

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 91 / 2008

Monday, this the 23rd day of March, 2009.

CORAM

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

T.Saraswathy,
W/o late Thankamuthu,
Ex-Fitter Gr.II/Diesel,
Southern Railway, Erode,
Residing at House No.570-A,
E.M.M.Main Street,
Periathottam,
Cheimalai Road, Erode.Applicant

(By Advocate TC Govindaswamy)

v.

1. Union of India represented by
The General Manager,
Southern Railway,
Headquarters Office,
Park Town.P.O.
Chennai-3.
2. The Senior Divisional Mechanical Engineer,
Southern Railway/Diesel/Loco Shed,
Erode.
3. The Divisional Railway Manager,
Southern Railway,
Palghat Division, Palghat.
4. Senior Divisional Personnel Officer,
Southern Railway,
Palghat Division, Palghat.Respondents

(By Advocate Mr Sunil Jose)

This application having been finally heard on 28.1.2009, the Tribunal on 23.3.2009 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

Applicant's grievance in this O.A is against the Annexure A-5 letter dated

1.6.2005 by which her Annexure A-2 representation of her late husband Shri S.Thangamuthu for grant of compassionate allowance has been rejected by the disciplinary authority by observing that there was "no reason to grant compassionate allowance after the lapse of such along period". She is also aggrieved by the Annexure A-10 letter from the 4th respondent rejecting her Annexure A-9 representation on the same issue. In the said letter, it has been stated that as per the Railway Board's letter dated 9.9.2005, the compassionate allowance is granted under the discretionary power of the competent authority and since the said authority has not sanctioned the compassionate allowance to her husband at the time of his removal from service, the issue cannot be re-opened by way of another representation at a later date.

2. In this case, applicant's husband S.Thangamuthu while working as Fitter in the Diesel Loco Shed, Erode, Southern Railway was removed from service on 10.4.1994 for the continued unauthorised absence and later he passed away on 28.12.2007. According to the applicant, her husband was mentally depressed and wandering here and there and, therefore, he was absent from duty. Even after his removal from service, the mental depression and disorder continued and he had never made any appeal against the order of removal and no terminal benefits were collected from the respondents. The applicant and her 2 daughters, after removal of the applicant from service are living in extreme penury and hardship. She has further submitted that in terms of Rule 65 of the Railway service (Pension) Rules 1993 read with paragraph 309 and 310 of the Manual of Pension Rules 1950, (which we extract below) the respondents were required to consider the question of granting compassionate allowance to him.

"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)."

Para 309 of the Manual of Pension Rules, 1950 reads as under:

"Removal of 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) – corresponding to ordinary gratuity and/or death-cum-retirement gratuity – and/or allowances – 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."

Para 310 of the Manual of Pension Rules, 1950 reads as under:

"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 a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment imposed, though it may have been necessary in the interest of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the 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."

3. But in his case, no such consideration was done. When her husband Shri S.Thangamuthu became mentally fit, he made the Annexure A-1 representation dated 10.10.2003 to the respondents requesting them to sanction him pension

and other terminal benefits. It was followed by Annexure A-2 representation to the 4th respondent. Yet another representation was submitted by him before the Pension Adalath. Vide Annexure A-3 letter dated 2.12.2004, the 4th respondent again rejected his request for compassionate allowance as the same does not come under the purview of the Pension Adalath. It was also informed to him by the said letter that an amount of Rs.2,284 + Rs.420/- was due from him as over payment made to him and the same could not be adjusted against his provident fund balance as there was only Rs.741/- at his credit. Thereafter, he was also permitted by the Annexure A-4 letter dated 13.12.2004 to remit the aforesaid amount of Rs.2284+420 = 2,704/- by cash.

4. Later on, the Railway Board vide letter RBE No.79/2005 dated 9.5.2005 (Annexure A-6) issued clarification as to whether compassionate allowance can be sanctioned to the removed/dismissed Railway servants and family pension to the eligible members of the family on the basis of the representation received from them and the family after a lapse of many years from the date of removal/dismissal and death, respectively of such removed/dismissed railway servants. Inviting the attention to the provision of Rule 65 of Railway Services (Pension) Rules, 1965, the Railway Board has clarified that if the case of a removed/dismissed Railway servant is deserving of special consideration, the authority competent to dismiss or remove the Railway servant from service may 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. The power to sanction or otherwise compassionate allowance being a discretionary power vested in the authority competent to remove/dismiss the Railway servant, it is to be exercised by that authority suo motu, at the time of passing orders of dismissal or removal from service or immediately thereafter but past cases, where the competent authority, in



exercise of its discretionary powers, had not sanctioned compassionate allowance at the time of passing orders of removal/dismissal or immediately thereafter, cannot be reopened for review on the basis of representations received from the removed/dismissed employees and members of their family at a later stage. Based on the aforesaid clarification of the Railway Board, the applicant's husband again made the Annexure A-7 dated 22.9.2006 representation before the Pension Adalath held in 2006. The Divisional Office has again vide Annexure A-8 letter dated 17.11.2006 informed the applicant that the question of granting compassionate allowance does not come within the purview of Adalath but his representation was being considered separately and he will be advised in the matter later. The applicant made Annexure A-9 reminder to the Divisional Railway Manager on 16.4.2007. The respondents considered the aforesaid representations and rejected it vide the impugned Annexure A-10 letter dated 18.5.2007. The applicant still continued with his Annexure A-11 representation dated 30.9.2007 and the Annexure A-12 letter dated 30.5.2005 to the Senior Personnel Officer/TFC, Southern Railway, Chennai according to which the Railway Board has advised the concerned authorities that the grant of compassionate allowance can be considered by the higher authority also even in cases where the dismissing/removing authority has not granted compassionate allowance. She has also produced the Annexure A-12(2) dated 28.4.2005 issued by the Deputy Director Establishment, Railway Board, New Delhi to General Manager, Southern Railway, Chennai stating that action to grant compassionate allowance should be taken in terms of Rule 65 of Railway Service (Pension) Rules, 1993 which says that the authority competent to remove or dismiss a Railway servant from service can grant him compassionate allowance. Authorities higher to the authority which passed the order of dismissal or removal from service thus can also grant compassionate allowance even in cases where the dismissing/removing authority decided not to



grant compassionate allowance. In the above circumstances, the applicant has filed this O.A seeking a declaration that her husband was entitled to be considered and granted compassionate allowance with effect 11.4.1994 and to declare that the applicant is entitled to receive his pension and direct the respondents accordingly. She has also seeking a declaration that she is entitled to be granted family pension with effect from 29.12.2007 with all consequential arrears therefrom and to direct the respondents to grant her the same.

5. According to the learned counsel for the applicant, this case is fully covered by the decision in O.A.873/2005 decided on 9.8.2006 – **K Palaniswamy v. Union of India & others** – operative part of which reads as under:

"9. From the above Instructions it would appear to be the intention of the authorities that every case has to be necessarily scrutinized on merits in terms of the guidelines as to whether there are any extenuating circumstances causing undue hardship to the individuals. The competent authority has to exercise its discretion in the matter. The ratio of the judgment of the coordinate bench in 1561/2002 is also the same in allowing the prayer preferred after 18 years. Hence we are of the view that the applicant is also entitled to consideration of his request for grant of compassionate allowance irrespective of the inordinate delay that has occurred in the matter. In the result, we direct the respondents to consider the applicant's case for grant of compassionate allowance with all consequential benefits as provided for in Paras 309 and 310 of the Manual of Railway Pension Rules and communicate the decision to the applicant within a period of two months from the date of receipt of this order. O.A is partly allowed. No costs."

6. The learned counsel for the applicant has also relied upon the judgment in **Ex.CT.Dayal Nand v. Union of India & others** [2000(1) ATJ, 137] and the order of this Tribunal reported in **V.Prakasham v. Divisional Railway Manager, South Central Railway, Hubli & others** [(1989) 11 ATC 692] and in **S.Srinivas Rao v. The CPO S.C.Rly, Secunderabad & Ors** [2003(2) ATJ 564] (CAT, Hyderabad Bench).

7. In **Ex.C.T.Dayal Nand's** case (supra) the Hon'ble Delhi High Court has

held as under:

"The respondent, in the counter affidavit has stated that the representation for compassionate allowance under Rule 41 of the said Rules was not considered by the competent authority due to devoid of merits. The petitioner is admittedly not granted the pension. It is difficult to accept the contention of the respondent in the counter affidavit as to how the request for grant of compassionate allowance under Rule 41 would be devoid of merits.

As pointed out above, Rule 41 of said Rules specifically requires the authority competent to dismiss or remove from service to consider 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).

The petitioner has admittedly served for more than 20 years, as point out above. His service came to be terminated without any grant of pension or gratuity. Under the circumstances, the petitioner deserves to be granted compassionate allowance under Rule 41 of the said Rules.

In the above view of the matter, the petition is granted. The respondent is directed to grant the compassionate allowance to the petitioner under Rule 41 of CCS(Pension) Rules, 1972 from the date of the discharge of the petitioner from service i.e. w.e.f. 21.5.1981 along with arrears. The respondents shall clear the dues of the petitioner within three months from today, failing which the petitioner will be entitled to 12% interest from the date the amount became payable till the actual date of payment by the respondent to the petitioner."

8. In **S.Srinivas Rao's case (supra)** the Hyderabad Bench of the Tribunal has held as under:

"10. Having regard to all the above relevant facts and circumstances, I find that the applicant deserves sanction of compassionate allowance under Rule 65 of the Railway Services (Pension) Rules, 1993.

11. The learned counsel for the applicant brought to my notice a decision of the Central Administrative Tribunal, Bangalore Bench in the case of "V Prakasham v Divisional Railway Manager, South Central Railway, Hubli and others, reported in (1998) 11 ATC 692" wherein it was held that,

"No doubt the authority concerned has discretion to grant compassionate allowance after the imposition of penalty. But, in the instant case the punishment was imposed seven years ago and since then the applicant has remained out of employment with no source of income. In this peculiar situation the applicant should not be sent back to the authorities for considering the grant of compassionate allowance to him.

This Tribunal, ultimately, directed the department to allow the

applicant compassionate allowance equal to half of the pension which would have been admissible to him had he retired on medical certificate on the date of removal. However, the compassionate allowance was made payable only prospectively."

12. He also relied upon another decision of the Delhi High Court reported in 2000(1) ATJ in the case of "Ex CT Daya Nand v. Union of India and others" wherein it was held that,

"Compassionate Allowance – Petitioner was dismissed from service after serving more than 20 years – No pension and gratuity was given-Claim for grant of compassionate allowance under rule 41 of the Pension rules – Claim granted from the date of discharge along with arrears."

13. In the instant case also, since the applicant has served the Railways for 18 years by the date of his dismissal from service and as he has clearly alleged in the present O.A that he has been put to great financial hardship for the last 14 years and could not approach the competent authority for sanction of the same on account of pendency of the litigation before the various forums, I find that the case of the applicant is deserving one for sanction of compassionate allowance in terms of Rule 65 of the Railway services (Pension) Rules, 1993. Further I find that at this distance of time the applicant cannot be directed to once again approach the competent authority for seeking the above said relief by giving direction to the 2nd respondent to reconsider the matter. In the circumstances, I am of the opinion that ends of justice would be met, if the respondents are directed to allow the applicant compassionate allowance equal to half of the pension which would have been admissible to him, had he retired on medical service.

14. Since the applicant has submitted his first representation on 28.10.1998 for grant of compassionate allowance, I find it necessary to order that the applicant shall be paid the said compassionate allowance with effect from 1.11.1998.

15. In the result, this OA is allowed granting the following reliefs:

- (i) The impugned order dated 5.7.2002 of the 2nd respondent is set aside.
- (ii) The respondents are directed to allow the applicant compassionate allowance equal to half of the pension which would have been admissible to him had he retired on medical certificate from the date of dismissal from service.
- (iii) The applicant is entitled to the said compassionate allowance with effect from 1.11.1998; and
- (iv) The arrears shall be paid with interest @ 9% per annum till the date of payment.

16. The respondents shall comply with these orders within three months from the date of receipt of a copy of this order.

17. In the circumstances, I direct the parties to bear their respective costs."

9. The applicant has also stated that pension is a continuing cause of action and therefore, there is no question of any limitation. In this regard, he has relied upon the judgment of the Apex Court in **M.R.Gupta v. Union of India & others** [(1995) 5 SCC 628] which reads as under:

"5. Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules."

10. Respondents in their reply have submitted that the applicant's late husband was imposed with a penalty of removal from service from 10.4.1994 by Senior DME/DsI/ED for unauthorised absence duly following the relevant provision. As per the provisions contained in the Railway Services (Pension) Rules 1993, the authority who is competent to remove the employee/removed the employee is vested with full discretionary powers to sanction to compassionate allowance not exceeding 2/3rd of pension or gratuity or both to the removed employee. The rule is very clear that the power vested with the authority is purely discretionary. In the case of the applicant, the competent authority had not sanctioned any compassionate allowance. Moreover, the payment of compassionate allowance arises only in the case of an employee who is surviving after his removal subject to various conditions governing sanction of such compassionate allowance. There are no rules for claiming compassionate allowance by the widow after 13 years of removal. Hence the claim for compassionate allowance is not tenable. As regards the claim of the applicant for family pension from 29.12.2007, i.e. the date from which her husband died, the respondents have submitted that the payment of family pension arises only in the event of the death of an employee or a pensioner. If

the employee is granted pension or compassionate allowance, the widow becomes entitled for family pension on the death of the pensioner. Hence, in the event of non-sanction of pension/compassionate allowance, there is no question of payment of family pension to the widow. In the case of the applicant's husband, his request for grant of compassionate allowance was considered by the competent authority during 2005 but it was rejected and the decision was communicated to him during his life itself vide Annexure A-5 letter dated 1.6.2005. If the applicant was aggrieved on the non-sanctioning of the compassionate allowance he should have sought appropriate legal remedy within the limitation period. Having not done so, Annexure A-5 has become final and the applicant's husband was not having any grievance over the decision. Hence the present claim is highly barred by limitation and acquiescence/estoppel. As regards the Annexure A-6 letter of the Railway Board dated 9.5.2005 (the respondents have also filed a copy of it as Annexure R-1), the respondents have submitted that the advice of the Railway Board is that past cases cannot be reopened for review on the basis of the representation either from the employee or the family. They have also stated that the applicant has not produced any evidence to show that the amount of Rs.2,284/- and Rs.420/- was due from the ex-employee was remitted.

11. I have heard Shri T.C.Govindaswamy, counsel for applicant and Shri Sunil Jose counsel for respondents. No doubt compassionate allowance is granted to removed/dismissed Railway servant and family pension to eligible members of the family as a matter of discretion by the disciplinary authority. Obviously, the gravity of the misconduct committed by the applicant will be a factor that would weigh in the mind of the disciplinary authority to grant such allowance. In this case, admittedly, the misconduct on the part of the applicant was unauthorised absence. The case of the applicant was that her husband was mentally ill and in

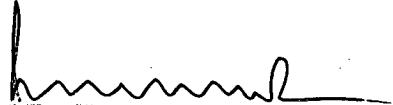
fact, he was missing from his office. Hence the disciplinary proceedings were held ex parte and finally he was removed from service. The Annexure R-1 P.B.Circular No.94/2005/RBE No.79/2005, has reiterated the following existing guiding principles and procedures for grant of compassionate allowance or gratuity or both:

- (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."

It is not the case of the respondents that the aforesaid procedure has been followed in the case of the applicant's husband. According to the applicant, her husband while he was alive made a number of representations. The only reason given by the respondents in rejecting his request, as is seen from the impugned Annexure A-5 letter dated 1.6.2005, is that there was no reason to grant compassionate allowance after the lapse of such a long period. In my considered view, as the disciplinary authority has not sanctioned compassionate allowance to the applicant in the order of his removal from on 10.4.1999 or on any date subsequently, the disciplinary authority was duty bound to consider his request in terms of Annexure R1 P.B. Circular No.94/2005 (supra). It is a well

[Signature]

settled law that payment pf pension/compassionate allowance is a continuing cause of action and the judgment of the Apex Court in M.R.Gupta's case (supra) will apply. I, therefore, direct the respondents to follow the prescribed procedure in the case of the applicant and her late husband and to take a judicious decision within three months from the date of receipt of a copy of this order. The decision so taken shall also be communicated to the applicant. With the aforesaid directions, the O.A is disposed of. There shall be no order as to costs.



GEORGE PARACKEN
JUDICIAL MEMBER

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