

X

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR

O.A.NO. 27/2010

Dated this the 9<sup>th</sup> day of December, 2010

CORAM

HON'BLE MR. JUSTICE S.M.M. ALAM, MEMBER (JUDICIAL)

Hussain Bux S/o Sri Allah Deen,  
Aged about 70 years, resident of C/o  
Pareek News Centre, Maiji-Nai-ka-katla  
Main Bazar, Shridungargah, Distt. Bikaner,  
Last employed on the post of Trolley Man  
In the Office of PWI-III at Shridungargah  
Railway Station, NWR.

...Applicant

(By Advocate Mr.J.K.Mishra)

Vs.

1. Union of India, through General Manager,  
North western Railway, Jaipur Zone, Jaipur.

2. Divisional Railway Manager,  
NWR, Bikaner Division, Bikaner.

3. Assistant Divisional Engineer,  
North West Railway,  
Ratangarh Jn.

....Respondents

(By Advocate Mr.Vinay Jain)

This application having been heard on 9.12.2010, the Tribunal on the same day delivered the following:

ORDER

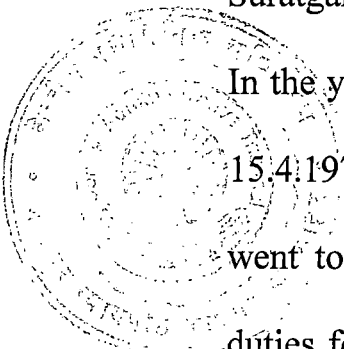
Applicant Hussain Bux has preferred this Original Application  
seeking the grant of following reliefs:

1/2

- (i) That the respondents may be directed to consider the case of the applicant, for grant compassionate allowance as per the rules in force and allow all consequential benefits thereof. Any adverse order, if any passed on his pending representation may also be quashed.
- (ii) That any other direction or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be allowed.

The brief facts of the case are as follows:

2. The applicant Hussain Bux was working as Casual Labour under IOW-I and II at Hanumangarh. On 15.6.1958 he was absorbed on a Group D post against regular appointment and posted in Gang No.6 under the PWI Suratgarh at Rangmehal. In the year 1958 he was transferred to Sadulpur. In the year 1967 he was transferred and posted under the PWI, Sudsar. On 15.4.1977 the applicant took leave for 3 days on the ground of ill health and went to Ratangarh but his sickness prolonged and he could not join his duties for a considerable long time. Thereafter on 4.4.1988 he reported for duty but he was not allowed to join his duty and was told that he had already been removed from service vide order dated 11.6.1984. In the year 1990 the applicant was informed vide letter dated 27.8.1990 that he is not entitled for any pensionary benefits as he was imposed penalty of removal from service. However, in the year 2009 he applied for detailed information regarding removal from service and thereafter on 14.7.2009 (Annexure.A-4) the applicant submitted a representation for grant of compassionate allowance. But no order was passed by the respondents on the



5m-A

representation and so the applicant filed this Original Application for grant of compassionate allowance.

3. On filing of the Original Application notices were issued to the respondents and in compliance of the notice respondents appeared through lawyer and filed reply. As per the reply of the respondents, their case is that due to unauthorized absence of the applicant from duty with effect from 18.4.1977 to 2.5. 1983, SF 5 was issued twice for service upon the applicant but the same could not be delivered to the applicant as the applicant was not found at home and at that time he was out of the country. It is contended that the applicant has falsely stated that due to sickness he was absence and that he had duly informed the authorities but as per office record no such information is available. It is further stated that an enquiry was conducted by the then PWI/SDF and it was found that the applicant was out of India and his statement that he was taking treatment by a private doctor was found false. On the basis of the enquiry conducted by the PWI/SDF an ex-parte order was passed and the applicant was awarded the punishment of removal from service vide order dated 11.6.1984. (Annexure.R.1. Vide letter dated.9.2.1990 (Annexure.R2) the said order was intimated to the applicant. It is further stated that the applicant had submitted a representation before the Pension Adalat on 8.10.2003 and in the proceedings before the Pension Adalat the respondents had already informed the applicant that he was not eligible for pensionary benefits vide letter dated 20.10.2003 (Annexure.R.3) On the above mentioned grounds the respondents prayed for dismissing the application.

2/3

4. During the course of arguments Shri J.K.Mishra, Advocate appearing for the applicant drew my attention towards Annexure.A3 which is the copy of the Circular dated 4.11.2008 issued by the Government of India (Bharat Sarkar) Ministry of Railways (Rail Mantalaya) Railway Board. He submitted that as per the circular the Railway authorities are bound to pass suo motu order with regard to grant of compassionate allowance in case of dismissal or removal of any employee. The learned advocate of the applicant drew my attention towards para 3 of the circular which says " in partial modification of the Board's letter dated 9.5.2005 it has been decided by the Board that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, if any case appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/removed employees. Shri J.K.Mishra, Advocate relying upon the said circular submitted that admittedly in this case the concerned authorities have not passed any order with regard to payment of compassionate allowance at the time of passing the order of removal of the applicant and as such in the light of the circular the respondents should be directed to consider the representation of the applicant and grant compassionate allowance.

5. In reply to this argument, the learned advocate of the respondents placed Annexure.R.4 and submitted that through this letter the competent authority has considered the representation of the applicant for grant of compassionate allowance but found that the applicant was not eligible for

2/10/14

compassionate allowance and so in view of this document ie., Annexure.R.4 it cannot be said that the respondents have not passed any order on the representation of the applicant with regard to compassionate allowance. In this regard, the submission of the learned counsel of the applicant is that Annexure.R.4 is simply an inter-departmental communication and not any order passed on the representation of the applicant reviewing the deserved case for payment of compassionate allowance as per the Circular (Annexure.A3) mentioned above.

6. I have perused Annexure.R.4 and I agree with the view of the learned advocate of the applicant that Annexure.R.4 is simply a communication between the Assistant Divisional Engineer, NW Rly Ratangarh and Divisional Railways Manager/Lit, N.W Railway, Bikaner and so this letter cannot be treated as an order passed by the competent authority on the representation of the applicant with regard to payment of compassionate allowance in the light of Circular (Annexure.A3). In this view of the matter I am of the view that in this case a direction should be issued to the respondents to consider the representation of the applicant for grant of compassionate allowance in the light of Circular dated 4.11.2008 (Annexure.A3) issued by the Government of India, Ministry of Railways (Railway Board).

7. It has been argued by the learned counsel for the applicant that this case is covered by the judgment dated 14.8.2007 of the Hon'ble High Court of Rajasthan at Jodhpur passed in **DB Civil Writ Petition No. 1971/2005 Union of India and others Vs. Deva Khan and others**. He has submitted

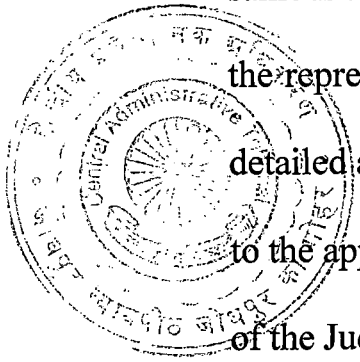
4/5

that Para 7 of the judgment is relevant so far as the case of the applicant is concerned.

8. On the basis of the discussions made above, I am of the view that this is a fit case in which a direction can be issued to the respondents to consider the case of the applicant for grant of compassionate allowance in the light of Circular dated 4.11.2008 (Annexure.A3) and in the light of the judgment of the Hon'ble High Court of Rajasthan at Jodhpur referred above and pass a detailed speaking order.

9. In the result I find that this OA has got merit and accordingly the same is allowed. Respondents are directed to consider the copy of the OA as the representation of the applicant and after due consideration of it, pass a detailed and speaking order with regard to grant of compassionate allowance to the applicant in the light of the Circular Annexure.A3 and also in the light of the Judgment of the Rajasthan High Court at Jodhpur as mentioned above.

It is further ordered that this exercise should be completed within three months from the date of receipt/production of a copy of this order. In the circumstances of the case there will be no order as to costs.



*S.M.M. Alam*

**Justice S.M.M. Alam**  
**Member (Judicial)**

Ks.

5/1/16  
दिनांक 17/1/16 के आदेशानुसार  
मेरी उपस्थिति में दिनांक 12/1/16  
को धारा-II व III लागू किए गए।

अनुमान अधिकारी  
केन्द्रीय प्रशासनिक अधिकरण  
जोधपुर न्यायपीठ, जोधपुर