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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH,
CHANDIGARH.**

O.A.No.060/00998/2014

Date of Decision : 22.9.2015
Reserved on: 18.09.2015

**CORAM: HON'BLE MRS. RAJWANT SANDHU, ADMINISTRATIVE MEMBER
HON'BLE DR. BRAHM A. AGRAWAL, JUDICIAL MEMBER**

Ajit Singh, son of late Partap Singh, resident of Village Nag Kalan, Tehsil and District Amritsar.

Applicant

Versus

1. Union of India, through its Secretary, Department of Railways, CGO Complex, Lodhi Road, New Delhi.
2. Chief Works Manager, Northern Railway, Mechanical Workshop, Amritsar.
3. Senior Personnel Officer (SPO), Northern Railway, Mechanical Workshop, Amritsar.
4. Assistant Personnel Officer, Northern Railway, Mechanical Workshop, Amritsar.

Respondents

Present: Mr. Vishal Goel, counsel for the applicant
Mr. G.S.Sathi, counsel for the respondents

ORDER
HON'BLE MRS. RAJWANT SANDHU, MEMBER (A)

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking setting aside of the order dated 07.08.2009 and order dated 15.04.2014 (Annexure P-6 and P-11) passed by



respondent no.2 whereby the request of the applicant has been declined for grant of compassionate allowance.

2. It is seen that this is the 2nd round of litigation involving the applicant on the very same issue. Earlier the applicant had filed OA No.339/PB/2011 against the order dated 07.08.2009 and the same had been rejected as follows:-

- "9. After careful consideration of the matter and perusal of instructions quoted herein above, we are of the view that since in order to invoke the instructions for review of the past cases on the point involved in the present case, the relevant service record of the employee along with D&A proceedings initiated against the delinquent employee is not available, therefore, no relief can be granted to the applicant at this stage, whose record is not available with the respondents which relates back to 1968 and the same stands destroyed as per instructions cited for destruction of records. The claim of the applicant is otherwise also hopelessly time barred. So far as the plea of the applicant that he may be allowed to produce some relevant record that he can show to the concerned authorities, such instructions cannot be issued, keeping in view that fact that the respondents have no record to tally the same with the documents, if any, to be produced by the applicant and to verify the authenticity of these documents and that too at such a belated stage.
10. Therefore, in view of the observations made herein above, we find no reason to interfere with the impugned order (Annexure P-6) dated 07.08.2009 and the same is held to be valid in view of the instructions Annexure P-4."

3. The applicant then filed CWP No.18746 of 2013 which was decided on 27.08.2013 as follows:-

- "1) Since the petitioner's claim for grant of compassionate allowance in terms of the policy dated 09.05.2008 was turned down by the Department on the ground that the record of 1968 when he was removed from service has been weeded out and is not available, learned counsel for the petitioner states that he may be permitted to withdraw this writ petition with liberty to move an application before

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the C.A.T., Chandigarh Bench, Chandigarh (in short, 'The Tribunal'), to withdraw the Original Application and thereafter to represent the Department for re-construction of the record for which he has sufficient material in his possession.

- 2) With liberty aforementioned, the writ petition is dismissed as withdrawn."

✓ 4. The applicant thereafter filed his representation on 24.12.2013 before CWM, NR, Mech. Workshop, Amritsar, requesting that his service record be reconstructed as per the orders of the High Court and on the basis of record produced by him and also as per the record available with the respondent Department and Accounts Branch, he may be sanctioned compassionate allowance as is admissible. The Chief Works Manager, rejected the request of the applicant for compassionate allowance vide letter 727-E/D&AR, dated 15.04.2014 (Annexure P-11).

✓ 5. In the grounds for relief, it has been stated that the applicant has all his service record and the record of the disciplinary proceedings with him. This was supplied to the Department as per the directions issued by the Hon'ble Punjab and Haryana High Court in CWP No.18746 of 2013 vide order dated 27.08.2013, but respondent no.2 failed to consider the same and erroneously declined the request for grant of compassionate allowance by stating that "it is specifically mentioned that you have already been advised vide letter dated 07.08.2009 that your request for grant of compassionate allowance can not be accepted as this office has no record being old for more than 40 years. The

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record produced by you contains only a part of D&AR proceedings. In terms of PS 13522/p8 the complete D&AR proceeding file / service record are essential for granting the compassionate allowance which are not available in the office. As such it is also not feasible to ascertain that DA has passed any order in respect of compassionate allowance. In view of this infirmity request for grant of compassionate allowance at such a belated stage cannot be considered. Hence this OA.

6. In the written statement filed on behalf of the respondents, it has been stated that the order dated 15.04.2014 has been passed by the competent authority after due application of mind considering the fact no record pertaining to D&AR proceedings against the applicant is available in the official record and the documents produced by the applicant contained only part of the D&AR proceedings. Once the matter has been thrashed out by this Tribunal while deciding the OA No.399/PB/2011, and there is no further change in the facts and circumstances, the applicant is legally estopped to rake up the same issue once again.

7. Arguments advanced by the learned counsel for the parties were heard, when the learned counsel for the applicant reiterated the content of the OA. He could not explain as to why the applicant had delayed filing his request for compassionate allowance so many years after his discharge from service in 1968. Learned counsel stated that the applicant had filed the claim for

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compassionate allowance when fresh instructions were issued in 2009 by the Govt. of India regarding claims for compassionate allowance.

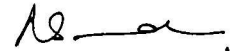
8. Learned counsel for the respondents stated that the guidelines issued regarding grant of compassionate allowance required that the record of the disciplinary proceedings should be available with the respondent Department and taking into account the grounds for seeking the compassionate allowance, the competent authority was required to examine the matter in accordance with the Govt. instructions. In the case of the applicant, since he had been discharged from service in 1968, no record whatsoever was available with the Department. It was not enough that the applicant had copies of some documents as reliance could not be placed on the material produced by the applicant till the same was cross verified with the record available with the respondent Department. Since the Department had categorically stated that the record regarding the disciplinary proceedings in respect of the applicant was not available, it having been weeded out in accordance with the rules regarding maintenance of records, the claim of the applicant for compassionate allowance could not be considered at this belated stage.

9. We have given our careful consideration to the matter, In view of the categorical statement of the respondents that the record regarding disciplinary proceedings is no longer available with the Department that would enable verification of the documentation produced by the applicant, the claim of the

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applicant for grant of compassionate allowance cannot be considered in the light of the instructions issued by the Department from time to time on this subject.

10. Hence, this OA is rejected. No costs.



(RAJWANT SANDHU)
ADMINISTRATIVE MEMBER.



(DR. BRAHM A. AGRAWAL)
JUDICIAL MEMBER

Place: Chandigarh

Dated: 22.9.2015.

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