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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**O. A. No. 174/Jodhpur/2011**

Date of decision: 24.08.2012

CORAM :

**HON'BLE MR. B.K.SINHA, ADMINISTRATIVE MEMBER.**

Harish S/o Shri Kishan Chand Ex Helper-Khalasi,  
T.No. 9700/2003, working under the Shop  
Superintendent NO.3, Northern Railway  
(now North Western Railway), Jodhpur,  
presently residing at 2-Cha-70, Chopasani  
Housing Board, Pulia - I, Jodhpur.

.....Applicant

**[By Mr. N.K.Khandelwal, Advocate]**

**Versus**

1. Union of India through the General Manager,  
North Western Railway, Headquarters Office, Jaipur.

2. The Chief Works Manager, North Western  
Railway, Workshop, Jodhpur.


3. The Assistant Production Engineer, North  
Western Railway, Workshop, Jodhpur.

4. The Senior Personnel Officer, North Western  
Railway, Workshop, Jodhpur.

.....Respondents

**[By Mr. Manoj Bhandari, Advocate]**

**ORDER**



The case of the applicant, simply stated, is that the applicant was a Railway employee working as Ex-Helper Khalasi under the Shop Superintendent - III in North Western Railway, Jodhpur. A punishment of removal from service was imposed upon him w.e.f. 15.03.1995. The applicant contends that an actionable right accrued to the applicant for grant of compassionate allowance as no order had been passed at the time of passing the order of removal from service under Rule 65 (1) of the Railway Services (Pension) Rules, 1993. When appropriate relief was not

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forthcoming from the respondents to his representations, the applicant approached this Tribunal vide OA No. 140/2009 wherein, the Tribunal vide its order dated 29.07.2010 directed the applicant to file a representation before the respondents for grant of compassionate allowance in the light of Railway Board's Circular No. F(E)/III-2003/PN1/5, dated 4<sup>th</sup> November, 2008 within a period of 15 days from the date of receipt of a copy of that order. The Tribunal further directed that such representation, if filed within the stipulated period, should be disposed of in the light of the aforesaid Circular letter of the Railway Board dated 4<sup>th</sup> November, 2008, within three months by means of a detailed and speaking order. The respondents have adduced a copy of the PPO dated 28.07.2012 whereby they have granted Compassionate Allowance to the applicant w.e.f. 7<sup>th</sup> April, 2012. The applicant has referred to the provision 4 of the Railway Board's Circular dated 4<sup>th</sup> November, 2008, wherein, it has been clearly stipulated that the compassionate allowance shall be sanctioned notionally from the date of dismissal / removal to the family eligible for family pension. As such, the applicant does not appear to be satisfied with the compliance and seeks a modification of the same.

3. The learned counsel for the respondents vehemently opposed the plea of the applicant on the ground that on the order of removal from service, employer - employee relationship between the applicant and the North Western Railway had stood severed and does not exist. The compassionate allowance is a charity and not a right, hence, the respondent organization is at liberty to grant the same as per its own convenience. In the instant case, it has been correctly given from the date of sanction. Since, compassionate allowance is not a right the applicant has to take



whatever that comes his way without there being any right to protest.

4. The only issue remaining here to be considered is that from which date, the compassionate allowance shall be granted. In this regard, it is necessary to peruse the order of this Tribunal dated 29.07.2012 passed in OA no. 140/2009, wherein, the Tribunal has directed as under:

**"9. In the circumstances, mentioned above, I feel no necessity to pass any order on merit or on the point of limitation. However, the question is left open to decide if any O.A. is filed in future with regard to the question involved in the present O.A. But at this stage I am of the view that ends of justice would be met, if the applicant is directed to file a representation before the respondents for grant of compassionate allowance in the light of Railway Board's circular dated 04.11.2008 (Annex.A/3) within a period of 15 days from the date of receipt of a copy of this order and if any such representation is made by the applicant for grant of compassionate allowance in the light of the directions contained in the above mentioned Railway Board's circular dated 04.11.2008, within the above stipulated period, then the respondents are directed to pass a detailed and speaking order within a period of three months from the date of receipt of such representation. The O.A. is disposed of with the above observations. No costs."**

5. The aforesaid order of the Tribunal gives opportunity to either grant the compassionate allowance to the applicant in terms of the Circular of the Railway Board placed at Annex.A/3 dated 4<sup>th</sup> November, 2011 and/or a detailed reasoned order. It is also necessary for this purpose to have a look at the provisions of the compassionate allowance. Rule 65 of the Railway Services (Pension) Rules, 1993, Para (1) provides as follows:

**"(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."**

6. The above provision stipulates three things- where the Railway servant is dismissed/removed from service and has

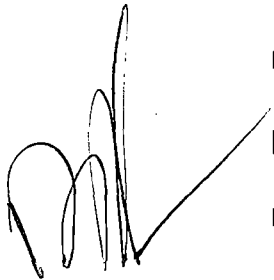
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thereby forfeited his pension and gratuity, the Railway authorities may sanction a compassionate allowance to him where they found him deserving of special consideration; this allowance shall not exceed  $2/3^{\text{rd}}$  of pension or gratuity or both, admissible to him; the allowance shall not be less than Rs. 375/- per month. It is clear from a plain reading of the provision that this allowance is a discretionary provision which rests with the Railways and is not to be claimed as a matter of right in the same manner as pension is.

7. The provision 4 of the Railway Board's Circular provides that :

**"4. In review of such cases, if the Competent Authority sanctions compassionate allowance to a dismissed/removed Railway servant, the same shall be effective from the date of removal/dismissal. In case the Competent Authority decides to sanction family pension to the spouse or eligible family member of the deceased Railway servant, compassionate allowance shall be sanctioned notionally from the date of dismissal/removal to make the family eligible for family pension and in such cases family pension shall be payable for the period commencing from the date following the date of death of the removed/dismissed Railway servant."**

This Circular, when read in totality along with the provision of Rule 65 (1) of the Railway Services (Pension) Rules, 1993, lays down 5 conditions for grant of compassionate allowance. In the first place, the record of the past services should be reasonable; second, the case will be considered on merits that whether there exists such extenuating conditions which make the punishment of dismissal/removal unduly harsh on the individual; third, the authorities have the liberty to decide what kind of service rendered by the applicant may entitle him to compassionate allowance; fourth, the compassionate allowance is not to be granted where a Railway servant has been dishonest and was removed/dismissed on such grounds; and finally the condition of poverty of the individual, spouse and dependant on him is also reckoned for this purpose.



8. It appears from the wordings of paragraph 4 of the Railway Board's Circular that the compassionate allowance shall be effective from the date of removal/dismissal. This provision further provides that where the Railway authorities decide to sanction family pension, the same shall be sanctioned from the date of dismissal/removal notionally and the pension shall commence from the date of death of the removed / dismissed Railway servant. The applicant has relied upon a decision of Bangalore Bench of this Tribunal reported in **(1989) 11 ATC 692 – V. Prakasham Vs. DRM, SC Railway, Hubli and Ors.** In that case, the Tribunal has proceeded to grant compassionate allowance equal to half of the pension which would have been admissible to the applicant had he retired on medical certificate on the date he was removed from service. The Relevant portion of the order in Paras 9 and 10 is reproduced below:

***"9. We have considered the matter carefully. Grant of compassionate allowance can no doubt be made by the authorities themselves when imposing the penalty of removal from service but it will not constitute a part of the quantum of penalty imposed. After the penalty of removal from service is imposed, the disciplinary proceedings are complete. Then the question of compassion enters the picture to consider whether despite the punishment an allowance corresponding to pension should be given. The relevant rule in the Manual of Railway Pension Rules reads as follows :***

***"309 Removal or dismissal from service.- No pensionary benefit may be granted to a railway servant on whom the penalty of removal or dismissal from service is imposed : but to a railway servant so removed or dismissed, the authority who removed or dismissed him from service may award compassionate grant(s) – corresponding to ordinary gratuity and/or death-cum-retirement gratuity-, and/or allowance corresponding to ordinary pension-. When he is deserving of special consideration : provided that the compassionate grant(s) and/or allowance awarded to such a railway servant shall not exceed two-thirds of the pensionary benefits which would have been admissible to him if he had retired on medical certificate.***

***This rule says that ordinarily a person removed from service by way of penalty will not be eligible to pension, but on compassionate grounds a compassionate allowance can be granted. Whether such an allowance should be granted***

*has to be decided after the punishment is imposed; the punishment remains unaffected irrespective of whether a compassionate allowance is or is not granted. Removal from service means that the official concerned will no longer be allowed to stay in service. But whether he should be paid an allowance after removal is a separate matter which does not affect the quantum of punishment already awarded. Therefore, we are unable to agree with Shri Sreeangaiah that we are not competent to consider the grant of compassionate allowance on the ground that it would amount to interfering with the quantum of penalty imposed by the authorities. No doubt the authority concerned has a discretion to grant such compassionate allowance after the imposition of penalty and one course open to us would be to leave it to the said authority to consider the matter. However, it must be remembered that in this case punishment was imposed on the applicant as far back as in 1982 and that for seven years he has been out of employment with no source of income whatsoever. In this peculiar situation we feel that we should not send him back to the authorities for considering the grant of compassionate allowance to him as that would cause him further hardship.*

*10. We are in agreement with Shri Bhat that even though the applicant may have deserved the punishment imposed on him, the benefit of 17 years' service rendered by him prior to the incident leading up to his punishment should not be ignored when it comes to the question of granting compassionate allowance. We, therefore, feel that in terms of Rule 309 to which we have referred earlier, it would meet the ends of justice if the applicant is granted by way of compassionate allowance an amount equal to one-half of the pension which would have been admissible to him if he had been retired on medical certificate on the date from which he was removed from service. We, however, not inclined to grant this benefit with retrospective effect but from the date he was removed from service. We feel that it would be proper to grant him such compassionate allowance from 1.6.1989."*

9. However, in this case the ratio was different from that laid down in the case of **Prakasham**. In **Prakashm's** case the issue was that whether the grant of compassionate allowance amounts to an interference with the order of dismissal. In the instant case, the issue is, from which date, it shall take effect.

10. After having gone through the Circular and the relevant provisions, two things are clear that the compassionate allowance is the matter of discretion to be granted to an employee removed/dismissed where any of the five conditions, as laid down in the Railway Board's Circular of 2008 are fulfilled. It is not to be granted to every dismissed/ removed employee as a matter of course. Since the order for considering grant of compassionate allowance

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has already been passed by this very Tribunal in its order dated 29.07.2010 I am precluded from going into the merits of the order. As regards the effect of the order, the provision of Para 4 of the Railway Board's Circular of 2008 serves to clarify that once it is granted, compassionate allowance shall take effect from the date of the removal / dismissal. One has to go into the intention of the Railway Board as to why this provision was included in the Circular. The reason that appears to be to the undersigned is not a matter of right and is a matter of discretion but once having been granted, the amount should not be left to the discretion of the authorities. It should follow certain rules for the purpose of financial clarity. To that extent I agree with the contention of learned counsel for the applicant.

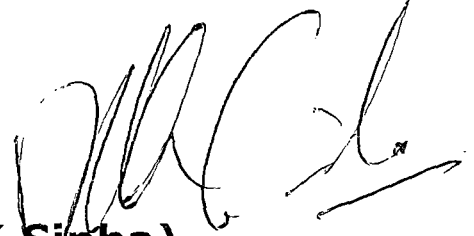
11. The applicant has also argued for the payment of gratuity and other benefits. It is to be pointed-out here that the matter has already been considered by this Tribunal and it has not been worthy found of being allowed in this O.A. Moreover, the question of gratuity has not been raised amongst the reliefs sought. The arguments of the learned counsel for the applicant that it would be covered within "any other relief" are not good enough. This Tribunal is not an emperor of medieval ages to grant relief as per its whims and fancies. It is very much bound by law, rules and regulations whether any relief can be granted to the applicant.

12. In view of the consideration made above, the O.A. is partly allowed with the following directions:



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- i. *The respondents are directed to re-consider the issue of the date of grant of compassionate allowance strictly within the terms of Para 4 of the Railway Board's Circular dated 4.11.2008 and issue revised orders to that effect within a period of 2 months.*
- ii. *There shall be no order as to costs.*



**(B.K.Sinha)**  
**Administrative Member**

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