

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 523 OF 2008

Monday, this the 15th day of June, 2009.

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER

M. Joseph,
Safaiwala (Retd.), Mangalore,
Southern Railway, Palghat Division. **Applicant**

(By Advocate Mr. Siby J. Monippally)

versus

1. Union of India represented
by the General Manager,
Southern Railway, Chennai.
2. The Senior Divisional Personal Manager,
Southern Railway,
Palghat Division, Paighat. **Respondents**

(By Advocate Mr. Thomas Mathew Nellimootttil)

The application having been heard on 10.06.2009 the Tribunal on
15-06-09 delivered the following:

ORDER

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

This application has been filed praying for compassionate allowance sanctioned to the applicant with effect from 17.07.2003 be advanced from 04.08.1998. Briefly stated, the applicant was earlier working as Safaiwala in the Railways since 1981 was on disciplinary grounds removed from service on 04.08.1998. The applicant was in fact convicted under the Indian Penal Code to undergo rigorous imprisonment for one year and a fine of Rs.1,000/- in default, 3 months rigorous imprisonment by the Chief Judicial Magistrate, Mangalore in C.C. No.15/86.

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On the basis of that conviction the respondents had invoked the provisions of Rule 14(i) of Railway Servants (Discipline and Appeal) Rules, 1968 and dismissed the applicant from service with effect from 29.12.1988. However, later on appeal, when the conviction was set aside by the Appellate Authority, the applicant was reinstated in service on 06.05.1992. After such reinstatement, on charges of unauthorized absence, the applicant was proceeded against departmentally under Rule 9 of Railway Servants (Discipline & Appeal) Rules, 1968 which culminated into a penalty of removable from service with effect from 04.08.1998.

2. Provisions exists under Para 65 of the Railway Services (Pension) Rules 1993, for grant of compassionate allowance to a Railway employee who is dismissed from service. The applicant preferred an application for the same to the Authority concerned vide his representation dated 20.01.2003. On consideration of the same, the Authorities had sanctioned compassionate allowance equal to the 50% of pension and 50% of gratuity which would have been admissible to the applicant if he had retired on compensation pension. Order dated 25.07.2003 at Annexure A1 refers. The applicant has been enjoying the same since then.
3. In this O.A. the applicant has claimed pension with effect from 04.08.1998.
4. Respondents have contested the O.A. They had raised objection by way of limitation. In addition, they had stated that applicant's very request for compensation pension was dated 20.01.2003. As such he cannot claim for the post period any compassionate allowance.

5. Counsel for the applicant submitted that under Rule 65, the Competent Authority can sanction compassionate allowance in deserving cases, in the case of dismissal or removal from service. According to the guidelines issued by the Board, it is for the Railways, without any need for the Railway Servant to apply, to consider and grant any deserving case the compensation pension. As since the respondents have not consider at the time of passing of the penalty order the aspect of compensation pension, when they had appreciated that the case of the applicant deserves compensation pension, it would be appropriate if such pension is granted immediately from the date of removal from service.

6. Counsel for the respondents submitted that the application is barred by limitation and the applicant has applied for compensation pension only in 2003.

7. Arguments were heard and documents perused. Rule 65 of the Railway Services (Pension) Rules reads as under :-

"65. Compassionate allowance

(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.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than Rupees three hundred seventy-five rupees per mensem (now Rs. One thousand two hundred and seventy-five from 1.1.1996 mensem)."

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The Railway Board order in regard to grant of compassionate allowance reads as under :-

" 2. The existing guiding principles and procedures for grant of compassionate allowance or gratuity or both are reiterated hereunder for compliance by the concerned authorities :-

- (i) The decision for grant of compassionate allowance or gratuity or both, or otherwise, shall be taken at the time of passing orders of removal/dismissal keeping in view the guidelines given in para 310 of the Manual of Railway Pension Rules, 1950.
- (ii) If no mention about the compassionate allowance, etc. is made by the competent authority while passing orders of removal/dismissal, the concerned Head of Office shall resubmit the case file along with relevant information/guidelines to the concerned competent authority and obtain its decision for or against sanction of compassionate allowance or gratuity or both.
- (iii) If the decision is for grant of compassionate allowance, etc., necessary action to implement the same shall be taken by the Head of Office based on the decision of the appellate authority on the penalty orders passed by the disciplinary authority.
- (iv) If no appeal is preferred within the target date, sanction order shall be issued immediately thereafter.
- (v) If the appeal is preferred within the target date, and a decision has already been taken for or against sanction of compassionate allowance, etc., and the same is not turned down by the appellate authority, such a decision shall be treated as final and no representation in this respect shall be entertained at a later date.
- (vi) The decision to grant compassionate allowance, etc., shall be communicated through a separate order. This decision shall not form part of the order under which the penalty of removal or dismissal is imposed."

8. A reading of the above would go to show that the decision for grant of compassionate allowance shall be taken under the time of passing

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orders of dismissal/removal of the Railway servants. Necessity for the Railway servants to apply for it may arise only when the dismissed Railway servant prefers an appeal. If no appeal is preferred within the prescribed period, sanction order shall be issued immediately thereafter. Thus the duty cast upon the respondent Railway in coming to a decision in regard to grant of compassionate allowance is specific and no where the rules warrant application by the individuals. From that point of view the objection raised by the respondents to the effect that the applicant has preferred his representation only in January 2003 does not hold good. Even if that be taken into account sanction of compassionate allowance has been made available only with effect from 17.07.2003 and not earlier. Thus there is a clear default on the part of the respondents in not acting in accordance with the Railway Board Circular and Para 65 of the Railway Services (Pension) Rules.

9. But, in so far as limitation is concerned the question is whether the O.A. is hit by bar of limitation. Though in the reply statements the respondents have referred to limitation, it was not emphasized during argument. Nevertheless, the fact remains that the period involved being from 04.08.1998 and the application having been made on 1st September, 2008, there has been a delay of at least 9 years (1 year being allowed as per the Rules) from the date of course of action. The course of action again arose in 2003 when the applicant could have moved the Tribunal. That has also not been done. It is not the case of the applicant that he had made some representations but the same had been rejected in the recent past. In that event also perhaps the applicant could have justified in not approaching the Tribunal earlier. In any event, in such cases, the relief is



restricted to only for a period of three years from the date of filing of the petition, as held in the case of *Union of India vs Tarsem Singh (2008) 8 SCC 648*, wherein the Apex Court has held as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

8. In this case, the delay of sixteen years would affect the consequential claim for arrears. The High Court was not justified in directing payment of ~~arrears~~ relating to sixteen years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

10. In the instant case, the applicant has filed the OA in 2008 and his pension stood sanctioned right from 2003. As such, he cannot be allowed to claim from the beginning the pension, though he had a right, because of

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limitation. The applicant has to blame himself for courting such a situation.

11. In view of the above, I have no option but to reject the O.A. No orders as to cost.

Dated, the 15th June, 2009.



**Dr.K.B.S.RAJAN
JUDICIAL MEMBER**

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