

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 8th day of January, 2008

ORIGINAL APPLICATION No.215/2006
Misc. Application No.126/2006

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER

Bheru Lal K.
s/o Shri Krishna,
aged about 44 years,
c/o Shri Mohan Lal Rathore,
236-C, Railway Workshop Colony,
Tulla Pura, Kota Junction,
Last employed as Khallasi (Microwave)
Under Chief Telecom Inspector,
West Central Railway, Kota Division,
Kota.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India
through General Manager,
Western Central Zone,
West Central Railway,
Jabalpur.
2. The Divisional Railway Manager,
Western Central Railway,
Kota Division,
Kota.
3. Divisional Signal &
Telecom Engineer (Microwave),
West-Central Railway,
Kota Division,
Kota

.. Respondents

(By Advocate: Shri Anupam Agarwal)

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O R D E R

Per Hon'ble Mr. M.L. Chauhan, M(J)

The applicant has filed this OA thereby praying for the following reliefs:-

- "i) That the respondents may be directed to consider for grant of compensate allowance as per provisions of rule 65 of Railway Services (Pension) Rules, 1993 and to release the same from the date of dismissal i.e. 13/2/1999 or prospective date.
- ii) Any other order/direction of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- iii) That the costs of this application may be awarded."

2. Along with the OA, the applicant has also filed Misc. Application for condonation of delay which has been registered as Misc. Application No.126/2006. The ground taken by the applicant for condonation of delay in filing the present OA is that although the order of dismissal from service was passed on 4.2.1999 it has attained finality when his revision petition was dismissed on 28.6.2001 and the said order was required to be challenged within a period of one year, but the said order could not be challenged on account of financial hardship and constant illness of the applicant. It is further pleaded that the respondents did not consider the case of the applicant for grant of compassionate allowance and grant of compassionate allowance is recurring cause of action, as such, the

applicant is entitled for the same from the date of dismissal or prospective date.

3. Briefly stated, facts of the case so far as relevant for decision of this case are that the applicant was initially appointed as Khalasi in the year 1981. He was issued a major penalty chargesheet in the year 1994 on the allegation that the applicant took fraudulent withdrawal from the account of one Shri Anil Kumar Sharma by appending forged signatures of Shri Anil Kumar. Enquiry in the matter was conducted and ultimately the Disciplinary Authority imposed punishment of dismissal from service vide order dated 4.2.99 (Ann.A1). The applicant presented a revision petition dated 26.3.1999 against the order passed by the Disciplinary Authority which revision petition was also dismissed on 28.6.2001 (Ann.A2). Thus, the punishment of dismissal awarded by the competent authority which has not been challenged by the applicant has attained finality. Now the limited case of the applicant as pleaded in this OA is regarding compassionate allowance. For that purpose the applicant has placed reliance on the instructions dated 19.7.98 (Ann.A3), instructions dated 22.6.05 (Ann.A4) and the provisions contained in Rule 65 of the Railway Services (Pension) Rules, 1993.

4. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have taken stand that the order of dismissal has attained finality in the year 2001 when revision petition of the applicant was rejected. Since then or even prior to it, the applicant did not make any grievance regarding grant of compassionate allowance. It is further pleaded that applicant never asked for it till date by making any application to the railway authorities. Thus, according to the respondents, this application cannot be treated within limitation. This being not a case of denial of rightful claim, no recurring cause of action is available to the applicant. The respondents have also filed a separate reply thereby opposing application for condonation of delay.

On merits, it has been stated that the instructions issued by the respondents vide Ann.A3 was issued with a purpose for the speedy settlement of dues of the railway servants. Regarding Ann.A4, the circular issued in the year 2005, it is stated that the said circular is applicable prospectively only. It nowhere state about grant of such allowance in cases decided in the past. Further the same being instructions of the authorities, cannot be termed as Railway Board instructions so as to have force of law. It is stated that applicant never requested for such grant till filing of the OA, therefore, he has no

right to ask for it by way of this OA. So far as provisions contained in Rule 65 of the Railway Services (Pension) Rules, 1993, the respondents have pleaded that mere reading of the said provisions discloses that it is the prerogative of the competent authority to sanction such allowance subject to the condition mentioned therein in deserving cases only that too which need special consideration. The applicant never submitted any application disclosing such circumstances so as to have his claim within the ambit of Rule 65 of the Rules of 1993. Therefore, non grant of the compassionate allowance cannot be said to be illegal or arbitrary so as to prefer this Original Application for enforcing the claim. It is further stated that in view of the charges against the applicant with regard to forgery being proved against him, he is not entitled for compassion from the administration. The applicant has already been dismissed way back cannot claim compassionate allowance at such a belated stage as a matter of right. Further, the applicant cannot ask for exercise of discretion in a particular fashion. According to the respondents, the applicant cannot be said to be facing any financial hardship as the applicant was dismissed in the year 1999 and he survived till date without such allowances from the answering respondents.

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5. I have heard the learned counsel for the parties and gone through the material placed on record.

6. The controversy which requires my consideration is whether the applicant is entitled to compassionate allowance in view of the relevant instructions issued by the railway authorities and also provision contained in Rule 65 of the Railway Services (Pension) Rules. In order to appreciate the matter in controversy, it will be useful to quote a letter dated 19.7.1989 (Ann.A3) on which reliance has been placed by the learned counsel for the applicant. Para 4.1 of which thus reads as follows:-

"4.1 Staff dismissed/removed from service under DAR:-

Attention is invited to Para 309 & 310 of MRPR, 1950, according to which no pensionary benefit may automatically be granted to a Railway servant on whom the penalty of removal or dismissal has been imposed. The authority who removed or dismissed the Railway servant from service should however consider and record whether any compassionate grant(s) corresponding to ordinary gratuity and/or Death-cum-Retirement Gratuity and/or allowance corresponding to ordinary pension not exceeding two-third ($2/3^{\text{rd}}$) of the pensionary benefits which would have been admissible to him had he retired on medical certificate, should be awarded, on the merits of the case. While Para 309 of MRPR, 1950 vests discretion to grant such compassionate grant/allowance, it is incumbent on the part of the Personnel Officer to have the decision in this regard, recorded by the Competent Authority and advise the same to the Settlement Section. There should be no need to wait for a formal request to be made by the Railway servant, who was removed or dismissed. If timely action is taken in such cases, payment of compassionate grant and/or allowance, where sanctioned by the Competent

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Authority can be made within two months or more over/ dismissal. If such staff are subsequently re-instated in service on appeal/revision, action under para 917(4)-RI (1985 Edition) may be taken."

The applicant has also placed reliance on letter dated 22.6.2005 issued by the Divisional Railway Manager (Estt.), Kota to his subordinate officers which stipulates that in future in all removal/dismissal cases, appropriate authority should also pass appropriate order regarding compassionate allowance in terms of Rule 65 of the Pension Rules, 1993. Rule 65 of the Pension Rules is in the following terms:-

"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-third of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than Twelve hundred seventy five (Rs. 1275/-)"

Thus, the sole question which requires consideration is whether the applicant has made out a case for grant of compassionate allowance in terms of the aforesaid provisions. The matter on the point is no longer res-integra. Para 309 and 310 of MRPR 1950 as circulated vide circular dated 19.7.1989 (Ann.A3) relevant portion of which is reproduced above was

considered by the Hon'ble Rajasthan High Court in the case of Idan Puri vs. Union of India and Ors., 2007

(3) SLJ 439. At this stage, it will be useful to quote para 8 of the judgment, which thus reads:-

"8. Even otherwise Paras 309 and 310 of the Rules of 1950 give a discretion to the Railways to decide whether or not to grant compassionate allowance to Railway servant who is removed/dismissed. Rule 309 clearly provides for giving such compassionate allowances to the Railway servant who is removed/dismissed "when he is deserving a special consideration" such a compassionate allowance shall not exceed two third of the pensionary benefits which would have been admissible to him if he had retired on medical certificate. Rule 310 further provides that 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." This very Rule further provides that "Where it can be legitimately inferred that Railway servant's service has been dishonest there can seldom be any good case for award of compassionate grant and/or allowances."

At this stage, it will also be useful to quote para 10 of the judgment which thus reads:-

"10. A similar question came up before the Division Bench of this Court in Kishal Lal Chadha vs. Union of India and Others, in D.B.Civil Writ Petition No. 1564 of 2000, decided on 12th December, 2002 wherein also the prayer was made for grant of compassionate allowance after the appellant had lost in the first round of litigation against the order of dismissal. In the facts of that case, while considering the scope of Rule 41 of Central Service (Pension) Rules, 1972, a provision similar to Rule 309 and 310 in the Rules of 1950, the Division Bench observed as under:-

"Apart from the fact that the petition has in fact never pressed for the compassionate

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allowance under proviso (i) to Rule 41(1), it may be observed that it is for the concerned Competent Authority to consider the case in appropriate cases as to whether the dismissed employee deserves any special consideration with regard to the sanction of compassionate allowances. No such case has either been set up or has been made out and, therefore, it is not necessary for this Court to examine as to whether the petitioner was entitled to this compassionate pension or not and it appears from the facts of this case that the concerned Competent Authority may have found the petitioner liable to punishment for the allegations for which he was dismissed way back in 1975 and even otherwise it is too late for the petitioner to seek such a relief and the petitioner has in fact not asked for it in his earlier litigation and in the opinion of this Court rightly so."

Thus, from the judgment of the Hon'ble High Court in the case of Idan Puri (supra), relevant portion of which has been reproduced hereinabove, it is categorically held that compassionate allowance can be granted, if there exists such 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 where it can be legitimately inferred that Railway servant's service has been dishonest there can seldom be any good case for award of compassionate grant and/or allowance in terms of Para 310. In the present case, the applicant is guilty of fraud and has withdrawn the amount dishonestly from the account of one Shri Anil Kumar Sharma. This charge has been fully established and findings have attained finality as the applicant has not challenged the action of the authorities in

Court of law. Thus, in terms of provisions contained in para 310 it cannot be said that the applicant's service was not dishonest so as to entitle him for compassionate grant/allowance. Further, the applicant has not shown any extenuating circumstances which may entitle the applicant for grant of compassionate allowance either in this OA or before the authorities. The case set up by the applicant in this OA is that it was the authority to consider case of the applicant in terms of Rule 65 of the Pension Rules as well as instructions issued in the year 1989 and grant the same as if the applicant is entitled to such claim as a matter of right. According to me, such is not the object and scope of the provisions and instructions issued by the railway authorities as quoted above. Para 310 of the MRPR, 1950 prohibits the competent authority to exercise such discretion in favour of a person whose services have been dishonest. Thus, the case of the applicant is required to be dismissed on this ground alone.

Further, the applicant has never approached before the competent authority to consider his case for grant of compassionate allowance as it is for the competent authority to consider in an appropriate case whether the dismissed employee deserves any special consideration with regard to sanction of compassionate allowance. No such case has either been set up or has been made out either before the authority or in this

OA, and therefore, it is not necessary for this Tribunal to examine as to whether the applicant was entitled for compassionate allowance or not. Reliance placed by the applicant on the instructions dated 22.6.2005 is wholly misconceived. These instructions are applicable to the cases where dismissal order has been passed after issuance of the said instructions whereby the subordinate authorities have been asked to consider the cases for compassionate allowance while passing the order of removal/dismissal from service. Further, this order relates to Kota Division, it cannot be said to be the instructions issued by the Railway Board as applicable to all railway servants.

7. Thus, for the foregoing reasons, I am of the view that the applicant is not entitled to any relief. Since findings have been recorded on merits, this Tribunal has not gone into the question whether the present application is liable to be dismissed on the ground of limitation. Accordingly, the present OA is dismissed with no order as to costs.

8. In view of the order passed in the OA, Misc. Application No.126/06 for condonation of delay shall also stands disposed of.


(M.L. CHAUDHARY)

Judl.Member

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