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**ORDERS OF THE BENCH**

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**Date of Order: 09.07.2013**

OA No. 570/2011

Mr. S.C. Sethi, counsel for applicant.

Mr. Anupam Agarwal, counsel for respondents.

Arguments heard.

O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

  
(S.K. KAUSHIK)  
JUDICIAL MEMBER

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 570/2011

**DATE OF ORDER:** 09.07.2013

**CORAM :** HON'BLE MR. S.K. KAUSHIK, JUDICIAL MEMBER

Smt. Sukkho, aged about 57 years, W/o late Shri Shakoor, Ex. Gangman, under PWI, Idgah (Western Railway) now West Central Railway, Kota Division, Kota, R/o H.No. 21, Idgah Agra, C/o Gulab Singh, Railway Quarter No. 21-L, Railway Colony, Idgah, Agra (U.P.) - 282007.

...Applicant

Mr. S.C. Sethi, counsel for applicant.

**VERSUS**

1. Union of India through General Manager, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota (Raj.).
3. The FA & CAO, West Central Railway, Jabalpur.
4. Sr. DEN, West Central Railway, Kota Division, Kota.
5. Sr. Divisional Finance Manager, Western Central Railway, Kota.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

**ORDER (ORAL)**

By means of the present Original Application filed under Section 19 of the Administrative Tribunal Act, 1985, the applicant seeks the following reliefs: -

- "8.1 That Annexure A/2 and A/3 letters of DRM Kota, Western Central Railway Kota Division may kindly be declared bad, illegal against rules & inoperative.
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Similarly in order Annexure A/1 dated 22.2.2002 the words "FROM PROSPECTIVE DATE" may kindly be declared bad, illegal against rules and inoperative and the respondents be directed to expunge this portion in the order and to allow the compassionate allowance from 16.10.1990 the last date of service of late Shri Shakoor Gangman.

- 8.2. That the alternations made by the resp. No. 5 Sr. Divisional Finance Manager, West Central Railway Kota Division Kota, in PPO No. WR/51414/323217 dated 5.8.2003 issued by the FA & CAO Western Central Railway, Jabalpur, changing date of commencement of pension 22.2.2002 in place of 16.10.90 and striking gratuity column showing Rs. 65217/- may be declared as bad illegal, arbitrary and without jurisdiction and inoperative.
- 8.3. It may kindly be declared that compassionate allowance is also one of the class of pension and is payable to a Railway Servant from the last date (date) of service in the establishment of Railway.
- 8.4. That it may kindly be declared that late Shri Shakoor, Gangman under PWI Idgah Agra was entitled for compassionate allowance from 16.10.1990 and the applicant being his widow & nominee is entitled to get the arrears of difference of compassionate allowance for the period 16.10.1990 to 22.2.2002 because Shri Shakoor has died on 19.11.2002.
- 8.5. That the respondents may be directed to pay the amount of Gratuity Rs. 65217/- to the applicant along with the amount of Rs. 68577/- recovered through Punjab National Bank Daresi Agra from the compassionate allowance of the applicant with interest @ 12%."

2. Facts are not in dispute; therefore, brief note thereupon is sufficient.

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3. I have heard Shri S.C. Sethi, learned counsel appearing for the applicant and Shri Anupam Agarwal, learned counsel appearing for the respondents.

4. Shri Sethi, learned counsel appearing for the applicant vehemently argued that the impugned order dated 22.2.2002 (Annexure A/1) restraining the benefit of compassionate allowance from prospective date is contrary to the Rule 65 of Railway Service Conduct Rules, 1993. Therefore, the impugned order is liable to be set aside only to the extent it make the benefits effective 'from the prospective date' instead of from the date of death of the applicant's husband.

5. Shri Sethi, also submitted that the respondents have also recovered an amount of Rs. 65217/- from the gratuity on account of some alleged dues pending against her husband. He urged that even during the life-time of the deceased husband of the applicant or thereafter no notice was served upon the applicant about pending dues, therefore, the amount, which has been recovered from the gratuity of the deceased husband of the applicant is also liable to be refunded because before passing the impugned order of recovery, the applicant has not been granted

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any opportunity of hearing and straightway the recovery order has been passed that too from the amount of gratuity.

6. On the other hand, Shri Agarwal, learned counsel appearing for the respondents argued that it is for the competent authority to decide from which date the benefit is to be granted to the wards of an employee. He further urged that as far as the amount which has been recovered from the applicant is concerned, a detail chart has been given in para 4.13 of the reply and after considering that the amount is due from the husband of the applicant, the same has been recovered from the gratuity.

7. I have considered the rival submissions of the respective parties and have gone through the pleadings available on record.

8. Here, two questions arise for my consideration. Firstly, whether the compassionate allowance admissible under Rule 65 of the Railway Services (Pension) Rules, 1993, is to be allowed from the date when the employee died or from the date of passing of order i.e. prospectively? A perusal of Rule 65 of the Rules makes it clear that the same is admissible from the date of death of the removed/dismissed Railway servant. The

relevant portion of Rule 65 of the Railway Services (Pension) Rules, 1993 reads as under: -

"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/pension under the provide to sub-rule (1) shall not be less than Rs. 375/- per mensem.

In this regard, several representations had been received by the Railway Board from the eligible members of the family for grant of compassionate allowance, after a lapse of many years from the date of removal / dismissal and death, respectively and it has been decided that if the case of removal/dismissal of a Railway servant is deserving of special consideration, the authority competent to dismiss or remove the Railway servant from service, may sanction compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him, had he retired on the compensation pension. The power to sanction or otherwise of compassionate allowance is a discretionary power vested in the authority competent to remove / dismiss the Railway service, to be exercised by the said authority suo motu at the time of passing order of dismissal or removal from service or immediately thereafter. Therefore, it has been clarified that past cases where the competent authority in exercise of its discretionary powers had not sanctioned compassionate allowance at the time of passing punishment order or immediately thereafter, cannot be reopened for review

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on the basis of representation received from removed / dismissed employee and their families at a later date.

The Railway Board has given guiding principles for the grant of compassionate allowance or gratuity or both for compliance by the Railways concerned as under:

- (i) The decisions 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 re-submit 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 has further been clarified that compassionate allowance being one of the clauses of pension and a

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minimum qualifying service of ten years is a prerequisite for sanctioning of any class of person it is absolutely necessary for the competent authority sanctioning compassionate allowance to a person on whom the punishment of removal/dismissal is imposed, to satisfy itself that such a person had rendered not less than 10 years of qualifying service. Therefore, the Head of Office should place before the competent authority the information about the qualifying service and other relevant facts concerning the Railway servant either at the time of imposing penalty or immediately thereafter to facilitate that authority to take a decision in regard to pension or compassionate allowance in terms of Rule 65 of the Railway Services (Pension) Rules, 1993.

[Rly. Board's letter No. F(E)III/2003/PNI/5 dated 9.5.2005.] (R.B.E. No. 79/05)

When it was brought to the notice of the Railway board that the aforesaid instructions are not being scrupulously followed in all cases where the penalty of removal/dismissal from service has been imposed and the courts are taking serious view of the matter not being given due consideration by the Disciplinary Authorities at appropriate stage. The Railway Board has once again reiterated the above instructions to the effect that orders for or against grant of Compassionate Allowance or gratuity or both, should invariably be passed without fail either at the time of imposing the penalty of removal/dismissal or immediately thereafter, so as to avoid any repercussion at a later stage.


([Rly. Bd.'s letter No. F(E)III/2003/PN1/5 dated 31.7.2008 (R.B.E. No. 89/2008) (N.R.S. No.13490).]

The Railway Board has also decided to reiterate that in cases where 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 the Board's letter dated 9.5.2005 it has been decided that out of the past cases in which the Disciplinary Authority had not passed any such order for or against grant of

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compassionate allowance, if any case appears to be deserving for consideration being given by the Disciplinary Authority concerned, may be reviewed on receipt of representation of dismissed/removed employees or the family members of the deceased employees keeping in view the following conditions:

- (i) Only those past cases can be reviewed where records pertaining to disciplinary proceedings and service records are available. The disciplinary authorities are required to take a fair decision duly considering the gravity of the offence and other aspects involved therein and to confirm that the question of sanction or otherwise of compassionate allowance was not considered by the competent authority at any stage. Service records are essential to adjudge the Kind of service rendered by the dismissed/removed employee and to determine the net qualifying service for working out the quantum of compassionate allowance, if sanctioned.
  - (ii) Each case will have to be considered on its merits and conclusion reached on the question whether there were any extenuating facts associated with the case that would make the punishment of dismissal/removal, which though imposed in the interest of the Railways, appears unduly hard on the individual.
  - (iii) Not only the grounds on which the Railway servant was removed/dismissed, but also the kind of service rendered should be taken into account.
  - (iv) Award of compassionate allowance should not be considered if the Railway servant had been dishonest which was a ground for his removal/dismissal.
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- (v) Though poverty is not an essential condition precedent to the award of compassionate allowance, due consideration can be made of the individual's spouse and children dependent upon him.

On review of such cases, if the competent authority sanctions compassionate allowance to a dismissed/removed Railway servant, the same shall be effective from the date of removal/dismissal. In case the competent authority decided to sanction family pension to the spouse or eligible family member of the deceased Railway servant compassionate allowance shall be sanctioned notionally from the date of dismissal/removal to make the family eligible for family pension and in such cases family pension shall be payable for the period commencing from the date following the date of death of the removed/dismissed Railway servant.

[Rly. Bd.'s letter No. F(E)III/2003/PN1/5 dated 4.11.2008.(R.B.E. No. 164/2008) (N.R.S. No. 13522).]"

In view of the above, the first question is decided in favour of the applicant and accordingly the impugned order dated 22<sup>nd</sup> of February, 2002 (Annexure A/1) is quashed to the limited extent of restricting the benefit from the prospective date i.e. from 22<sup>nd</sup> of February, 2002 instead from the date of death of applicant's husband.

9. With regard to the second question with regard to recovery of amount from the gratuity, it is nowhere pleaded by the respondents that any notice was ever served upon the applicant or upon her husband during his life-time and

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straightway amount of Rs. 68577/- has been recovered from the gratuity, which is not permissible because any order which has civil consequences will be passed after following the principle of natural justice. Since the respondents are affecting recovery from the gratuity of the deceased employee of the applicant, as such, the said recovery order has civil consequences that too after the death of an employee from the gratuity. In the peculiar facts and circumstances of the present case, the recovery has been affected from the gratuity of an employee who had already died, therefore, it concern the legal heir to whom the gratuity amount is to be paid. Therefore, I am of the considered view that the respondents should not recover the said amount from the gratuity in view of the above facts and accordingly, I direct the respondents to refund the said amount within a period of two months from the date of receipt of certified copy of this order.

10. In the above term, the Original Application is disposed of.  
No order as to costs.

  
(S.K. KAUSHIK)  
JUDICIAL MEMBER

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