

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 547 of 2013

Friday, this the 4th day of September, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member

S. Usha, aged 48 years, W/o. (late) R. Susheelan,
 Residing at : Vilayil Veedu, Thinavila,
 Keezhattingal, (via) Attingal, Thiruvananthapuram District,
 Kerala State, Pin – 695 101. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. Union of India, represented by the General Manager,
 South Western Railway HQ, Hubli PO, Pin – 580 020,
 Dharwar District, Karnataka.
2. The Sr. Divisional Railway Manager,
 South Western Railway, Mysore Division, Mysore-570 021.
3. The Divisional Personnel Officer, South Western Railway,
 Mysore Division, Mysore – 570 021.
4. The Sr. Divisional Engineer, South Western Railway,
 Mysore Division, Mysore – 570 021. **Respondents**

(By Advocate : Mr. Sunil Jacob Jose)

This application having been heard on 04.09.2015, the Tribunal on the same day delivered the following:

O R D E R

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

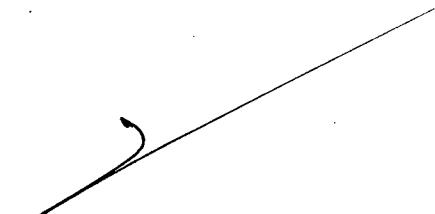
The applicant claims to be the wife of Shri Susheelan who was working as a Trackman under Senior Section Engineer, Sakaleshpur. The applicant is a resident of Trivandrum District. The applicant contends:

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Susheelan used to visit the family consisting of the applicant and her two sons only occasionally. He left the house in 2007; thereafter nothing was heard of him. The applicant submitted a representation vide Annexure A1 on 1.1.2010. Another representation Annexure A2 was also sent to which Annexure A3 and A4 replies were given. It was stated in Annexure A4 that Susheelan was guilty of unauthorized absence and that he had already been removed from service with effect from 24.6.2008. As Susheelan was not heard of for several years a presumption of death is to be drawn. A complaint was given by the applicant to trace Susheelan to Kadakkavoor Police Station on 14.6.2010 vide Annexure A6. Annexure A8 representation was given by the applicant followed by Annexure A9 dated 13.12.2012. Yet another representation Annexure A10 was also given. The respondents did not consider the length of service of Susheelan the husband of the applicant. The benefit of compassionate allowance should have been given to the applicant as provided in Rule 65 of Railway Services (Pension) Rules, 1993. Thus, the applicant has filed this Original Application seeking a direction to the 2nd respondent to consider Annexures A8 and A9 representations and to grant her the benefit of family pension and compassionate allowance as provided under the relevant rules.

2. The respondents filed reply statement admitting the fact that Susheelan was engaged as a Mazdoor and he was granted temporary status with effect from 1.1.1984 and was posted to Sakaleshpur. The contention that the applicant's husband was not heard of is incorrect. The representations Annexures A1 and A2 were forwarded to ADEN/Sakaleshpur as per

Annexure A3. The applicant was also informed that Susheelan was removed from service with effect from 24.6.2008 vide Annexure A4. Susheelan was issued with a charge memorandum on the charge of unauthorized absence from 18.5.2006 to 20.8.2006. The acknowledgment received on 14.12.2006 and 27.1.2007 is evidenced by Annexures R1, R2 and R3. Susheelan was a habitual absentee. He was imposed with punishment earlier also and finally he was removed from service with effect from 24.6.2008 for unauthorized absence. Therefore, the plea raised by the applicant that she is entitled for family pension and other terminal benefits is untenable. Annexures A8 and A9 representations were for compassionate employment to the applicant's son. Those representations were under examination. In fact Annexure A10 is an unsigned representation. The employee (Susheelan) was charge sheeted for the unauthorized absence and he had in fact acknowledged the charge memorandum and also some of the notices issued to him relating to the inquiry conducted in the matter but Susheelan did not bother to submit any explanation nor did he participate in the inquiry. The averment made by the applicant that her husband has been missing has been stated for the 1st time in 2010 after a period of three years from the date of the inquiry; namely, after the inquiry notices were sent to Susheelan in January and March, 2007. No application was submitted specifically requesting for grant of compassionate allowance. The FIR was lodged not during the period of absence for which action was taken against Susheelan. That FIR was lodged only as an after thought in order to seek family pension/compassionate allowance.



3. The point for consideration is whether the applicant is entitled to get the benefit of family pension or compassionate allowance or such other benefits as claimed in the application?

4. I have heard the learned counsel appearing for the parties and also gone through the pleadings and documents.

5. Annexure A1 is the letter dated 1.1.2010 sent by the applicant to the Section Engineer, South Western Railway, Sakaleshpur stating that she and her children are not being looked after by her husband. Annexure A2 is another letter dated 10.1.2010 where it was stated that her husband had completed 19 years of service and that she and her two children are staying at Trivandrum. It was also stated that he was not looking after the applicant and her children. Annexure A3 is the letter sent from the Divisional Office to the ADEN/Sakalespur as per which the complaint given by the applicant was forwarded. As per Annexure A4 dated 5.5.2010 the Divisional Engineer informed the applicant that R. Susheelan mentioned above was continuously absent from duty from 21.8.2006 to 22.6.2008 and that he was subsequently removed from service with effect from 24.6.2008. It was also stated that the order was communicated in the permanent address which is also the address of the applicant but it was returned unserved.

6. The respondents would contend that since Susheelan had already been removed from service with effect from 24.6.2008 nothing can be built based on the letters sent by the applicant in 2010 nearly two years after the

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3. The point for consideration is whether the applicant is entitled to get the benefit of timely hearing of compensation claim on the basis of the benefits as claimed in the application?

4. I have read the hearing counsel application for the hearing and also some through the pleadings and documents.

5. Annexure A1 is the letter dated 1.1.2010 sent by the applicant to the Section Officer, South Western Railway, Skraveshant station that she and her children are not being looked after by her husband. Annexure A2 is another letter dated 10.1.2010 where it was stated that her husband had completed 10 years of service and that she and her two children are staying at Jhansidih. It was also stated that he was not looking after the applicant and her children. Annexure A3 is the letter sent from the Divisional Office to the AIEN Skraveshant as per which the complaint given by the applicant was forwarded. As per Annexure A4 dated 5.2.2010 the Divisional Officer informed the applicant that R. Subhash Kumar above was continuously absent from duty from 21.8.2008 to 22.6.2008 and that he was suspended from service with effect from 24.6.2008. It was also stated that the order was communicated in the permanent address which is also the address of the applicant but it was returned unanswered.

6. The respondents would contend that since Suspension had already been removed from service with effect from 24.6.2008 nothing can be said passed on the letters sent by the applicant in 2010 nearly two years after the

employee was removed from service. The fact that subsequently a complaint was lodged with the police based on which an FIR was registered under the caption 'man missing', is also not of much help to the applicant. Even Annexure A7 the report given by the police is to the effect that Susheelan was in the habit of consuming intoxicating liquors and he was also not in the habit of taking regular medicines as advised by Doctors.

7. Be that as it may, the question is whether the applicant is entitled to get the compassionate allowance. It is not disputed that Susheelan was granted temporary status with effect from 1.1.1984. He was removed from service with effect from 24.6.2008.

8. Annexure R1 is the articles of charge leveled against Susheelan the applicant's husband. It was acknowledged by him on 9.10.2006 as can be seen from the bottom of Annexure R1. Annexures R2 and R3 are the two notices issued to him on 14.12.2006 and 27.1.2007. It is seen that these two notices were also acknowledged by Susheelan. Annexure R3 was acknowledged by him on 12.2.2007. The copy of the order as per which Susheelan was removed from service has not been produced.

9. Annexure R4 is the Railway Board RBE No. 79/2005, dated 9.5.2005 wherein paragraph 2 deals with the existing guiding principles and procedure for granting compassionate allowance or gratuity or both. It is stated that the decisions for grant of compassionate allowance or gratuity or both or otherwise should be taken at the time of passing orders of

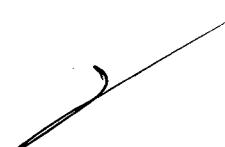
removal/dismissal keeping in view the guidelines given in paragraph 310 of the Manual of Railway Pension Rules, 1950. It is further stated that if no mention about the compassionate allowance etc. is made by the competent authority while passing orders of removal/dismissal, the concerned Head of Office shall resubmit the case file along with the relevant information/guidelines to the concerned competent authority and obtain his decision for or against sanction of compassionate allowance or gratuity or both. Paragraphs (iii), (iv) & (vi) of Annexure R4 reads:

- “(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.
- (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.”

10. Annexure R5 is Principal Branch serial circular No. 165/2008 of South Western Railway dated 3.12.2008. It has been explained as under:

“In terms of proviso to Rule 65(1) of Railway Services (Pension) rules, 1993, the authority competent to dismiss or remove a Railway servant 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. This is the discretionary power vested in the authority competent to dismiss or remove a Railway servant, to be exercised by that authority suo-motu, at the time of passing orders of dismissal or removal from service or immediately thereafter.”

11. In paragraph 3 it was further stated that the matter has again been considered by the Board in consultation with DOP&PW's and it has been decided to reiterate that in cases where a decision has already been taken by



the disciplinary authority not to grant compassionate allowance, such a decision is final, which should not be reviewed at any later stage. However, in partial modification of Board's letter dated 9.5.2005 it has also been decided by the Board that out of the past cases in which the disciplinary authority had not passed any specific order for or against grant of compassionate allowance, if any case appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/removed employees or the family members of the deceased employees keeping in view the conditions mentioned therein. There is no case for the respondents that any final decision was taken earlier refusing compassionate allowance.

12. Therefore, there would be no legal impediment for considering the request for compassionate allowance made by the applicant. The fact that Susheelan had been conferred temporary status with effect from 1.1.1984 and that he was removed from service only in 2006 would show that he has been in service for nearly 22 years. Article 353 CSR – Railway Board's letter No. 01044-F, dated 3.5.1940 has also been referred to in this connection (vide Annexure R6). It can be seen that it is the absolute discretion to grant or not to grant any compassionate allowance but the only restriction being that, if granted, it shall not exceed the maximum of two-thirds of the pension that would be admissible to the officer concerned. The orders/circulars etc. referred to earlier would make it clear that the respondents have to consider the request for compassionate allowance eligible to the applicant as the wife of Susheelan who was not heard of for

the disciplinary authority not to grant compensation allowances such as
decisions as itself which should not be referred to any other state. However
in particular with regard to Board's letter dated 9.5.2002 it was also held
decided by the Board that out of the best case in which the disciplinary
authorities had not passed any specific order for the payment of
compensation allowances if such case appears to be deserving
consideration pending payment may be referred by the disciplinary authority
concerned on receipt of representations of dismissed former employees of
the family members of the dismissed employee keeping in view the
conditions mentioned earlier. There is no case for the respondent that the
final decision was taken without considering compensation allowances

12. Therefore there would be less impediment for considering the
request for compensation allowances made by the applicant. It is held that
Supreme Court had passed corresponding order in 2000 holding that the
and that the was removed from service only in 2000 having shown that he had
been in service for nearly 25 years Article 353 CRP. Ruling by Board's
letter No. 01044-H dated 3.7.1990 has also been referred to in this
connection (vide Annexure R0). It can be seen that it is the respondents
discretion to grant or not to grant the compensation but the only
restriction is that it shall not exceed the maximum of the
limits of the pension that would be admissible of the officer concerned. The
order of the court is to refer to higher authority to make it clear that the
respondents base of considering the request for compensation allowances
not to bind the Board to grant the same to the old age

some years. Since the respondents themselves are conscious of the orders, instructions, circulars, etc. referred to as Annexures R4 to R6, appropriate orders will certainly be passed by them after considering the request made by the applicant. The respondents will consider the request for grant of compassionate allowance made by the applicant within two months of the date of receipt of a copy of this order.

13. The Original Application is disposed of accordingly. No order as to costs.


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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