

**Central Administrative Tribunal  
Ernakulam Bench**

OA No.180/0048/2017

Thursday, this the 15<sup>th</sup> day of November, 2018

**C O R A M**

**Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member**

J.Sebastian, aged 74 years  
S/o Joseph  
(Fitter Khalasi)  
Residing at : C/o A.Rajkumar  
No.EWS-1265  
Muthampalayam, Housing Unit  
Phase-I, Opp. Water Filter Tank  
Erode-638 009

Applicant

[Advocate: Mr.T.C.Govindaswamy]

**versus**

1. Union of India represented by the  
General Manager, Southern Railway  
Headquarters Office  
Park town P.O., Chennai-600 003.
2. The Senior Divisional Personnel Officer  
Southern Railway, Palakkad Division,  
Palakkad – 678 002.
3. The Senior Divisional Mechanical Engineer  
Southern Railway, Palakkad Division  
Palakkad-678 002.

Respondents

[Advocate: Mr.C.B.Sreekumar]

This OA having been heard on 9<sup>th</sup> November, 2018, the Tribunal delivered the following order on 15.11.2018:

**ORDER**

Through this second round of litigation, the applicant, a septuagenarian, seeks compassionate allowance for his service rendered under

the Railways for 16 years between the period 1968 and 1984. The earlier OA filed by the applicant bearing No.638/2016 was disposed of by this Tribunal directing the competent authority to consider and dispose of the applicant's representation. The representation was rejected vide impugned order dated 24.11.2016 (Annexure A5).

2. The respondents in their reply statement have justified the reasons for denial of compassionate allowance to the applicant, contending that the case is more than 30 years old and compassionate allowance cannot be considered in case of dishonesty. The applicant was removed from service for attempted theft of brass materials.

3. Learned counsel for the applicant argued that Annexure A5 has been issued without application of mind and hence is opposed to the principles of natural justice. The applicant was removed from railway service for attempted theft whereas the charge sheet (Annexure A5) outlines a scenario wherein the applicant was found near the LSK siding, by the side of Time Office, Carriage Repair Shop, Erode at about 01/HR on 12.12.2002 “with the intention of committing theft”. Though an extreme penalty was imposed upon him, the case as described does not prove dishonesty to any stated degree. In the case of two other co-accused, the penalty of one was modified as a compulsory retirement and in the other, the penalty was set aside. He further argued that compassionate allowance is payable for the service rendered whereas penalty is imposed for the offence concerned. The learned counsel for the applicant calls to his assistance two decisions – one by Delhi High Court in *Ex.Asi Shadi Ram vs. Govt of NCT of Delhi and others*, rendered on 22.2.2008 and another by CAT, Madras Bench

in OA No.74/1990 *I.Solomon vs. The General Manager, Southern Railway, Madras*. The counsel has also cited two more decisions – one by CAT Hyderabad Bench in *S.Srinivas Rao vs. The CPO S.C.Railway, Secunderabad and others*, reported in ATJ 2003 (2) 565 and the other by Andhra Pradesh High Court in *Mohd.Abdul Samad vs. S.C.Rly represented by G.M., Secunderabad & Ors*, reported in All India Service Journal 2008(2) 103.

4. Heard Mr.T.C.Govindaswamy, learned counsel for the applicant and Mr.C.B.Sreekumar, learned counsel appearing for the respondents and examined the material placed on record. The record shows that the applicant was dismissed from service about 34 years ago, to be precise, on 17.11.1984. Thereafter his whereabouts were unknown till he came back home in 2005. The representation submitted thereafter for compassionate allowance virtually remained in cold storage without any decision being taken. In this background, the applicant was forced to approach this Tribunal with OA No.638/2016. The applicant has remained out of employment for several years since the imposition of penalty of dismissal from service for what is called “attempted theft”. I find that the applicant, a septuagenarian with no source of income, in his sunset years, deserves sanction of compassionate allowance under Rule 65 of the Railway Services (Pension) Rules, 1993. Certain extenuating factors exist in favour of the applicant who was charged with only having been “found near the LSK etc on 'off' duty”. Since the applicant submitted his first representation on 5.7.2016 for grant of compassionate allowance, ends of justice would be met if the applicant is granted compassionate allowance with effect from 5.7.2016. In the result, the OA is allowed granting the following reliefs:

- (i) The impugned order Annexue A5 is set aside.
- (ii) The respondents are directed to grant compassionate allowance to the applicant, equal to half of the pension which would have been admissible to him had he retired on medical certificate from the date of dismissal from service.
- (iii) The applicant is entitled to the said compassionate allowance with effect from 5.7.2016. The arrears shall be paid with interest at applicable GPF rate till the date of payment.

**5.** The respondents shall comply with the orders within three months from the date of receipt of this order. No order as to costs.

(E.K.Bharat Bhushan)  
Administrative Member

aa.

Annexures filed by the applicant:

- Annexure A1: Copy of penalty advice bearing No.J/M/315/11/82 dated nil issued by the 3<sup>rd</sup> respondent.
- Annexure A2: Copy of representation dated 5.7.2016 submitted by the applicant addressed to the 1<sup>st</sup> respondent General manager with a copy to the 2<sup>nd</sup> respondent.
- Annexure A3: True extract of 309 and 310 of the Manual of Railway Pension Rules, 1950.
- Annexure A4: Copy of the order in OA No.638/2016 dated 25.8.2016 rendered by this Tribunal.
- Annexure A5: Copy of order bearing No.J/P OA No.638/2016 dated 24.11.2016.
- Annexure A6: Copy of communication under letter bearing No.J/M315/11/ED dated 12.8.1983 issued by the Enquiry Officer.
- Annexure A6(a) A typed legible copy of Annexure A6.
- Annexure A7: Copy of the office order No.J/MM23/93 dated 6.8.1993 issued by the DPO/PGT.
- Annexure R1: Copy of Railway Board order No.164/2008 dated 4.11.2008.