

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.587/2004.

Thursday this the 13th day of October, 2005.

CORAM:

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

M.S.Shanmugham,
S/o :Sivanmalai Gounder,
Ex-Diesel Assistant, Southern Railway, Erode,
Residing at Door No.23, Swathantrapuram,
Solar Pirivu, (Kalur Road), ERODE-2. Applicant's
(By Advocate Shri T.C.Govindaswamy)

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1. Union of India, represented by the General Manager, Southern Railway, Headquarters Office, Park town P.O., CHENNAI-3.
2. The Divisional Railway Manager, Southern Railway, Palghat Division, PALGHAT.
3. The Senior Divisional Mechanical Engineer, Southern Railway, Palghat Division, PALGHAT.
4. The Senior Divisional Personnel Officer, Southern Railway, Palghat Division, PALGHAT.

(By Advocate Shri P. Haridas)

The application having been heard on 13.10.2005 the Tribunal on the same day delivered the following

ORDER(Oral)

HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant joined the service of the Railways since 6.11.1962 as Loco Khalasi and was promoted as Diesel Assistant. While working as Diesel Assistant, he was removed from service w.e.f. 21.4.1986, on certain allegations of misconduct. It is averred in the O.A. that the applicant came to know that there is a provision for compassionate allowance (a class of pension), even in the case of a person removed from service. He made a representation (A1) to the 3rd respondent, Senior Divisional Mechanical Engineer

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on 19.7.1999 and the 3rd respondent had sanctioned compassionate allowance to the applicant which was communicated by the 4th respondent vide letter dated 6.10.1999 (A2). The applicant was under the bonafide belief that he would be granted compassionate allowance and consequential benefits as indicated in A-2. However, there was no response, he again submitted a representation (A-3) dated 27.5.2003 and also approached the Pension Adalath and vide A-4 he was informed that "the sanction of compassionate allowance was reviewed by the competent authority, i.e. Sr.DME/PGT, who has opined that no Compassionate Allowance needs to be sanctioned." The applicant made a further representation (A5) dated 29.12.2003, which was also not responded to. Aggrieved by the inaction on the part of the respondents the applicant has filed this O.A. seeking the following main reliefs:

- i. Call for the records leading to the issue of Annexure A-4 and quash the same;
- ii. Declare that the applicant is entitled to be granted compassionate allowance as sanctioned in Annexure A-2 and direct the respondents to grant the same forthwith, without further loss of time.
- iii. Direct the respondents to grant the arrears of compassionate allowance and the dearness relief on the same, with 9% interest, to be calculated with effect from such date as this Hon'ble Tribunal may deem fit, just and proper.

2. The respondents have filed a detailed reply statement contending that as per the provisions of articles 309/310 it is within the powers of disciplinary authority to sanction or not the compassionate allowance and the applicant cannot claim the same as a matter of right. The broad parameters under which the compassionate allowance can be sanctioned has been laid down in Annexure R-1. The 3rd respondent who is the disciplinary authority, initially sanctioned compassionate allowance to the applicant and on the basis of the said sanction pension papers were also forwarded to him. However, on perusal of service records, it was found that the applicant had participated in two strikes during 1968/72 and finding that the applicant is not the one that deserves consideration in terms of provisions contained in Para 309/310 of Manual of Railway



Pension Rules (MOPR for short) 1950, the Sr.DME reviewed his case and withdrew the earlier order sanctioning compassionate allowance. It is further pleaded that the service of the applicant was not upto the required standard so as to sanction compassionate allowance. As per the relevant provisions, the competent authority has the discretion to allow or not the compassionate allowance. The contention of the applicant that no opportunity was given to the applicant before canceling the order, is without any basis.

3. Learned counsel for the applicant has filed a rejoinder contending that, once the competent authority had sanctioned compassionate allowance which is one of the classes of pension under the relevant rules, the only authority to withhold or reduce or impose a cut in the same is the President and none else and the said authority, (the disciplinary authority) becomes functus-officio once power under Paras 309/310 of MOPR is exercised.

4. The respondents have filed an additional reply statement reiterating their contentions in the 1st reply statement and further adding that Para 310 of MOPR"each case has to be considered on its merits and a conclusion has to be reached on the question whether there were any extenuating features in the case as would make the punishment imposed though it may have been necessary in the interest of the government, unduly hard on the individual and that the kind of service the applicant had rendered has to be taken into account while sanctioning compassionate allowance. Hence, on finding that the case of the applicant is not one deserves consideration in terms of provisions of para 309/310 of MOPR, the very same authority and incumbent had ordered that the case is not recommended for the payment of compassionate allowance and the order of Sr.DME was also ratified by the higher authority, DRM. The statement of the applicant that the decision to sanction compassionate allowance and the later decision to withdraw the said sanction was made by two different incumbents of the post of Sr.DME, is without basis. Both the decisions were taken by the very same incumbent.

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5. Mr. TC Govindaswamy, learned counsel appeared for the applicant and Mr. P. Haridas learned counsel appeared for the respondents. Counsel have taken me to various pleadings, evidence and material placed on record. Counsel for the applicant argued that once compassionate allowance is granted in terms of Para 309 of the Manual of Railway Pension Rules, 1950, there is no provision to review the same. Therefore, the impugned order A-4 is arbitrary, discriminatory, contrary to law and ultravires the statutory rules and hence unconstitutional.

6. Learned counsel for the respondents on the other hand persuasively argued that, the power of review is an inherent power of the authority and the very same authority and the incumbent had ordered that the case is not recommended for payment of compassionate allowance which cannot be impugned.

7. I have given due consideration to the arguments advanced by the counsel for both parties. The crux of the point to be considered whether the applicant is entitled for compassionate allowance which has already been sanctioned as per A-2 or not? For better elucidation A-2 is quoted below:

SOUTHERN RAILWAY

No.J/P 526/II

To:

Shri M.S.Shanmugham,
Ex-DSL Asst/ED,
C/o H.No.23, Swathantrapuram,
Cholar Piruvu, Karur Road,
Erode-2.

Divisional Officer,
Personnel Branch,
Palghat, Dt. 6.10.99.

Sub: Settlement of Pensionary benefits.

Compassionate allowance has been sanctioned to you by Sr.DME/PGT. To enable to take necessary action for sanctioning the pensionary benefits, you are required to execute the following documents before 5.11.99 immediately.

1. An application for payment of pension Form 6 in duplicate.
2. Declaration of non-receipt of any other pension "
3. Left hand thumb and finger impression duly



attested by a gazetted officer of provisional Central government with his office seal affixed.

4. Permanent address after retirement and method of payment of pension and DCRG separately in form 12 with Account No.Bank/Post Office.
5. Specimen signature, duly attested by govt. in triplicate Gazetted Officer as required Form 10.
6. Identification marks in form No.10 "
7. Annexure I drawal of pension through post office. "
8. Pension Communication application form One copy

Payment of DCRG will be arranged by the Railways in case of SC to PF. In case where payment is not to be received by the party in person, letter of authority and hand receipt will have to be executed for which necessary forms will be sent.

Payment of pension will be arranged at a Government Treasury or sub-treasury of sub-post office/authorized banks as desired by the party. As a rule, a pensioner must take payment in person after identification by comparison with the pension payment order. We afford the disbursing officer comparatively cast means of identification and also to save the pensioners some delay which may cause by the need for comparing the thumb an finger impression before making payment you are required to forward four copies of joint photographs in passport size.2 x 2 for self and wife be attested by a Gazetted Officer in the front with your signature on the back side of all the four copies duly witnessed by the employee.

The photographs will be pasted on the Pension Payment and the Treasury will then be in a position to make payment strength of the reasonableness between the pensioner and his photographs pending final recompilation, if any. The cost of photographs has to be borne by you.

You are also required to execute the nomination form for pension and DCRG/Family Pension if not already filled in.

Non-compliance of the aforesaid instructions may result in delay in payment of pensionary benefits.

Encl: as above in sheets.

Sd/-

Sr.DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY,
PALGHAT

8. It is an admitted fact that as per A-2, compassionate allowance has been sanctioned to the applicant by Sr.DME, Palghat on 6.10.1999 and necessary required documents and papers were directed to be submitted well before 5.11.99 to the authority as indicated in the said letter. This fact is also conceded by the respondents. But the case



of the respondents is that, on a subsequent review, the order has been withdrawn. It is pertinent to note that no order reviewing its earlier order has been communicated to the applicant as per the available records. Learned counsel for the respondents has produced Anexure R-1 rules relating to granting of compassionate allowance which is reproduced as under.

GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(Railway Board)
MANUAL OF RAILWAY PENSION RULES, 1950

Page-8

309. Removal or dismissal from service – No pensionary benefit may be granted to a Railway servant on whom the penalty of removal or dismissal from service is imposed; but to a Railway servant so removed or dismissed the authority who removed or dismissed him from service may award compassionate grant(s) – correspondent to ordinary gratuity and/or death-cum-retirement gratuity, and/or allowance – corresponding to ordinary pension, when he is deserving of special consideration, provided that the compassionate grant(s) and/or allowance awarded to such a Railway servant shall not exceed two-thirds of the pensionary benefits which would have been admissible to him if he had retired on medical certificate.

310. Para 309 vests the officer removing or dismissing the Railway servant from service with an absolute discretion to grant or not to award any compassionate grant(s) and/or allowances, the only restriction being that, if awarded, it shall not exceed the maximum of two-thirds of the pensionary benefits that would be admissible to the Railway Servant concerned on retirement on invalid gratuity/pension. Each case has to be considered on its merits and conclusion has to be reached on the question whether there is any extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interests of government, unduly hard on the individual. In considering this question it has been the practice to take into account not only grounds on which the Railway servant was removed or dismissed, but also the kind of service he has rendered. Where it can be legitimately inferred that the Railway Servant's service has been dishonest there can seldom be any good case for award of compassionate grant(s) and/or allowances. Poverty is not an essential condition precedent to the award of compassionate grant(s) and/or allowances but special regard is also occasionally paid to the fact that the Railway servant has a wife and children dependent upon him, though this factor by itself is not, except, perhaps, in the most exceptional circumstances, sufficient for the grant of compassionate grant(s) and/or allowances.”

9. Learned counsel for respondents would submit that, as per rules, the merit of each case has to be evaluated separately and on a subsequent consideration of the case of the applicant, he was found unfit for granting compassionate allowance. In support of



this claim the respondents have produced Annexure R-2 dated 28.8.2000 (The specimen of A-2 note files). It is an extract of the official notes that has been found out from the concerned file. In that file, the Sr.DME has observed that "his case is not a deserving case. Hence, the decision was revised". It was endorsed by the DRM subsequently in "one word order". But the Sr.DPO's observation with regard to the upholding of the earlier order is very important as far as this note is concerned, which is reproduced below:

"Compassionate allowance already seems to have been sanctioned by the authority (Sr.DME) vide sidings at PP6. Hence the above decision requires revision. The file was again sent to Sr.DME for deciding the question of gratuity to be paid since the same was not specified in the earlier order. It is suggested that, in this case the compassionate allowance already sanctioned may suffice to meet the ends of justice."

10. Now the question involved in this case is, whether once a decision has already been taken to grant compassionate allowance as seen from A-2, the authorities are justified in reviewing the matter without recalling that order and that without giving notice to the applicant.

11. Learned counsel for the applicant would argue that the compassionate allowance is a kind of pension and once it was sanctioned it cannot be reviewed by any other authority except by the President of India. Though I am not looking at that point, the fact remains that, none of the authorities took the pain to recall A-2 order and also the official note does not show any sufficient reason to review that order except otherwise a statement that the applicant's case is not a deserving one. On perusal of Annexure R-1, I find that, in considering this question it has been the practice to take into account not only grounds on which the Railway servant was removed or dismissed, but also the kind of service he has rendered. Where it can be legitimately inferred that the Railway Servant's service has been dishonest there can seldom be any good case for award of compassionate grant(s) and/or allowances.

12. From the pleadings and materials placed on record, I find that the reason for



removal of the applicant from service was unauthorised absence and the participation in the strikes. Counsel for the applicant brought to my notice the names of those who have also been participated in the strike and even re-instated in service even without any damage to their service. Considering all these aspects I am of the view that reconsideration/review of the earlier order granting compassionate allowance without proper application of law and subsequently, the opinion of the Sr.DME that the case of the applicant is not a deserving, cannot be a reason for denial of the benefit which has already been granted. Compassionate allowance which has got all attributes of pensionary benefit cannot be denied to an employee since it is not a bounty of the respondents. All the more, the reason that, A-2 order was not recalled by any authority, also gives an indication that all these proceedings have been initiated as a subsequent thought, and without due application of mind.

13. In the conspectus of facts and circumstances, I am of the view that, the impugned order A-4 has been issued without proper application of mind and not in tune with the legal position as discussed above and therefore, it deserves to be set aside. Accordingly, I set aside A-4 order dated 27.11.2003 with a direction to the respondents to grant all the benefits to the applicant in consequence of A-2 within a time frame of three months from the date of receipt of a copy of this order. In the circumstance, no order as to costs.

Dated the 13th October, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER