

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 497/2012

Jodhpur, this the 11th day of March, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)
Hon'ble Ms Meenakshi Hooja, Member (Administrative)**

Hazara Bano wife of late Hussain Bux, aged about 69 years, resident of C/o Shri Nashiruddin, Kalu Bas, Damnio Ki Masjid, Sridungargarh, Distt-Bikaner, her husband was last employed on the post of Trolley Man in the office of PWI-III at Shridungargarh Railway Station, NWR.

.....Applicant

By Advocate: Mr J.K. Mishra

Versus

1. Union of India through General Manager, HQ Office, North-Western Railway, Malviya Nagar near Jawahar Circle, Jaipur-17.
2. Divisional Railway Manager, NWR, Bikaner Division, Bikaner.
3. Assistant Divisional Engineer, North West Railway, Ratangarh Jn.

.....Respondents

By Advocate : Mr. Subhash Kachhwaha proxy counsel.

ORDER (Oral)

The present OA has been filed by the applicant to challenge the order Annexure A/1 dated 01.02.2011 by which respondent department has rejected the claim of the applicant for compassionate allowance in reference to the CAT's order dated 09.12.2010 passed in OA No. 27/2010.



2. Short facts of the case, as averred by the applicant, are that the applicant's husband late Shri Hussain Bux was initially engaged as Casual Labour under IOW-I and II at Hanumangarh and was absorbed on group D post in regular establishment of respondent department and posted in gang NO. 6 under PWI Suratgarh at Rangmehal in the year 1958. Later on Hussain Bux posted under PWI Sudsar and took leave for 3 days from 15.04.1977 due to ill health. Thereafter, he happened to go to Ratangarh and had to remain at home due to his pronged sickness and after some time he took treatment from private medical practicenor. After being fit for duty on 04.04.1988 he reported for duty but he was informed that he had already been removed from service vide penalty order dated 11.06.1984. Late shri Hussain Bux vide letter dated 27.08.1990 was also informed that no pensionary benefits were payable to him since he was imposed the penalty of removal from service. Late Shri Hussain Bux in the year 2009 came to know that vide Railway Board circular RBE No. 164/2008, it has been provided that cases of employees, who were removed or dismissed from service as a measure of penalty and the disciplinary authority, had not passed any specific orders for or against grant of compassionate allowance, may be reviewed. Late Shri Hussain Bux submitted a detailed and self contained representation on 14.07.2009 but the competent authority did not decide the same, therefore, Shri Hussain Bux preferred an OA No. 27/2010 before this Tribunal and this Tribunal vide order dated 09.12.2010 disposed the same with a direction to consider the case of Shri Hussain Bux in the light of circular dated 04.11.2008 and the

judgment in case of Union of India vs. Deva Khan & Ors, DBCWP No. 1971/2005 dated 14.08.2007, passed by Hon'ble Rajasthan High Court at Jodhpur. The respondent-department abruptly rejected the representation of Shri Hussain Bux vide order dated 01.02.2011 (Annex. A/1) on the ground that he was unauthorizely absent from duty and proceeded out of India without prior permission of the competent authority, which shows that Shri Hussain Bux is dishonest and unreliable with railway duties and it gave fatal shock to Shri Hussain Bux and he died soon after on 17.02.2011. Therefore, the applicant i.e. the wife of late Shri Hussain Bux filed this OA seeking following relief (s):

- (i) That the impugned order dated 01.02.2011 (Annex. A/1) passed by the 3rd respondent, rejecting the case of the applicant's husband for grant of compassionate allowance, may be declared illegal and the same may be quashed. The respondents may be directed to grant compassionate allowance to her deceased husband as per the rules in force and directions of this Hon'ble Court in his previous OA and allow all consequential benefits thereof.
- (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 awarded.

3. By way of reply, the respondents have averred that in pursuance to direction given by the Hon'ble Tribunal applicant's husband submitted representation and his representation was again reconsidered by the respondent-department and thereafter a speaking order Annex. A/1 dated 01.02.2011 was passed. In the order

it has been specifically submitted that charge sheet was issued to applicant's husband for alleged unauthorized absence from duty from 18.04.1977 to 02.05.1983 and the same was of more than six years. As applicant's husband remained unauthorized absent from duty, therefore, inquiry was initiated and for this charge sheet was prepared and the same was also sent by registered postal dak but the same was not served upon Shri Hussain Bux as he was not found at home. As the charge sheet could not be served upon Shri Hussain Bux , an ex-party enquiry was initiated and in the inquiry it was proved from two witnesses Shri Chand Khan and Shri Rahim Bux, who were residing near Shri Hussain Bux home that Shri Hussain Bux has gone out of India. Thus, Shri Hussain Bux remained unauthorized absent from duty and further without seeking prior permission from competent authority he had gone out of India which was ample proof to show that he was dishonest and unreliable towards railway duty and as per circular no. 164/2008 compassionate allowance will not be paid to those railway servants who are dishonest. Shri Hussain Bux was removed from service because he remained unauthorizedely absent and thereafter without taking prior permission from competent authority had gone out of India. This fact is enough to show that the applicant's husband was dishonest towards his duty, therefore, the applicant's husband was not entitled to get any compassionate allowance and the respondents prayed to dismiss the OA.

4. Heard both the counsels. Counsel for the applicant contended that vide Railway Board circular No. 164/2008, it has been provided

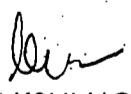
that cases of employees, who were removed or dismissed from service as a measure of penalty and the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, may be reviewed and the applicant's husband was removed from service due to unauthorized absence and the same does not involve any moral turpitude or dishonesty, thus, claim of applicant's husband has not been considered as per the rules and instruction in force. He further contended that in one of the case of a much grave nature of accident, the Hon'ble High Court of Rajasthan at Jodhpur, was pleased to recommend grant of compassionate allowance vide order dated 14.08.2007 passed in Deva Khan v. UOI & Ors, DBCWP No. 1971/2005 and this Tribunal while passing the order in OA No. 27/2010 directed the respondents to take the same into consideration but the same has not even been referred in the order Annex. A/1. Therefore, Annex. A/1 may be quashed.

5. Per contra counsel for the respondents vehemently contended that Annex. A/1 order has rightly been passed by the respondent-department as the husband of the applicant was working on the post of Trolley-Man and the post of Trolley-Man is of great importance and related to safety but husband of the applicant had gone absent without submitting any application for a period of more than 6 years and further he went out of India without taking prior permission from competent authority, this amply shows that he was dishonest and had intentionally gone out of India to earn more money. The facts of Shri Deva Khan vs UOI & Ors is different and applicant on the basis of

judgment cannot get his right to get the compassionate allowance and the order Annex. A/1 is passed after due application of mind by the respondent-department and cannot be said to be illegal.

6. We have considered the rival contentions and also perused the judgment referred in OA. Earlier, this Tribunal has directed the respondent-department to consider the copy of the OA as representation of the applicant and pass a detailed and speaking order with regard to grant of compassionate allowance to Shri Hussain Bux in the light of judgment referred by the counsel for the applicant. Looking to the entire facts and circumstances of the case especially looking to the fact that Shri Hussain Bux has died just after passing of the order Annex. A/1 by the respondent department, we intend to dispose of this OA with the direction to the respondent-department to reconsider the grant of compassionate allowance to late Shri Hussain Bux. Accordingly, Annex. A/1 is quashed and respondent-department is directed to re-consider the case of the applicant.

7. In terms of above direction, OA is disposed of with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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Date
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