

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 3987/2014
MA 3466/2014

Reserved on: 20.10.2016
Pronounced on: 26.10.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Shri Abdul Kadir
S/o Shri Abdul Razak
Ex/Walder-II (C&W)
Under Chief Depot Officer
Northern Railway, Bareilly
....Applicant

(Through Shri Padma Kumar S., Advocate)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway,
Moradabad
.... Respondents

(Through Sh. V.S.R. Krishna and Sh. A.K. Srivastava, Advocates)

ORDER

Mr. P.K. Basu, Member (A)

The applicant was appointed in the railways as Substitute Khalasi on 4.06.1974 and promoted as Welder-III and Welder-II on 30.11.1987 and 28.09.1995 respectively.

2. During his service period, the applicant remained on unauthorized absence for 87 days in 2002 and for 504 days between 2003 to 2005. Minor penalties were imposed on him twice and finally on account of his unauthorized absence, the applicant was removed from service with effect from 25.01.2006.

3. The case of the applicant regarding compassionate allowance was examined by the respondents in the light of instructions contained in P.S. No.12882 and P.S. No.13522/2008 and the applicant was not found eligible for compassionate allowance on the ground that para (iii) and (v) of P.S. No.13522/08 clearly stipulated that a dishonest railway servant who has been removed/ dismissed on charges of dishonesty, is not entitled to any compassionate allowance. Accordingly, the applicant was informed vide letters dated 3.04.2012 and 1.10.2012. The applicant is aggrieved by this decision of the respondents and seeks the following reliefs:

- (a) Quash and set aside the order dated 3.04.2012 and 1.10.2012;
- (b) Direct the respondents to consider the case of the applicant taking into account relevant consideration and discounting irrelevant considerations and pass an appropriate order granting the compassionate allowance from due date with all consequential benefits.

4. The learned counsel for the applicant states that Rule 41 of CCS (Pension) Rules 1972, which governs compassionate allowance, reads as follows:

"41. Compassionate allowance – (1) A government 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 the amount of rupees three hundred and seventy-five per mensem."

It is stated that in **Mahinder Dutt Sharma Vs. Union of India and others**, (2014) 11 SCC 684, the Hon'ble Supreme Court has laid down certain conditions, based on which claims under Rule 41 of the aforesaid Rules have to be evaluated. The relevant paragraph 14 is quoted below:

"14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

14.1.(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any

debauched, degenerate or evil behaviour would fall in this classification.

14.2.(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

14.3.(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

14.4.(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5.(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration."

5. It is the contention of the applicant's counsel that none of the criteria applies in case of the applicant. It is stated that in his representation, the applicant had explained in detail the

reasons why he had to absent him. In short, the facts are as follows:

- (i) His wife suffered from TB in 2002;
- (ii) One of his daughters also suffered from TB and, in fact, succumbed to her disease;
- (iii) Two of his daughters aged 29 and 25 are of marriageable age and the responsibility of getting them married lies heavily on him.
- (iv) The applicant has argued in his representation that his absence from duty was because of compelling reasons. It was neither deliberate nor intentional. It has been stated that but for the three instances, he never remained absent for a single day and that he had a satisfactory career of 31-1/2 years of service.

6. First of all, the respondents raised the question of maintainability of this OA on the ground of limitation as the order passed by the respondents is dated 1.10.2012 whereas the OA has been filed on 14.10.2014.

7. Learned counsel for the respondents stated that the applicant had been playing truant throughout his career and was unauthorizedly absent from duty for long periods for which reason he was imposed minor penalties twice but later on he was removed from service with effect from 25.01.2006. The

applicant approached this Tribunal in OA 862/2007 and vide order dated 19.08.2008, the Tribunal considering all facts and circumstances including the fact that his daughter had expired on 17.10.2006 etc., dismissed his OA for compassionate allowance. W.P. (C) No.386/2010 filed before the Hon'ble High Court was also dismissed vide order dated 20.01.2010. In fact, SLP No.16464 filed before the Hon'ble Supreme Court was also dismissed vide order dated 16.11.2010. Further, the Review Petition (Civil) No.2324/2010 filed before the Hon'ble Supreme Court was also dismissed.

8. On the question of delay, the applicant has filed MA 3466/2014 seeking condonation of delay. In the MA, the applicant has again referred to illness of his wife and his being busy in looking after two unmarried daughters and unmarried sons. Clearly, these are not good enough reasons. Once the order was passed in 2012, he should have approached the Tribunal in time. He has approached the Tribunal after a delay of about one year and, therefore, the OA is hit by the provisions of Section 21 of the Administrative Tribunals Act 1985 and not maintainable on the ground of limitation.

9. As regards merits of the case, the applicant had approached the Tribunal earlier in OA 862/2007 and the Tribunal dismissed his case after going into all the facts and circumstances. This was upheld by the Hon'ble High Court and his SLP and Review Petition were also dismissed by the Hon'ble Supreme Court. After having lost at all judicial forums, he again

filed a representation dated 27.04.2012 on which impugned order dated 1.10.2012 has been passed giving reasons why his compassionate allowance case could not be considered. The judgment of the Hon'ble Supreme Court in Mahinder Dutt Sharma (supra) cited by the applicant has also been considered by us. In para 14 of the judgment, there are five illustrations given to evaluate claim of the punished employee under Rule 41 of the Pension Rules 1972. Absence from duty unauthorizedly can certainly be classified as an act of dishonesty, emerging from his behavior of being untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. When a government servant indulges in an act of dishonesty, it also definitely amounts to cheating the society at large. In our opinion, the conduct of the applicant gets fully covered under para 14 (2) (ii) of the judgment of the Hon'ble Supreme Court.

10. In view of the above facts and circumstances, the OA is dismissed both on merits and also on the ground of limitation. No costs.

(Raj Vir Sharma)
Member (J)

(P.K. Basu)
Member (A)

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