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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

29
05.11.2012

OA No. 511/2012 with MA 243/2012 & 324/2012

Mr. Gaurav Sharma, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

MA No. 324/2012

Heard on this MA regarding deletion the name of respondent no. 4, the Secretary, Railway Board, Rail Bhawan, New Delhi, from the array of respondents. The learned counsel for the applicant has no objection as no relief has been claimed against the Railway Board. Therefore, the MA is allowed. The name of respondent no. 4 stands deleted from the array of respondents.

*Rejoined not
filed
by*
The MA stands disposed of accordingly.

OA No. 511/2012 with MA 243/2012

List it on 11.12.2012.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

11-12-2012

OA No. 511/2012 with MA No. 243/2012

Mr. Gaurav Sharma, Counsel for applicant.
Mr. Anupam Agarwal, Counsel for respondents.

Heard.

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

Anil Kumar
[Anil Kumar]
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 511/2012
with
MISC. APPLICATION NO. 243/2012

DATE OF ORDER: 11.12.2012

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Late Ramjit Lal S/o Shri Mangal, 45 years age as on death, last employed as Senior Khallasi, Wheel House, Freight Car, Repairs Factory, Kota Junction, West Central Railway, Kota (since deceased) through his Legal Representative –

1/1. Smt. Paan Bai widow of (Late) Ramjit Lal, aged about 54 years, R/o Ward No. 5, Mirzapur Road, Near Ambedkar Dharamshala, Village Mirzapur, Tehsil Gangapur City, Swai Madhopur, Rajasthan.

...Applicant

Mr. Gaurav Sharma, counsel for applicant.

VERSUS

1. Union of India through General Manager, West Central Railway, General Manager's Office Building, Jabalpur (Madhya Pradesh).
2. Chief Factory Manager, Kota Junction, West Central Railway, Kota, Rajasthan.
3. Divisional Railway Manager, West Central Railway, Kota, Rajasthan.

...Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER (ORAL)

This Original Application has been filed by the applicant claiming for the following reliefs: -

"i. That the rejection letter dated 19.05.2010 (Annexure A/1) as issued by the respondent no. 2 be declared to be void, illegal, bad in eye of law and be quashed and set-aside.

ii. That the respondents may kindly be directed to grant the Compassionate Allowance to applicant no. 1/1 – Smt. Paan Bai on behalf of her deceased husband & employee of the respondents (Late) Ramjit Lal in terms of the Rule

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68 of the Railway Services (Pension) Rules, 1993 read with para 310 of the Manual of Railway Pension Rules, 1950.

iii. That the circular/guideline of the Railway Board relied upon by the respondent authorities in the rejection letter dated 19.05.2010 (Annexure A/1) be declared inapplicable in the applicant's case.

iv. Any other directions and orders which is deemed fair & proper in the facts and circumstances of the case may kindly be allowed to the applicant."

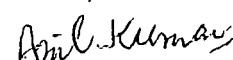
2. Learned counsel for the applicant submitted that the applicant no. 1/1 – Smt. Paan Bai is the widow of late Ramjit Lal, who was last employed as Senior Khallasi at Wheel House, Freight Car, Repairs Factory, Kota Junction, West Central Railway, Kota, Rajasthan. His services were terminated vide respondent's order dated 27.10.1993. Late Ramjit Lal worked for 07 years, 08 months and 10 days for the respondent-department. Since the death of Ramjit Lal on 28.02.2000, the applicant no. 1/1 – Smt. Paan Bai being entitled to the pension / compassionate allowance till her death or re-marriage as per the Railway Services (Pension) Rules, 1993, she made various representations to the respondents for grant of compassionate allowance, however, in the most slipshod and illegal manner, the respondents disallowed her request vide their rejection letter dated 19.05.2010 (Annexure A/1).

3. Learned counsel for the applicant further submitted that though the husband of the applicant worked for more than 10 years with the respondent-department, but even if, for the sake of arguments, it is conceded that he worked for less than 10

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years with the respondent-department, even then in terms of Rule 68 of the Railway Services (Pension) Rules, 1993, there is no bar for granting the compassionate allowance to an employee having worked for less than 10 years of service. He further argued that the rejection letter dated 19.05.2010 (Annexure A/1) has been passed in utter disregard of the Rule 3 (22) read with Rule 20 of the Railway Services (Pension) Rules, 1993 and therefore it is liable to be quashed and set aside. He further argued that the respondents have relied upon the Railway Board circular RBE No. 79/2005 dated 09.05.2005 for rejecting the claim of the applicant on the ground that the husband of the applicant had not completed 10 years of service prior to his termination from service in the year 1993. He further argued that this circular was issued on 09.05.2005; therefore, it cannot be applied retrospectively. In support of his arguments, learned counsel for the applicant referred to the order dated 10th February, 2012 passed by Central Administrative Tribunal, Ahmedabad Bench in O.A. No. 358/2010 with MA No. 433/2010 & MA No. 326/2011 (Mr. Omkarbhai Prembhai Bhabhor vs. Union of India). He has particularly referred to para 13 and 14 of order dated 10th February, 2012 (supra), which are quoted below: -

"13. Having regard to the relevant paras aforesaid, we find that this OA, merits consideration on the ground of applicability of rules and instructions to the case of the applicant relating to removal from service in 1988, which was much before the Railway Board's instruction on 09-5-2005 came into force. The provisions of para-309 referred to above clarifies that it is a discretionary power and such discretion could be exercised dependent on the satisfaction of the disciplinary authority. As regards the issue whether such discretion could have been applied by the disciplinary authority or not in this particular matter while passing the final order, we are of the view that if



such discretion has not been applied *suo moto* by the disciplinary authority at the relevant time, the applicant could not have pleaded for such grant of compassionate allowance because the disciplinary proceedings were conducted *ex parte*.

14. In view of the above, the decision of the respondents communicated vide their letter dated 21-12-2009 (Annexure-R/1) is set aside. The respondents are directed to consider this matter afresh in the light of the rules and instruction prevailing at the time of disciplinary proceedings and on the date on which the applicant was removed from service i.e. vide order dated 20-8-1988. While doing so, the respondents would keep in view the provisions especially with respect to the fact that he was not removed from service on ground of dishonesty. As provided in para-310 of the Manual while poverty is not an essential condition precedent for award of such compassionate grant or allowance. Para-310 also provides that 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. Accordingly, the OA is disposed of with the above observation. It is expected that fresh orders would be passed by the respondents as per above within a period not later than four months from the date of receipt of this order. No costs. With disposal of the OA, MAs require no further orders."

Learned counsel for the applicant further submitted that the facts of the present O.A. are quite similar to the facts of O.A. No. 358/2010 (*supra*), therefore, the respondents may be directed to reconsider the case of the applicant 1/1 – Smt. Paan Bai.

4. On the other hand, learned counsel for the respondents argued that the present Original Application has been filed by the deceased employee late Shri Ramjit Lal, which is not maintainable. A dead person cannot file an Original Application in as much as he cannot have any grievance to be redressed through the court of law. Accordingly, it deserves to be dismissed for this reason alone. He further argued that the

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present Original Application has been filed claiming compassionate allowance on behalf of deceased husband. In fact as per rules he is not entitled for any such grant because his service was terminated by order dated 27.10.1993. Even otherwise also a widow can claim only family pension. She cannot claim compassionate allowance or pension, which is to be granted to the employee concerned only. Therefore also the present Original Application for the relief as claimed is not maintainable and it should be dismissed at its outset. Learned counsel for the respondents further argued that the present Original Application has been filed in the year 2012 claiming compassionate allowance/pension while the applicant no. 1/1 survived without it since 1993 till date. Even as per Railway Board's circular RBE No. 79/2005, past cases cannot be reopened. Therefore also it deserves to be rejected at its outset.

5. Learned counsel for the respondents further argued that the perusal of Annexure R/1 clearly shows that late Shri Ramjit Lal was not having requisite qualifying service so as to be entitled for pension. He served with the respondent-department only for 07 years, 08 months and 10 days. Therefore, as per Railway Board's circular RBE No. 79/2005 dated 09.05.2005, Shri Ramjit Lal was not entitled for any compassionate allowance/pension. Even otherwise, compassionate allowance/pension since personal to the employee concerned cannot be granted to her widow. He further submitted that Shri Ramjit Lal was terminated from service and he received order of his termination on 02.11.1993, as evident by Annexure R/2, and he

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died in the year 2000 but he never claimed for any compassionate allowance/pension during his life time. Since Shri Ramjit Lal had knowledge of his termination from service way back in 1993, his legal representative(s) has no right to allege regarding non-communication of it to him. He further argued that the compassionate allowance/pension cannot be claimed as a matter of right; rather it is a discretionary power vested upon the competent authority in deserving cases. The services of late Shri Ramjit Lal were terminated on being found him guilty of misconduct, therefore also his case cannot be said to be deserving for such grant. Therefore, he argued that this Original Application has no merit and it should be dismissed with costs.

6. Heard the rival submissions of the respective parties, perused the documents available on record and the case law referred to by the learned counsel for the applicant. It is not disputed that late Shri Ramjit Lal was terminated from service of the respondent-department in the year 1993. It is also not disputed that late Shri Ramjit Lal died in the year 2000. A bare perusal of annexure R/2 shows that Shri Ramjit Lal had received the order of his termination on 02.11.1993, since then upto the death of Shri Ramjit Lal, he never claimed for any compassionate allowance/ pension during his life time.

7. I have carefully perused the letter dated 19.05.2010 (Annexure A/1) vide which it has been informed that Smt. Paan Bai, applicant no. 1/1, is not entitled for compassionate allowance/ pension because her late husband Shri Ramjit Lal had

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less than 10 years qualifying service. He had worked only for 07 years, 08 months and 10 days. Learned counsel for the respondents has argued that as per Railway Board circular, RBE No. 79/2005 dated 09.05.2005; the qualifying service has to be 10 years for grant of compassionate allowance to a person on whom the punishment of removal/ dismissal is imposed.

8. Para 309 of Manual of Railway Pension Rules 1950, provides as under: -

"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) – corresponding to ordinary gratuity and/or death-cum-retirement gratuity –, and/or allowances – corresponding to ordinary pension –, when he is deserving on 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."

Further, para 65 of Railway Services (Pension) Rules, 1993, is relevant, which reads as follows:-

"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 three hundred seventy-five rupees per mensem."

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Both these provisions make it clear that the person who is removed or dismissed from service has no legal right for compassionate allowances / pension. It is for the authority concerned who removed or dismissed him from service may award compassionate grant(s) / pension in deserving cases; 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.

9. I have carefully gone through the order dated 10th February, 2012 passed by Central Administrative Tribunal, Ahmedabad Bench in OA No. 358/2010 (supra), whose para 13 and 14 have been quoted above. In this order, Ahmedabad Bench of the Tribunal has observed that the Railway Board's instruction came into force on 09.05.2005, while the applicant in that OA was removed from service in the year 1988, therefore, the respondents were directed to consider his case afresh in the light of the rules and instruction prevailing at the time of disciplinary proceedings and on the date on which the applicant was removed from service i.e. vide order dated 20.08.1988. I am of the view that the facts of the present case are quite similar to the facts of OA No. 358/2010 (supra).

10. In view of the above, I am of the considered opinion that the ratio decided by Central Administrative Tribunal, Ahmedabad

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Bench in OA No. 358/2010 (supra) is squarely applicable in the facts and circumstances of the present case. Therefore, the respondents are directed to consider the case of the applicant no. 1/1, Smt. Paan Bai, afresh in the light of the rules and instruction prevailing at the time of disciplinary proceedings and on the date on which the husband of the applicant no. 1/1, late Shri Ramjit Lal, was removed from service i.e. vide order dated 27.10.1993. The respondents are further directed to pass a fresh speaking and reasoned order expeditiously but in any case not later than a period of four months from the date of receipt of a copy of this order.

11. With these observations and directions, the present Original Application is disposed of with no order as to costs.

12. In view of the order passed in O.A., no order is required to be passed in Misc. Application No. 243/2012. Accordingly, the Misc. Application is also disposed of.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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