

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 322/2013

Jodhpur this the 25th day of February, 2014.

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J)

Idan Puri s/o late Shri Dev Puri, Ex Skilled Fitter Ticket No.59, Shop No.1, Northern Railway Workshop, Jodhpur now North Western Railway, Workshop, Jodhpur, presently resident of Juni Bagar, Shiv Mandir Ki Gali, Mahamandir, Jodhpur

.....Applicant

(Through Advocate Mr N.K.Khandelwal)

Versus

1. Union of India through the General Manager Northern Railway, New Delhi, now General Manager, North Western Railway, Headquarters Office, Jaipur.
2. Chief Works Manager, North Western Railway, Workshop, Jodhpur.
3. Sr. Personnel Officer, Chief Works Manager's Office, North Western Railway, Jodhpur.
4. Senior Accounts Officer, Chief Works Manager's office, North Western Railway, Jodhpur

..... Respondents

(Through Adv. Mr Kamal Dave)

ORDER (Oral)

In the present OA, the applicant has challenged the order dated 24th February, 1993 by seeking the following reliefs:-

- 1- By an appropriate Writ, Order or Direction, the respondents may kindly be directed to review the case of the applicant on the authority of the Railway Board's letter dated 4.11.2008 (Annex.A-2) and the judgments delivered by this Hon'ble Tribunal in OA No.150/2009 and 174/2011 in connection with Harish

vs. UOI and Ors. delivered on 29.07.2010 and 24.08.2012 respectively.

2- By an appropriate Writ Order or Direction, the impugned order dated 24.2.1993 (Annex.A/1) may kindly be declared as illegal and the same may be quashed. Further, the respondents may kindly be directed to pay all the due retiral benefits viz. (i) pension (ii) gratuity, (iii) provident fund (iv) leave encashment (v) medical allowance and (vi) commutation etc.

3- By an appropriate Order or direction, the disciplinary authority may kindly be directed to implement compassionate grant to the applicant in its true sense whereas in fact the respondents have complied the compassionate grant sanctioned to the applicant in a wholly camouflage manner. Further, the respondents may kindly be directed to grant compassionate allowance to the applicant as granted in the case of V. Prakasham vs. DRM, South Central Railway, Hubli and Ors. reported in 1989 (2) ATC 692 (Annex.A-4) with due accrued interest and exemplary costs.

4- Any other relief which this Hon'ble Tribunal deems just, fit and proper in the facts and circumstances of the case, be also granted in favour of the applicant."

2. Short facts of the case, as stated by the applicant, are that the applicant was appointed on 25th April, 1956 as Khalasi in the then Northern Railway Workshop, Jodhpur. A case of theft of railway property was lodged against the applicant and on the basis of the evidence of RPF staff the Railway Magistrate held the applicant guilty of the offence and considering his past service the Railway Magistrate granted benefit of Section 4 of Probation of Offenders Act, 1958 and directed the applicant to keep peace. Thereafter on the basis of Court's order, the Disciplinary Authority issued order of dismissal from service dated 27th February, 1971 under Rule 14(1) of the Railway Servants (Discipline and Appeal) Rules, 1968. After dismissal of the applicant, he approached Central Administrative Tribunal/High Court/Labour Court and lastly he again filed OA No.387/1992 before this Tribunal, which was disposed of vide order

dated 7.9.1994 with a direction to the respondents that the applicant will make a representation for grant of compassionate allowance before the concerned authorities who will decide the representation in view of Rule 309 and 310 of the Manual of Railway Pension Rules, 1950 within a period of four months from the date of the order. In compliance of the order dated 7.9.1994, the applicant filed representation to the Dy. Chief Mechanical Engineer, Workshop, Jodhpur, who before considering the representation granted compassionate grant to the applicant vide order dated 24.2.1993 (Ann.A/1). The applicant has stated that the OA No.387/1992 was decided on 7.9.1994 and since then the respondents are silent. The applicant has further stated that the Railway Board order dated 4th November, 2008 provides that in a case where the Disciplinary Authority has not passed any order suo moto at the time of dismissal then in that case the Disciplinary Authority can review and consider a representation from the applicant for grant of compassionate allowance. In this letter, the Railway Board has granted liberty to employees who were dismissed but at the time of dismissal no specific order for or against grant of compassionate allowance was passed. The applicant has referred the judgment of the CAT-Bangalore Bench in OA No.1064/1988 in the case of V.Prakasham vs. D.R.M. South Central Railway, Hubli wherein it is held that C.A.T. is competent to grant compassionate allowance. The applicant has further stated that the pension scheme came into effect w.e.f. 1.4.1957 and the applicant is the appointee of 1956 besides this, the applicant has submitted his option for pension well in time to his concerned office and when the competent authority has granted for sanction of compassionate grant to the applicant then it implies that the applicant is a pension optee. Therefore, aggrieved

with the inaction on the part of the respondents, the applicant has filed the present OA for the reliefs as mentioned in para-1 above.

3. The respondents by way of filing reply have denied the right of the applicant and submitted that in view of conviction, the applicant was dismissed from service in application of Rule 14 (1) of Railway Servants (Discipline and Appeal) Rules, 1968. Previously the applicant approached the Hon'ble Tribunal by way of filing OA No.387/92 by which the Tribunal directed to consider the applicant's representation vide order dated 7.9.94. After rejection of representation, the applicant further approached the Industrial Tribunal cum Labour Court for same relief where also claim of the applicant was rejected vide award dated 23.11.2001 which was challenged before the Hon'ble High Court in S.B.Civil Writ Petition No. 3748/2002 and the same was also dismissed by the Hon'ble High Court vide judgment dated 16.10.2006. The respondents have further submitted that the applicant sought relief for compassionate allowance before this Tribunal in the year 1992 and also before the Labour Court after the representation of the applicant was rejected by the administration preferred in furtherance of judgment dated 7.9.1994. The Industrial Tribunal cum Labour Court rejected the claim of the applicant and the same was affirmed by the High Court vide its judgment dated 16.10.2006. Since the question of grant of compassionate allowance already stands adjudicated by the Industrial Tribunal cum Labour Court and the same was further affirmed by the Hon'ble High Court, hence no further prayer or ground can be raised in support of the relief which has already stands rejected. Therefore, the respondents pray for dismissal of the OA.

4. Heard both the parties. Counsel for the applicant contended that the applicant's earlier OA was disposed of by this Tribunal vide order

dated 7.9.1994. In the above OA, this Tribunal directed the applicant to deposit the amount paid vide letter dated 24.2.1993 and file representation and the respondent-department was directed to decide the representation filed by the applicant keeping in view Rule 309 and 3010 of the Manual of Railway Pension Rules, 1950 within a period of four months. He further contended that the Railway department has not paid any amount to the applicant and the applicant is entitled to receive the compassionate allowance as per Rule 309 and 310 and in view of RBE No.164/2008 dated 4.11.2008 for review of case of the applicant, as the applicant's case is still pending before the competent authority. Counsel for the applicant further contended that in the similar circumstances CAT-Bangalore Bench in OA No.1064/88 decide on June 21, 1989, held that the Tribunal itself can grant compassionate allowance and further the CAT-Lucknow Bench in OA No.386/1991 vide judgment dated 7th August, 1977 held that where the property stolen was worth Rs.10, punishment of removal or dismissal was too rigorous and the same was quashed by the Tribunal. The learned counsel further contended that the order Ann.A/1 is per-se illegal because the respondent department by way of Ann.A/1 informed that he is entitled to compassionate grant of Rs. 575/- and further it has been informed that the applicant is governed by the PF Rules whereas as per explanation to Rule 308 of Railway Pension Rules, all the posts in the Railways will be deemed to have been pensionable from beginning therefore, the applicant is also entitled for review of his case as per RBE No.164/2008 dated 4.11.2008.

5. Per contra, the counsel for the respondents contended that the earlier OA bearing No.387/1992 was disposed of by this Tribunal vide judgment dated 7.9.1994. The applicant has challenged legality of the

order Ann.A/1 as well as his dismissal before the Industrial Tribunal cum Labour Court and the Labour Court dismissed the claim of the applicant against which the applicant filed Civil Writ Petition No. 3748/2002 which was also dismissed by the Hon'ble High Court. The issue raised in the case before the Labour Court which was affirmed in the Writ Petition before the Hon'ble High Court as also the issue raised in earlier OA No. 387/92 were similar to the issue involved in the present case, therefore, now the applicant cannot be allowed to agitate the same issue again before this Tribunal because the matter has attained finality after decision in the Writ Petition No.3748/2002 filed by the present application. In that Writ Petition also, the applicant's eligibility for compassionate allowance was considered and the Writ Petition was dismissed while affirming the judgment dated 23.11.2001 passed by the Industrial Tribunal cum Labour Court.

6. Counsel for the applicant further contended that the advocate for the applicant failed to brought to the notice of the Hon'ble High Court as well as Labour Court and this Tribunal the right facts and law, and in these circumstances, the applicant cannot be allowed to suffer for the mistake of the counsel and in support of his contention relied upon the judgment of the Division Bench of the Rajasthan High Court passed in Writ Petition No. 2164/2011 dated 19.7.2011.

7. Pondering over the arguments advanced by both the parties, so far as judgment passed by the Division Bench in Writ Petition No.2164/2011 is concerned, the facts of the case were entirely different and in that case the petition was dismissed in default and it was restored by the Division Bench of the Rajasthan High Court. In this particular case, it cannot be

said that the application filed by the applicant was ever dismissed in default.

8. In addition to it, I have perused Ann.A/3 judgment dated 7.9.1994. From this judgment it is clear that the applicant has challenged legality of Ann.A/1 by which some amount was paid to the applicant and this Tribunal directed the applicant to deposit the amount paid vide letter dated 24.2.1993 but the applicant has not averred in the OA whether the amount paid vide Ann.A/1 was ever deposited by him before filing the representation.

9. Further, so far as right of the applicant for review as per RBE No.164/2008 is concerned, the following essential conditions are required to be fulfilled for each review:-

(i) Only those past cases can be reviewed where records pertaining to D&A proceedings and Service records are available. D&S proceedings are essential to take a fir decision duly considering the gravity of the offence and other aspects involved therein and to confirm that the question of sanction or otherwise of compassionate allowance was not considered by the competent authority at any stage. Service records are essential to adjudge the kind of service rendered by the dismissed/removed employee and to determine the net qualifying service for working out the quantum of compassionate allowance, if sanctioned.

(ii) Each case will have to be considered on its merits and conclusion reached on the question whether there were any extenuating factors associated with the case that would make the punishment of dismissal/removal, which though imposed in the interest of the Railways, appear unduly hard on the individual.

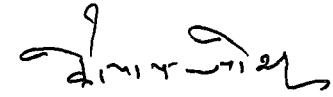
(iii) Not only the grounds on which the Railway servant was removed/dismissed, but also the kind of service rendered should be taken into account.

(iv) Award of compassionate allowance should not be consider if the Railway servant had been dishonest, which was a ground for his removal/dismissal.

(v) Though poverty is not an essential condition precedent to the award of compassionate allowance, due consideration can be made of the individual's spouse and children dependent upon him.

10. From condition No. (iv) it is very clear that in case of Railway servant had been dishonest and which was a ground of his removal/dismissal, payment of compassionate allowance cannot be considered. The applicant was removed on account of the judgment of the Railway Magistrate Court dated 23.9.1969 by which he was found guilty for the offence under RPUP Act. The counsel for the applicant contended that the amount of theft of property was so meager and the punishment order and order for non-payment of compassionate grant are disproportionate and on this account also he is entitled to have review of the order Ann.A/1. So far as this contention is concerned, the same cannot be accepted because the applicant has not challenged the legality of removal or dismissal in this OA and the judgment cited by the counsel for the applicant are passed on different facts in which the legality of dismissal or removal was challenged by the applicant. When the order of the Railway Magistrate dated 23.9.1969 has attained finality, in my considered view, whatever may be the facts, without challenging the legality of the order of removal or dismissal whether the punishment was proportionate to the offence or not, the same cannot be considered. Here it is very import that when the applicant has challenged legality of order Ann.A/1 as well as his removal order before the Industrial Tribunal cum Labour Court, which was dismissed by the Labour Court and the same was challenged by the applicant before the Rajasthan High Court by filing Writ Petition, which too was dismissed by the Hon'ble High Court, therefore, the applicant cannot be allowed to re-agitate the same issue again before this Tribunal.

11. Consequently, the OA is dismissed being devoid of any force with no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

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