

Reserved
(On 16.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **05th** day of **April** 2018

Original Application No 330/01280 of 2016

Hon'ble Mr. Gokul Chandra Pati, Member – A

Franklin Dived Singh, S/o Late Shri C.D. Singh, R/o Bungalow No. 2, Mission Road, Old Katra, Kutchery, Allahabad.

. . . Applicant

By Adv: Shri Rakesh Verma

V E R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. The Divisional Mechanical Engineer (P), Northern Railway, Lucknow.

. . . Respondents

By Adv: Shri P. Mathur

O R D E R

This O.A. has been filed with the following reliefs:-

- "i. to issue a writ, order or direction in the nature of Mandamus commanding the Respondents to consider sympathetically and to decide the representation dated 19.06.2015 preferred by the petitioner before the Respondent No. 3 / Disciplinary Authority under receipt duly forwarded to it by the Assistant Mechanical Engineer (P), Northern Railway, Lucknow for necessary action with due application of mind, with reference to the Rule 65 (1) read with its proviso attached together with sub rule (2) of Rule 65 of the Railway Services (Pension) Rules, 1993 and to sanction payment of compassionate allowance per month to the petitioner and to continue to pay the same month to month in future, within a period as may be fixed by this Hon'ble Tribunal.*
- ii. to issue any other suitable writ, order or direction in the facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.*
- iii. to award cost of the petition in favour of the petitioner."*

2. The facts of this case in brief are that the applicant was appointed on 04.02.1976 as Cleaner and was posted under the control of Loco Foreman, Northern Railway, Pratapgarh. He was promoted to the post of IInd Fireman w.e.f. 17.03.1981. He was further promoted to the post of Ist Fireman / Diesel Assistant in the month of May, 1983 and was posted under Loco Foreman, Northern Railway, Varanasi. The applicant was transferred as Ist Fireman / Diesel Assistant From Varanasi to Prayag Ghat in the month of October, 1983. The applicant fell ill and was on sick on Railway Medical Certificate (in short RMC) duly issued by the authorized Railway Doctor w.e.f. 24.01.1985 to 23.05.1985. After 24.05.1985 he was continued to remain on leave without pay. The applicant got payment from 24.01.1985 to 23.04.1985 and 24.04.1985 to 23.05.1985 through supplementary bill dated 18.12.1985 amounting to Rs. 3,956.50 and bill dated 16.06.1985 amounting to Rs. 995.90 total Rs. 4,952.50 on 20.12.1985. The applicant was issued a charge sheet dated 13.03.1990 issued by Respondent No. 4 on the ground that he manage to have drawn fake supplementary bills in his favour amounting to Rs. 4,952.50 and taken payment thereof in a fraudulent manner causing loss to the Railways and he remained on long absence from duty without authorization. A disciplinary proceedings was started against the applicant and vide order dated 31.10.1994 Respondent No. 3 removed the applicant from service. The applicant submitted an appeal which was also rejected by the appellate authority on 15.07.1995 (Annexure A-2) and the revision filed by the applicant was also rejected on 26.02.2002 (Annexure A-3). Thereafter, the applicant filed an OA No. 576 of 2002 before this Tribunal, which was dismissed after hearing both the parties. The

applicant filed a Writ Petition before Hon'ble High Court and then filed SLP before the Hon'ble Supreme Court, which were also dismissed.

3. It is further submitted by the applicant that he had submitted a representation dated 19.06.2015 (Annexure A-6) to the respondent No. 3 for sanction of compassionate allowance in his favour under the Rule 65 of the Railway Services (Pension) Rules, 1993 on the ground that the family of the applicant consisting of six family members including him and there are two unmarried and unemployed sons and one unmarried daughter and his wife the applicant, who has no source of income after his removal from service. It is also submitted by the applicant that his representation for compassionate allowances under the Rule 65 has not been considered by the disciplinary authority to decide whether the applicant can be allowed compassionate allowance under the proviso attached with Rule 65 (1) read with Rule (2). The representation dated 19.06.2015 of the applicant is still pending with the respondents.

4. In the counter reply filed by the respondents it has been stated that the applicant was served with the major penalty charge sheet under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 for dereliction of duties. He was found guilty of omission and commission of the alleged fraud thereby failing to maintain absolute integrity, devotion of duty and having acted in a manner of unbecoming of a railway servant. After, affording opportunity of personal hearing the disciplinary authority had held the applicant guilty of the alleged misconduct and passed an order of removal dated 31.10.1994 which was confirmed in appeal and also confirmed by the revisionary authority. The fraud committed by the

applicant was accepted by him during the departmental proceedings vide his confessional statement dated 05.12.1986. It is stated that there is no scope for exercising the discretion of the competent authority for granting compassionate allowance. The applicant was removed from service as a result of which the service rendered of the applicant stands forfeited accordingly no benefit of payment of pension and gratuity are admissible under the Rules except in deserving of special consideration to the satisfaction of the authorities concerned. In such circumstances no liability can be attributed upon the department. It is also submitted that the claim of compassionate allowances in pursuance of the provisions as contained in Rule 65 of the Railway Service (Pension) Rules 1993 is not sustainable.

5. In the rejoinder reply and the supplementary affidavit filed by the applicant, the contentions in the OA have been reiterated. Learned counsel for the applicant has also submitted the written submissions, where it is stated that the Rule 65 of the Railway Services (Pension) Rules, 1993 is applicable only for the cases where a railway servant has been dismissed or removed from service for serious and grave misconduct. For such employees, the provision of the rule 65 has been provided for the railway servants who are awarded extreme punishment of dismissal or removal from service. Hence, the contentions of the respondents not to consider the compassionate allowance on the ground that the charges against him are serious are misconceived.

6. Learned counsels for the applicant and the respondent were heard in the matter. They reiterated their respective stands in the pleadings. The relevant question in this case is whether the respondents' stand that the

applicant's claim/representation for compassionate allowance is not to be considered in view of serious charges which were proved against the applicant and which have been upheld by Hon'ble Apex Court.

7. I have carefully considered the pleadings and the submissions of both the parties. It is seen that the rule 65 of the Railway Services (Pension) Rules, 1993 do not have provisions supporting the stand of the respondent that the compassionate allowance cannot be considered in favour of an employee against whom charges of serious misconduct have been proved. The rule 65 provides for sanction of compassionate allowance in cases where a railway servant has been dismissed or removed from service provided the case deserves special consideration by the authorities. The aforesaid rule does not say that the employees who are removed or dismissed from service on serious charges will not be eligible for the benefit of the rule 65.

8. In this case, the applicant in his representation dated 19.06.2015 (Annexure A-6) has stated that his family consisting of three unemployed sons and one unmarried daughter besides the applicant and his wife is facing severe difficulties as he does not have any source of income after his removal from service from October 1994 and his "family is living in starvation position". If these facts are true, then his family is facing a difficult situation, which may be a reason for considering the applicant's case as a case deserving special consideration for the purpose of the rule 65 of the Railway Services (Pension) Rules, 1993.

9. As submitted by the applicant's counsel, in a similar case involving pilferage of Railway property, in the case of ***Mohd. Abdul Samad vs. S.C. Ry. Represented by G.M.*** reported in ***2008 (2) All India Services Law Journal page 102***, Hon'ble Andhra Pradesh High Court has held that a railway servant dismissed on the ground of very serious charges is also entitled to be considered for grant of compassionate allowance under the rules. Hon'ble High Court has held as under:-

"15. While there can be no dispute that the charges held established against the petitioner, of pilferage of railway property and attempt to sell it to a habitual receiver of stolen property, are grave and serious and would deserve no sympathy from this Court in exercise of its jurisdiction under article 226 of the constitution of India, it cannot be lost sight of that the applicable rules extend the benefit of compassionate allowance even to those who have been dismissed/removed from service, however, subject to the conditions stipulated therein. Under the Disciplinary and Appeal Rules, removal and dismissal from service are the harshest of the penalties prescribed and it is only when the charge held established against an employee are grave and serious would such a punishment be imposed. While the submission of Sri Gouri Shankar Sanghi, learned Senior Standing Counsel, that no indulgence should be shown by this Court to such an employee, cannot be said to be without merit, since the railway authorities, in their wisdom, have made rules extending the benefit of grant of compassionate allowance even to those employees, who have been removed/dismissed from service, it is not for this Court to delve further on this aspect. Under the Rules, while an employee is entitled for compensation pension on his retirement, the maximum limit, up to which compassionate allowance can be granted to an employee who is dismissed or removed from service is restricted to 2/3rd thereof. The rule making authority has considered it appropriate to make an ameliorative provision even in favour of employees who have been dismissed / removed from service. Since this benefit is extended even to those who have been removed from service, as has been rightly observed by the 3rd respondent himself, in the impugned order dated 28-6-2000, the actual misconduct or the course of misconduct which led to the removal or dismissal from service cannot by itself be a ground for denying the benefit of grant of compassionate allowance to such an employee. Lest it be construed otherwise it is made clear that this would also be one of the factors which may be required to be taken into consideration by the Competent Authority while arriving at his decision in granting/refusing to grant compassionate allowance but this cannot be the only factor. As has been noted by the 3rd respondent himself, the kind of service which the employee has rendered would also be a relevant factor. In addition, the fact that the applicant has a wife and children dependent upon him is a factor which Para 310 of the Manual of Pension Rules, 1950 requires the Competent Authority to take into consideration while exercising his discretion as to whether or not the benefit of compassionate allowance is required to be extended to such an employee.

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21. *It would meet the ends of justice if the writ petition is disposed of with a direction to the 3rd respondent to reconsider the matter afresh, in the light of the provisions of Paras 309 and 310 of the Manual of Railway Pension Rules, 1950, for grant of compassionate allowance to the petitioner herein, within a period of four months from the date of receipt of a copy of this order. The writ petition is disposed of accordingly. However, in the circumstances, without costs.*

10. It is also noted that Ernakulam Bench of this Tribunal while deciding a case involving sanction of compassionate allowance i.e. ***T. Saraswathy vs. Union of India represented through G.M. Southern Railway and others in the O.A. No. 91/2008*** (as reported in the website <https://indiankanoon.org/doc/73693328/>), has held as under:-

"11. I have heard Shri T.C. Govindaswamy, counsel for applicant and Shri Sunil Jose counsel for respondents. No doubt compassionate allowance is granted to removed/dismissed Railway servant and family pension to eligible members of the family as a matter of discretion by the disciplinary authority. Obviously, the gravity of the misconduct committed by the applicant will be a factor that would weigh in the mind of the disciplinary authority to grant such allowance. In this case, admittedly, the misconduct on the part of the applicant was unauthorised absence. The case of the applicant was that her husband was mentally ill and in fact, he was missing from his office. Hence the disciplinary proceedings were held ex parte and finally he was removed from service. The Annexure R-1 P.B. Circular No.94/2005/RBE No.79/2005, has reiterated the following existing guiding principles and procedures for grant of compassionate allowance or gratuity or both:

(i) "The decision 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 resubmit 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 is not the case of the respondents that the aforesaid procedure has been followed in the case of the applicant's husband. According to the applicant, her husband while he was alive made a number of representations. The only reason given by the respondents in rejecting his request, as is seen from the impugned Annexure A-5 letter dated 1.6.2005, is that there was no reason to grant compassionate allowance after the lapse of such a long period. In my considered view, as the disciplinary authority has not sanctioned compassionate allowance to the applicant in the order of his removal from on 10.4.1999 or on any date subsequently, the disciplinary authority was duty bound to consider his request in terms of Annexure R1 P.B. Circular No.94/2005 (supra). It is a well settled law that payment of pension/compassionate allowance is a continuing cause of action and the judgment of the Apex Court in M.R. Gupta's case (supra) will apply. I, therefore, direct the respondents to follow the prescribed procedure in the case of the applicant and her late husband and to take a judicious decision within three months from the date of receipt of a copy of this. The decision so taken shall also be communicated to the applicant. With the aforesaid directions, the O.A is disposed of. There shall be no order as to costs."

11. In the light of the judgments in the cases as discussed above, it will be just and fair on the part of the respondents to consider the representation dated 19.06.2015 submitted by the applicant for compassionate allowance (Annexure A-6) on merit under the rule 65 of the Railway Service (Pension) Rules, 1993 since in this case the sanction of compassionate allowance was not considered by the disciplinary authority (respondent No. 3) while passing the order dated 31.10.1994 (Annexure A-1) removing the applicant from service. It is also noted that the payment of compassionate allowance is a continuing cause of action for which no limitation will apply as per the judgment of Hon'ble Apex Court in the case of **M.R. Gupta vs. Union of India & Ors** reported in **1995 (5) SCC 628**. Hence, the respondent No. 3 / competent authority is directed to consider the representation dated 19.06.2015 (Annexure A-6) of the applicant on merit for sanction of compassionate allowance under the rule 65 of the Railway Service (Pension) Rule, 1993 within three months from the date of receipt of a copy of this order. The applicant may also submit a fresh representation to the respondent No. 3 / competent

authority enclosing a copy of this order and a copy of his representation dated 19.06.2015 for sanction of compassionate allowance.

12. The OA is disposed of with directions as above. There will be no order as to costs.

(Gokul Chandra Pati)
Member (A)

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