

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 446/JODHPUR/2013

Jodhpur, this the 16th day of January, 2015

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, 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 Chopasni Housing Board, Pulia No.1, Jodhpur

.....Applicant

By Advocate: Mr. N.K.Khandelwal.

Versus

1. Union of India through the General Manager, Northern Western Railway, Headquarters Office, Jaipur
2. Chief Works Manager, North Western Railway, Workshop, Jodhpur
3. Assistant Production Engineer, N.W.RLY. Workshop, Jodhpur
4. Senior Personnel Officer, N.W. Railway Workshop, Jodhpur

.....Respondents

By Advocate : Mr. Salil Trivedi

ORDER (ORAL)

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

"(a) By an appropriate writ, order or directions the respondents may kindly be directed to pay the following pensionary and other terminal benefits:-

- (i) Computation of pension
- (ii) Payment of Provident Fund amount
- (iii) Payment of Gratuity
- (iv) Payment of Insurance amount (proportionately)
- (v) Payment of leave encashment
- (vi) Payment of fixed medical allowance w.e.f. 01.01.99
- (vii) Payment of out standing bonus, if any.



- (b) *Any other relief which in the facts and circumstances of the case warrants.*
- (c) *That the costs and the accrued interest may also be allowed."*

2. Brief facts of the case, as averred by the applicant, are that the applicant was initially appointed on 22.8.1981 in Group-D service and was further promoted as Helper Khalasi. In the year 1991, the applicant fell sick and went to a private Doctor as he was residing too far from the Railway Hospital. On account of private sick, the applicant was considered unauthorized absent from railway duty and was issued a chargesheet and after holding department proceeding, he was removed from service. Against the removal order, the applicant filed appeal, which was also rejected by the Appellate Authority. Thereafter, the applicant was granted compassionate allowance from the date of issuance of letter dated 7.4.2012, which was challenged by the applicant by filing OA before this Tribunal and the Tribunal allowed the compassionate allowance w.e.f. the date of removal. The applicant has also filed OA No.174/2011 before this Tribunal which was disposed of by this Tribunal vide order dated 24.8.2012. In compliance of the order dated 24.8.2012, the respondents have granted only pension to the applicant and have denied the other pensionary and terminal benefits. As such, the applicant has had to file the present application for other pensionary and terminal benefits as extracted in para-1 above.

3. By way of filing reply to the OA, the respondents have submitted that the applicant is not entitled to seek the relief as claimed in this OA, inasmuch as, the applicant in his earlier OA no.174/2011 has sought the same relief as is evident from perusal of order passed by this Tribunal on 24.8.2012. Thus, the relief sought by the applicant is hit by the principle of res-judicata. It has been

further submitted that a railway servant who is dismissed or removed from service shall forfeit his pension and gratuity and the competent authority in a case deserving special consideration may sanction compassionate allowance not exceeding $\frac{2}{3}$ of the pension or gratuity or both which would have been admissible, if he had retired on compensation pension. The competent authority has already sanctioned the compassionate allowance looking to the circumstances by exercising its power under the rules, but granting of compassionate allowance is the discretion of the authority competent to sanction and the same does not entitle any employee to claim all other retiral benefits as if he was retired from service honourably and not removed from service. In the instant case, the applicant is claiming all the retiral benefits after grant of compassionate allowance after being removed from service as if the applicant is retired from service after attaining the age of superannuation. If the applicant is granted the relief as sought, then it would be against the basic principle of service jurisprudence and this will be a premium extending to such employees who are guilty of committing misconduct during service and when they are removed from service, they can claim all the retiral benefit by misinterpreting the rules of granting the compassionate allowance which is not permissible under the service jurisprudence. The reliance placed by the applicant upon Para 307 of MOPR 1950 is highly misconceived and misleading. Therefore, the OA filed by the applicant is totally misconceived and the same deserves to be dismissed.

4. The applicant has filed rejoinder to the reply filed by the respondents and reiterated the averments made in the OA.

5. Heard both the parties. Counsel for the applicant submits that earlier in OA No.174/2011, decided by this Tribunal vide order dated 24.08.2012, the following order was passed:-

- “(i) The respondents are directed to re-consider the issue of the date of grant of compassionate allowance strictly within the terms of Para 34 of the Railway Board’s Circular dated 04.11.2008 and issued revised order to that effect within a period of 2 months.
- (ii) There shall be no order as to costs.”

Counsel for the applicant contended that the respondents were to directed to re-consider the issue of the date of grant of compassionate allowance strictly within the terms of Para 34 of the Railway Board’s Circular dated 04.11.2008 and issue revised order to that effect within a period of 2 months. Counsel for the applicant submits that although the compassionate allowance has been sanctioned to the applicant but no pensionary benefits, gratuity, computation, PF and medial allowance has been sanctioned to the applicant, and as per paras 309 and 310 of the Manual of Railway Pension Rules, 1950 (Annexure-A/5), these also come under the pension and further the amount has not been calculated as per para 309 and 310 of the Manual of Railway Pension Rules 1950. Counsel for the applicant further contend that the compassionate amount must not exceed two-thirds of the pension, this clearly connotes that the compassionate allowance is a pension and the applicant is entitled to have the pensionary benefits, gratuity, computation, PF and fixed medical allowance per month. Counsel for the applicant further contends that in the earlier OA although the order was passed to reconsider the case of the applicant regarding compassionate allowance and the competent authority ought to have considered his case in view of the provisions of para No.309 and 310 of the Manual of Railway Pensionary Rules, 1950, which they have failed to do.

6. Per contra, counsel for the respondents contended that the relief sought by the applicant is barred by the principle of res judicata because in earlier OA the same reliefs have been claimed by the applicant but earlier while considering all the facts and circumstances of the case, the learned Tribunal found other benefits not worthy of being allowed and the question of gratuity has been raised among the relief sought therefore that relief was also not granted by the Tribunal.

7. We have perused the judgment dated 24.08.2012 passed in the earlier OA No. 174/2011. The same reliefs have been sought by the applicant in the earlier OA and the same have been denied by considering each and every ground and contentions raised by the applicant. In our considered view as per the paras No.309 and 310 of Manual of Railway Pension Rules 1950 it cannot be said that the fixed compassionate allowance is a part of the pension, gratuity or other pensionary benefits and further granting the same is entirely a discretionary relief which is to be exercised by the competent authority looking into the entire facts and circumstances of the case.

8. Accordingly, the applicant is not entitled to get any benefit except granted by the Bench of this Tribunal in OA No.174/2011. The OA is thus dismissed with no order as to costs.



[Meenakshi Hooja]
Administrative Member



[Justice K.C. Joshi]
Judicial Member