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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A No. 180/00486/2017

Wednesday, this the 10th day of October, 2018

CORAM:

HON'BLE Mr. ASHISH KALIA, JUDICIAL MEMBER

A.C. Cherian,
Ex.WLA/TVC,J/M3264,
Aged 66 years, S/o. Late Chandy John,
Attupurath House, Peringara (P.O.),
Thiruvalla – 618 109, Pathanamthitta District.
(Wheel Lubricate Attendant (WLA) Retd). Applicant

[By Advocate Mr. P.K. Madhusoodanan]

v e r s u s

1. Senior Divisional Personnel Officer,
Divisional Office, Personnel Branch,
Southern Railway, Trivandrum – 685 914.
2. Senior Divisional Mechanical Engineer,
Divisional Office, Mechanical Branch,
Southern Railway, Trivandrum – 685 914.
3. Union of India,
represented through the General Manager,
Southern Railway, Park Town,
Chennai – 600 003. Respondents

[By Advocate : Mr. Asif K.H.]

The application having been heard on 10.10.2018, this Tribunal on the same day delivered the following:

O R D E R (Oral)

Per: Ashish Kalia, Judicial Member

1. The present application is filed seeking compassionate allowance as per the rules and to set aside Annexure A11.

2. The brief facts of the case are that the applicant joined the service as casual labour Carriage & Wagon Khalasi at Irumpanam Goods Yard. He was granted temporary status and scale and worked as such till 11.06.1975. He was regularly appointed to the post of regular Khalasi on 09.07.1976 at Shornur and was promoted as helper on 09.07.1978. While working as Wheel Lubricate Attendant (WLA) under the Carriage & Wagon Superintendent, Trivandrum Central, the applicant was dismissed from service w.e.f. 15.11.1989 on the ground of conviction and sentence of four years Rigorous Imprisonment by the Sessions Court, Ernakulam in Crime No. 132/1981 of Hill Palace Police Station, Thripunithura which was reduced in appeal to 3 years Rigorous Imprisonment by the Hon'ble High Court of Kerala.

3. According to the applicant this said order was served on the applicant on 20.01.1990 and his services were terminated on the same day itself. The applicant submitted that the punishment has adversely and detrimentally affected his family consisting of wife and children and it disrupted his

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family life. Due to acute illness and old age and that of his unemployed wife, acute unemployment, abject poverty etc. destroyed everything in life not only of his but also of his entire family members.

4. He has approached the respondents by way of a representation seeking grant of compassionate allowance which was not found in his favour and respondents rejected the same. He filed one after the other three OAs and in the last OA this Tribunal has considered his case for compassionate allowance and directed as under:

“In the light of the above discussion, this Tribunal while quashing Annexure A5 order directs the competent authority of the respondents to consider Annexure A1 request of the applicant afresh in the light of the observations made above, especially in the light of the distinct considerations illustrated by the Apex Court in Mahinder Dutt Sharma's case (supra). The said authority shall pass a detailed speaking order in the light of the above discussions in this order and adverting to the judgment of the Hon'ble Apex Court in Mahinder Dutt Sharma's case (Supra). O.A. Is disposed of with the above directions. Parties shall suffer their own costs.

(Para 16 Page 56 A10 & 11) for ... of details for this order for the light of discussion”

5. Notices were issued to the respondents. Respondents entered appearance through Mr. Asif K.H. and filed a detailed reply statement in the matter. They contended as under:

5..... that the crime in which the applicant involved is no ordinary affair. The involvement of the applicant in the incident of theft of oil from a tank wagon stabled at Irumpanam Yard on 18.09.1981 and subsequent attack of Railway Protection Force by him, the attempt of snatching of revolver from the Protection Force were very serious offences. The attack further led to the RPF to open fire and consequent

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bullet injury to one Khalasi who was one among the gang and his consequent death. The applicant's involvement in the criminal case of pilferage of oil from the railway tank Wagon led to his conviction for rigorous imprisonment for three years consequent to legal proceedings. The act of the applicant, which resulted in the infliction of the punishment of dismissal from service, was an act of moral turpitude and an act of dishonesty towards his employer. The statement vide his application that he happened to be one of the accused in the criminal case due to ill fate is without any demonstrable reason or cause that the respondents can deduce any merit from it for sanctioning compassionate allowance.

7.....challenging the Order dated 22.09.2014, the applicant then filed an O.A. 180/263/2015 with prayer to set aside Annexure A5 (Order dated 22.09.2014 mentioned above) and to issue necessary directions to the respondents to grant and disburse to the applicant compassionate allowance as per rules with all attendant monetary arrears in accordance with law and as ordered in Annexure A2 (Order in OA 1070/2011) and A4 (Order in OA 180/00090/2014) within a time limit to be fixed by this Hon'ble Tribunal and the Hon'ble Tribunal has issued orders as follows:

“In the light of the above discussion, this Tribunal while quashing Annexure A5 order directs the competent authority of the respondents to consider Annexure A1 request of the applicant afresh in the light of the observations made above, especially in the light of the distinct considerations illustrated by the Apex Court in Mahinder Dutt Sharma's case (supra). The said authority shall pass a detailed speaking order in the light of the above discussions in this order and advertent to the judgment of the Hon'ble Apex Court in Mahinder Dutt Sharma's case (Supra). O.A. Is disposed of with the above directions. As such, the respondents have then issued a detailed speaking order on the matter and it is humbly submitted that the detailed speaking order issued by respondent No. 2 vide letter No. V/M.226/Court/CAT/ACC dated 21.07.2016 was issued duly considering and in line with the above observations and directions of the above 3 orders of this Hon'ble Tribunal.

6. We have heard Mr. P.K. Madhusoodhanan, learned counsel appearing for the applicant and Shri Asif K.H. learned counsel appearing for the respondents at length and appreciated the legal position and perused the records. The applicant, no doubt was subjected to a criminal case and awarded with the punishment of four years Rigorous Imprisonment which

was reduced in appeal by the High Court to 3 years Rigorous Imprisonment.

7. Applicant has made a representation stating that “.....*I am aloof, no means of livelihood and nobody to lend a helping hand to me and my family consisting of three children and oldaged, bed ridden sick mother and we are in the verge of starvation and vagrancy, as there I have no source of income to have our both ends meet, In these predicament I cannot even obtain in life saving medicines to my old sick mother. My ill fate and unfortunate incidents occasioned to me as Criminal case and penalty advice destroyed me and the repentance in me cannot save my family and it cannot bring bread for them*”. Due to this penury circumstance, applicant requested the department to consider his case. On the contrary, the respondents have taken stand firstly; the applicant is not having qualifying service according to them and he has only 6 years 8 months and 10 days which is refuted by the applicant. On my attention to the next controversy about the qualifying service of the applicant, according to him he had more than 10 years service as has been noted by this Tribunal in Annexure A2 order. According to him he started his service with the Railways as a casual labour-Carriage and Wagon Khalasi at Irumpanam Goods Yard on 27.04.1974. This aspect has already considered by this Tribunal and found that the applicant has 10 years service.

8. The next point raised by the respondents' counsel before this Tribunal is that he is subjected to criminal case of pilferage of oil from the railway tank wagon which resulted in infliction of punishment of dismissal from service which is an act of moral turpitude and an act of dishonesty towards employer is not eligible for compassionate allowance. He relied upon the judgment passed by the apex court in Mahinder Dutt Sharma Vs. Union of India and Others, wherein the apex court held as under:

.....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.

(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.

(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 employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee in 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.

(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

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adopting double standards or by foul play, would fall in this category.

(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 R.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.”

9. Counsel has made strenuous effort to convince this Tribunal that the case of applicant deserves special consideration at the hands of the respondents as envisaged in Rule 65 of the Railway Services (Pension) Rules, 1950. This Tribunal is not justifying the act committed by the applicant. He was subjected to a criminal case and punishment was awarded. But being a welfare state, where a citizen who is suffering from penury circumstance for a specific act of crime and his family suffering penurious life.

10. Keeping in view the above facts and circumstances, this Tribunal feels that Rule 65 envisage the authority competent to dismiss or remove a person from service, if the case is deserving of special consideration, sanctioning of compassionate allowance not exceeding two thirds of pension or gratuity or both is admissible. The case of the applicant is deserving one and needs special consideration under Rule 65 of Railway Service (Pension) Rules, 1993. This Tribunal hereby directs the respondents to grant him compassionate allowance within a period of 60 days from the date of receipt of a copy of this order.

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11. The Original Application is disposed of as above. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

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Applicant's Annexures

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| Annexure A1 | - | True copy of the representations dated 11.03.2006, submitted by the applicant, before the 1 st respondent. |
| Annexure A2 | - | True copy of the order dated 21.12.2012 in O.A. 1070/2011 passed by this Hon'ble Tribunal. |
| Annexure A3 | - | True copy of the letter No. V/M.226/DAR/AC dated 15.07.2013 issued by the 2 nd respondent. |
| Annexure A4 | - | True copy of the order dated 16.06.2014 in O.A. No. 180/90/2014 on the file of this Hon'ble Tribunal. |
| Annexure A5 | - | True copy of the letter No. V/M.226/DAR/AC, dated 22.09.2014 of the Senior Divisional Mechanical Engineer, Trivandrum Central, by the 2 nd respondent. |
| Annexure A6 | - | True copy of the Memorandum dated 17.02.1993 issued by the 1 st respondent. |
| Annexure A7 | - | The office order No. 124/81 Mechl., dated 04.11.1981 issued by the 1 st respondent. |
| Annexure A8 | - | True copy of the certificated dated 14.02.1995, issued by the Coaching Depot Officer, Trivandrum Central. |
| Annexure A9 | - | True copy of the reply No. V/P.50/ RTI/ 2699/ 491/PR/2014/PB, dated 28.01.2015 of the ist respondent. |
| Annexure A10 | - | True copy of the final order dated 18.02.2016, in O.A. No. 180/263/2015 on the files of this Hon'ble Tribunal. |

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Annexure A11 - True copy of the Order No. V/M.
226/Court/CAT/ACC, dated 21.07.2016 of the
2nd respondent.

Annexures of Respondents

Nil
