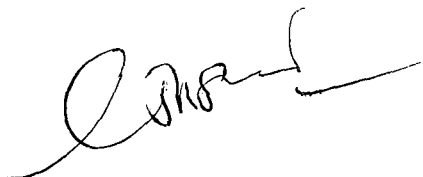
ORDER

PER MR. JUSTICE G.L. GUPTA:

The applicant while holding the post of Artisan Khalasi, in Diesel Shed, at Abu Road, was served with major penalty charge sheet for unauthorised absence from duty. The disciplinary inquiry culminated in the imposition of penalty of removal from service vide order dated 12.8.1993. The appeal preferred by the applicant against the penalty of removal was allowed in part. Upholding the findings of the Disciplinary Authority, the Appellate Authority granted compassionate allowance vide order dated 2.11.1993. The applicant challenged the said orders of the Disciplinary Authority and Appellate Authority by filing O.A. No. 481/94. The same was allowed vide order dated 10.02.2000, and the orders of the Disciplinary Authority and Appellate Authority were set aside. It was directed that the applicant should be reinstated in service. Dis-satisfied with the order of the Tribunal, the respondents preferred W.P. No. 1100/2000 before the High Court of Rajasthan, wherein the Writ Petition was admitted and stay was granted.

2. The case for the applicant now is that he is not getting anything pursuant to the stay orders passed by the High Court and hence he should be paid compassionate allowance which was allowed to him vide Appellate Authority's order dated 02.11.1993.

3. In the counter the respondents' case is that compassionate allowance cannot be granted to the applicant as he had not vacated Railway quarter after his removal from service. It is stated that the applicant retained the accommodation till 18.09.2002 and he has been served with a show cause notice dated 18.10.2002 to deposit a sum of Rs 1,72,609/- but he has not deposited the same.



: 3 :

4. Heard the learned counsel for the parties and perused the documents placed on record.

5. It is manifest from the order of the Tribunal dated 10.02.2000 rendered in O.A. No. 481/94 filed by the applicant, that the order of the Disciplinary Authority removing him from service dated 12.08.1993 and also the order of the Appellate Authority dated 02.11.1993 confirming the removal order were set aside. When the order of removal had been set aside by the Court, it is obvious, the applicant stood reinstated in service. It is different matter that because of the stay order of the High Court in the Writ Petition, the reinstatement has not taken place.

6. The contention of the applicant, that he is getting nothing because of the stay order granted by the High Court and therefore he should be allowed compassionate allowance, cannot be accepted. The question of grant of compassionate allowance may arise if the removal order stands restored when the applicant is in service under the order of this Court, the respondents cannot be asked to make payment of the compassionate allowance to him. If the applicant has got grievance of not getting anything either salary or compassionate allowance he may, if advised, approach the Hon'ble High Court which is now seized of the matter. This Court cannot pass any order in that respect.

7. The Ruling of the Supreme Court in Gorakhpur University & Others vs. Dr. Shitla Prasad Nagendra and Others (2001 (2) SC SLJ 247) and Smt. Sumitra vs. General Manager Western Railway Mumbai (O.A. No. 347/2001 decided on 25.09.2002) do not assist the applicant in getting compassionate allowance because of very different fact situation.

8. It is noticed that after the applicant filed this O.A. the

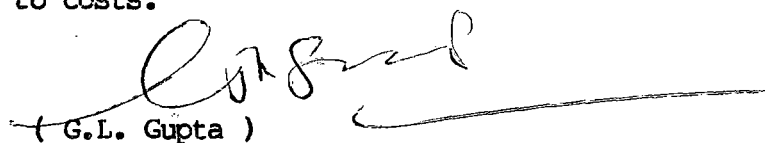


: 4 :

respondents have issued show cause notice on 18.10.2002 to the applicant. The applicant may file reply to the show cause notice and if he is aggrieved by the order he may approach the appropriate authority. However, on the ground that the respondents propose to recover outstanding dues against the applicant, this O.A. for the grant of compassionate allowance cannot be allowed, for the simple reason that pursuant to the order of this Tribunal passed in O.A. No. 481/94, the removal order does not survive and the respondents cannot be directed to pay compassionate allowance so long as the order of this Tribunal is not set aside by the Hon'ble High Court.

9. No other point was pressed before me.

10. Consequently, I find no merit in this Original Application and dismiss it with no order as to costs.


(G.L. Gupta)

Vice Chairman

R/copy
3 1/2
11-2-08

Part II and III destroyed
in my presence on 14-5-08
under the supervision of
section officer () as per
order dated 5-2-08

NGQA
Section officer (Record)