

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**O.A No. 180/00771/2016**

Wednesday, this the 27<sup>th</sup> day of June, 2018

**CORAM:**

**HON'BLE Mr. E.K. BHARAT BHUSHAN, ADMINISTRATIVE MEMBER**

Smt. Sobhana Kumari,  
W/o. Late P. Babu,  
Chirathalakkal Veedu, Pothencode P.O.,  
Thiruvananthapuram – 695 584. .... Applicant

**[By Advocate Ms. Shameena Salahudheen]**

**v e r s u s**

1. Union of India rep. by Chairman,  
Railway Board, Rail Bhavan,  
New Delhi – 110 001.
2. The General Manager,  
Southern Railway, Chennai – 600 003.
3. Chief Personnel Officer,  
Headquarters Office, Personnel Branch,  
Southern Railway, Chennai – 600 003.
4. The Senior Divisional Medical Officer,  
Southern Railway, Thrissur – 680 005.
5. Chief Medical Director,  
Headquarters Office, Personnel Branch,  
Southern Railway, Chennai – 600 001.
6. Medical Supervisor, Trivandrum Division,  
Southern Railway, Trivandrum-14.
7. Senior Divisional Personnel Officer,  
Divisional Office, Southern Railway,  
Trivandrum Division, Trivandrum – 14.

8. Divisional Railway Manager,  
Southern Railway, Trivandrum Division,  
Trivandrum Division, Trivandrum – 14. .... Respondents

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

The application having been heard on 13.06.2018, this Tribunal on 27.06.2018 delivered the following:

**O R D E R**  
**Per: Mr.E.K. Bharat Bhushan, Administrative Member**

OA 771/2016 is filed by Smt. Sobhana Kumari, widow of a late Sanitary cleaner who was removed from service for unauthorised absence. She is deeply aggrieved by the rejection of her request for compassionate allowance inspite of the finding of this Hon'ble Tribunal as well as the Hon'ble High Court at Annexure A6 and A7 that she is eligible for compassionate allowance.

2. The late husband of the applicant Sri. P. Babu had joined services of Southern Railway Trivandrum Division as a Sanitary cleaner in 27.10.1985. On 02.11.2001 he was served with removal of service as penalty by the 4<sup>th</sup> respondent, who was the disciplinary authority, on the charge of absenting himself from duty for a period of 102 days. The Appeal and Revision filed by Shri. P. Babu were also dismissed and the penalty was confirmed. A copy of the orders passed by the 5<sup>th</sup> respondent in the Revision Petition dated 18.08.2008 is at Annexure A2. Shri. P. Babu passed away at Medical College Hospital, Thiruvananthapuram on 11.12.2011. His death certificate is at Annexure A3.

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3. Upset by extremely difficult circumstances the applicant had two children to take care and was living in a pathetic condition. She approached the 3<sup>rd</sup> respondent at a Pension Adalath seeking family pension but her request was rejected on the ground that the Disciplinary Authority, when the punishment order was issued, had not recommended for compassionate allowance. She challenged this decision by filing OA 169/2015 before this Tribunal. This Tribunal by order pronounced on 28.09.2015 directed as below:

*"In the above circumstances, this Tribunal directs the competent authority of the respondents to reconsider the representation put in by the applicant on 18.03.2014 addressed to respondent No.3 and the competent authority as mentioned in Annexure A-6 Railway Board communication shall consider granting of compassionate allowance for the deceased Mr. P. Babu notionally from the date of his such dismissal, in terms of the afore-quoted Railway Board instruction in Annexure A-8 and shall take a decision on the grant of family pension to the applicant. The above exercise shall be completed within two months from the date of receipt of a copy of this order and the decision so taken shall be communicated to the applicant. It is made clear that in the event of granting family pension, the same shall be paid to the applicant from the date of death of Shri. Babu (the ex-employee) with arrears. "*

4. The respondents challenged Annexure A6 order before the Hon'ble High Court of Kerala by filing OP (CAT) 93/2016 and the same also came to be dismissed as per Judgment dated 17.03.2016, confirming the order of this Tribunal. Copy of the Judgement is at Annexure A7. As the respondents did not comply with the order, the applicant filed Contempt Petition CP 64/16 before this Hon'ble Tribunal. During the pendency of the

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contempt proceedings the 7<sup>th</sup> respondent issued Annexure A1 order reconsidering the request but rejecting the same stating that the applicant's husband did not have the requisite the qualifying service for granting compassionate allowance.

5. As grounds the decision taken by the official respondents is characterised as illegal, arbitrary and unjust and violative of Article 14 and 21 of the Constitution of India. The grant of compassionate allowance to a Railway servant, dismissed from service is governed by Rule 65 of the Railway Services Pension Rules 1993 and in several cases, similar to that of the applicant's husband, such allowance had been granted. The husband of the applicant had more than 15 years of service at the time of his removal from service on 02.11.2011. It is alleged that this factor was never considered by the authorities while passing Annexure A1. Besides A1 order loosely refers to his service as only of 8 years, one month and 13 days and thus short of 10 years qualifying service that would have made the widow eligible for family pension. However, the stated reason for Sri. P. Babu's removal was unauthorised absence for 102 days only. Clearly there is a contradiction in the stands adopted by the official respondents. Based on these reasons the applicant prays for grant of compassionate allowance to her from the date of removal of her husband with interest @ 12% for delayed payment.

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6. Per contra, the respondents have filed a reply statement refuting the claim of the applicant. It is reiterated that Sri. P. Babu, the husband of the applicant, employed as a Sanitary Cleaner, had been removed from service for unauthorisedly absenting himself for a period of 102 days. It is further stated that his actual total absence had been for a period of 8 years, one month and 13 days in his entire service period of 15 years which establishes the fact that he was a habitual absentee. In compliance with the directions issued by this Tribunal and confirmed by the Hon'ble High Court the case had been re-examined and it was seen that he had rendered only 7 years, 10 months and 22 days of service during the entire period he was employed under the respondents. As per Pension Rules a minimum period of 10 years of qualifying service is required to be eligible for grant of pension. Hence, the late employee was not sanctioned pension. While he was eligible for gratuity and service gratuity the same was sanctioned and credited to the applicant's bank account.

7. The respondents call to their assistance judgment of APSRTC & others (Civil) Appeal 3424/2000 where Hon'ble Supreme Court had directed that it is for the sanctioning authority to consider the actual circumstances of each case before benefits such as pension are allowed. Further the decision of the Principal Bench of this Tribunal in O.A. 178/2005 has been referred to which appears to reinforce the argument that the respondents are fully

within their powers to take a decision in accordance with the Pension Rules. The Disciplinary Authority had decided not to grant compassionate allowance and this had been approved by the Appellate Authority observing that the husband of the applicant had been unauthorisedly absent for 102 days between October 1999 to April 2000 in a span of six months period. The respondents submitted that the issue had been thoroughly examined by the respondents and a decision arrived at fully considering the circumstances of the case.

8. Smt. Shameena Salahudheen learned counsel was heard on behalf of the applicant and Shri. Asif K.H., on behalf of the respondents. The applicant had also filed a rejoinder reiterating the contentions made in the O.A.

9. This is the 2<sup>nd</sup> occasion the applicant has come before this Tribunal. In the first instance, the applicant had approached this Tribunal with the very same request and orders had been issued in O.A. 169/2015 clearly directing that the benefit as sought for is to be granted to the applicant. This direction was confirmed by the Hon'ble High Court before whom the respondents had gone in OP(CAT) 93/16. Thereupon the respondents had considered the case and issued the impugned order which is at Annexure A1 dated 08.06.2016. It is admitted that the applicant's spouse the late Shri. P. Babu had been removed from service on account of unauthorised absence of 102 days in service. The circumstances of the case being what they were, the

competent authority had also decided not to grant compassionate allowance to the employee. The matter of compassionate allowance is governed by Rule 65 of the Railway Services (Pension Rules 1993) and the clause has the following provision:

***“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 in compensation pension.*

*2. A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than three hundred and seventy five rupees per memsem.”*

10. As per Rule 64 of the above Rules the Disciplinary Authority who issues the order of dismissal and removal from service is the competent authority to grant compassionate allowance. The position had been clarified further by the Railway Board that the grant of compassionate allowance can be considered by the higher authorities also in cases where the allowances are not granted by the subordinate authority.

11. In this case this Tribunal as well as the Hon'ble High Court had deemed it necessary to direct that the compensatory allowance may be paid to the applicant who is the wife of the late employee. However, the respondents had chosen to reject the claim of the applicant through a

detailed order which has been given at Annexure A1 and it is seen that a new argument has been used specifying that the case of compensatory allowance is being rejected on account of the fact that the applicant possessed only 7 years, 10 months and 22 days of actual qualifying service and had been absent for a period of 8 years 1 month and 13 days unauthorisedly. It is seen that this is an argument which was never raised by the respondent either in the OA on the earlier occasion or in the argument before the High Court. In fact, it is interesting to note that in Annexure A5 document, which is a copy of reply statement filed before this Tribunal by the respondent in OA 169/2015, the following averment is made :

*“the verification of the minimum period required qualifying service is to be ensure only in cases wherein the authority decided to grant compassionate allowance”.*

12. Clearly, an inference can be drawn here that the employee was proceeded against for his unauthorised absence for a period of 102 days and for no other reason. This being so, to find a new argument that the late employee was guilty of more period of absence in order to deny him compensatory allowance on the ground that he did not possess minimum service of 10 years appears to be an after thought and is not legally sustainable.

13. The applicant is a widow of the late employee who passed away in 2011. She has referred to circumstances of extreme indigence, which remain not refuted to by the respondents. The late employee's medical

records also indicate that besides being an alcoholic, he was also suffering from mental illness. Viewed as a whole this Tribunal feels that the issue has to be approached with more compassion.

14. On a consideration of all materials before the Tribunal and the arguments raised before me by the learned counsel for both sides, I am of the view that the OA has merit. Accordingly, I order that the applicant is eligible for Compensatory Allowance from the date of demise of her husband, which is 11.12.2011. She shall also be eligible for interest at GPF rates for the arrears. OA is disposed of with the above direction. No order as to costs.

**(E.K. BHARAT BHUSHAN)  
ADMINISTRATIVE MEMBER**

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**Applicant's Annexures**

Annexure A1	-	True copy of the Memorandum No.V/MD/ 02/DAR/ M/2000/TCR dated 04.06.2016 along with covering letter dated 08.06.2016.
Annexure A2	-	True copy of the order beaming No. P(A)91/2008/63 dated 18.08.2008 along with covering letter dated 21.08.2008.
Annexure A3	-	True copy of the death certificate 12.03.2012.
Annexure A4	-	True copy of the letter No. P(B)500/CA III/Shobhana Kumari dated 18.03.2014.
Annexure A5	-	True copy of the reply statement in OA No. 169 of 2015 dated 14.07.2015.
Annexure A6	-	True copy of judgment dated 28.09.2015 in OA No. 169 of 2015.
Annexure A7	-	True copy of the judgment dated 17.03.2016 in OP(CAT) 93 of 2016.
Annexure A8	-	True copy of the service records of the Applicant's husband dated 21.10.1985.
Annexure A9	-	True copy of the Railway Board letter No. E(D&A) 2005/RG 6-14 dated 28.04.2005.
Annexure A10	-	True copy of the Railway Board letter RBE No. 79 of 2005 dated 09.05.2005.
Annexure A11	-	True copy of the letter No. P(R)600/P/Vol.III dated 21.11.2008.
Annexure A12	-	True copy of the Personnel Branch Circular PBC No. 165/1997 dated 19.11.1997.

**Annexures of Respondents**

Annexure R1	-	True copy of the Leave Chart of late P. Babu, ex Sanitary Cleaner.
Annexure R2	-	True copy of the file notings containing the decision of the Disciplinary Authority.

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