

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 1364 /1994

Date of Decision: 05.08.1996.

Smt. Prabhavathi Ganeshan,

Petitioner/s

Shri L. M. Nerlekar,

Advocate for the
Petitioner/s

V/s.

Union Of India,

Respondent/s

Shri R. R. Shetty,

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri M. R. Kolhatkar, Member (A).

~~NON JUDICIAL~~

- (1) To be referred to the Reporter or not ? X
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ? X

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1364/94.

Dated, this Monday, the 5th day of August, 1996.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Smt. Prabhavathi Ganeshan,
Room No. 22, 3rd Floor,
Bairagi Niwas, Shivaji Nagar, ... Applicant
Wagle Estate,
THANE - 400 604.
(By Advocate Shri L.M. Nerlekar).

VERSUS

Union Of India through
Divisional Railway Manager, ... Respondents.
Central Railway,
Bombay V.T.
(By Advocate Shri R.R. Shetty).

: ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

1. In this O.A. the applicant is a widow of a dismissed and deceased railway employee who has sought direction to consider her case for compassionate appointment as if her husband has not been removed from service but died in harness. The applicant also prays that the respondents be directed to pay her compassionate pension.

2. The Learned Counsel for the respondents at the outset raises a preliminary objection that the O.A. is for compassionate appointment and compassionate pension and therefore, it is hit by the vice of multiplicity of reliefs and therefore it should be dismissed in limine. Admittedly, the reliefs ^{are} alternative reliefs and therefore, I am not

prepared to dismiss the matter at the threshold. The counsel for the applicant has raised several grounds for grant of relief. Regarding the rejection of application for compassionate appointment on the ground that her husband was removed from service, he contends, that the disciplinary enquiry was initiated ^{and} the respondents ought to have made further enquiries as to the whereabouts of the applicant before proceeding ^{ex-parte} with the case. Secondly, so far as the relief relating to compassionate pension is concerned, which will be read as compassionate allowance in terms of Rule 65 of Railway Servants(Pension)Rules, 1993 and which is paramateria with Rule 41 of the C.C.S. (Pension) Rules, He invites my attention to the Government of India decision ^{under Rule 41} as reproduced in para (1), page 79 of Swamy's Pension Compilation - 1993 edition. This decision envisages that each case has to be considered on its merit but the nature of misconduct, poverty and there being wife and children dependent on the Govt. employee, are some of the relevant factors which are to be taken into account. He contends that these decisions, since they go back to 1940, have to be read into the Railway Servants (Pension) Rules applicable to the applicant. In my view, I am not required to go into the various contentions raised by the counsel for the applicant and the case laws cited by him to show that the applicant is entitled to compassionate allowance in terms of Rule 65 of the Railway Servants (Pension) Rules. The material facts are that the applicant was a casual labourer w.e.f. 15.03.1977, brought as M.R.C.L. Khalasi w.e.f. 26.03.1981 and subsequently absorbed in the cadre of Khalasi vide letter dated 23.09.1982. He was removed

from service for absenteeism on 10.01.1992. The respondents have contended that compassionate allowance cannot be granted because the applicant's husband had not completed 20 years of service. I do not find any such condition under Rule 65 of the Railway Servants (Pension) Rules. The rule comes into operation when the Government servant is dismissed or removed and 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. In this case it does not appear that the applicant's conduct was dishonest. The only charge which led to his dismissal and in the earlier minor punishment was relating to absenteeism. The grounds taken by the respondents in their reply dated 11.01.1996 show that the question of compassionate allowance in terms of the rules has not been considered because the respondents have proceeded on the footing that compassionate allowance is permissible only in a case where the government servant is dismissed after putting in 20 years of service. Whereas, as observed above, no such rule is found. The applicant has contended that her husband died after his dismissal on 27.07.1992 of a heart-attack (herself) after a prolonged illness and is survived by a widow and two children. These circumstances in my view, need to be considered by the respondents before taking a view as to whether or not the widow deserves to be considered for grant of compassionate. Admittedly, the Government servant was away to his native place when he was dismissed and died within 6 months thereafter.

He therefore, could neither file an appeal nor could he apply for compassionate allowance in terms of Rule 65 of the Railway Servants (Pension) Rules, 1993. I therefore dispose of the O.A. by issuing the following directions :-

The applicant may make a self-contained representation for grant of compassionate allowance in terms of Rule 65 of the Railway Servants (Pension) Rules, 1993 and keeping in view that her husband died within six months of the dismissal from service due to heart attack after a prolonged illness and therefore could not have made such an application, the respondents may entertain the same and consider it according to rules and dispose of the same keeping in view the Government of India decisions under the para-materia rule viz. C.C.S. (Pension) Rules 41.

3. The O.A. is disposed of in these terms. No order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

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