

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No. 663/2017

New Delhi this the 30th day of July, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Guddi Devi, Aged 48 years (Group 'D')
W/o late Sh. Surender Kumar,
Ex-Khalasi, Work Special Const.
Kashmiri Gate,
R/o 836, Old Vijay Nagar, Ghaziabad - Applicant

(By Advocate: Mr. PS Khare)

Versus

Through Union of India

1. The General Manager,
Northern Railway,
Headquarters Office,
Baroda House, New Delhi-110055
2. The Chief Administrative Office/Construction,
Kashmiri Gate, Delhi - Respondents

(By Advocates: Mr. Shailendra Tiwari)

ORDER (Oral)

Ms. Nita Chowdhury, Member (A):

This Original Application (OA) has been filed by the applicant claiming the following reliefs:-

- “8.1 to allow the OA and respondent may kindly be directed to consider the request of the applicant for grant of compassionate allowances and family pension with all consequential benefits.
- 8.2 to grant any other relief which this Hon'ble court may deem fit & proper under the above explained circumstances in favour of the applicant and against the respondents.”

2. The brief facts of the case are that husband of the applicant was initially appointed as casual Khalasi (Works) on 16.07.1986 and was subsequently transferred to I.O.W/C/WZR on 15.01.1987 and thereafter posted under AEN/Jagadhari on 08.08.1987. He was again transferred to Kashmere Gate, Delhi on 17.07.1990 to work under O.S./Co-ordination. Due to serious sickness of cancer, he could not attend office. Accordingly, he was served with major penalty – charge sheet for his long absence. Due to serious conditions, he could not attend enquiry as well. As such, ex-parte enquiry was conducted and ultimately he was removed from service. He, after long illness, died on 11.04.2009. After his death, his wife – applicant herein requested from Northern Railway to get aside the removal order and grant of Family Pension and appointment of his ward on compassionate grounds but no heed was given.

3. It is submitted that the applicant submitted several representations for setting aside the punishment of removal from service of his husband but nothing has been done by the Administration. Ultimately, Northern Railway Men's Union through its Divisional Secretary requested to Secretary to CAO/Construction, Northern Railway Kashmere Gate, Delhi for setting aside the

removal order and granting family pension and compassionate appointment to her ward. Thereafter, General Manager, Northern Railway, vide letter dated 21.05.2014, informed to General Secretary, NRMU, 12 Chelmsford Road, New Delhi, that the case was examined by the competent authority and it was informed that the appeal of ex-employee had already been rejected by the competent authority. Hence, request for compassionate appointment cannot be considered.

4. It is averred that as per Rule 65 of Railway Servant Pension Rules 1993, compassionate allowance can be given to window of ex-employee. It is submitted that Ministry of Railways have issued guidelines time to time on the subject of grant of compassionate allowances wherein it has been provided that in those cases where the request of compassionate allowance has not been turned down by the competent authority and no order has been passed by the disciplinary authority at the time of imposing punishment, the old cases may be reviewed.

5. It is also averred that the applicant has submitted several representations lastly on 10.09.2015 for grant of compassionate allowance, family pension and appointment of her son on compassionate grounds. However, nothing has been done so far.

6. The respondents have filed their reply stating therein that husband of the applicant was issued major penalty charge sheet due to long unauthorized absence from duty and that he did not attend the enquiry which proves that he was not interested to serve the Railway department. Hence, he was removed from service on 07.08.2006 by the competent authority. As such, the applicant is not entitled for compassionate allowance, family pension and appointment of her son on compassionate grounds.

7. It is also submitted that during his life time, the husband of the applicant had never given any appeal for grant of compassionate allowance and as such, the same was not considered by the disciplinary authority. The applicant, after the death of his husband, submitted an application dated 11.12.2009 requesting for payment of compassionate allowance and giving appointment to her child on compassionate grounds which is not covered under the rule and the same was rejected by competent authority vide letter dated 22.02.2010. As such, the claim of the applicant for compassionate allowance and for appointment of his son on compassionate grounds is not covered under the rule.

8. In reply to para 3 of the OA, the respondents submitted that the husband of the applicant was removed from service vide order dated 07.08.2006 and thus, the OA is highly time barred under Section 21 of the Administrative Tribunals Act, 1985. The respondents thus pray for dismissal of the present OA.

9. I have heard learned counsel for the parties and perused the pleadings and material placed on record.

10. This Tribunal may note that Rule 65 deals with compassionate allowance which reads thus:-

“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 on compensation pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than Rupees three hundred seventy-five rupees per mensem (now Rs. one thousand two hundred and seventy-five from 1.1.1996 mensem).”

11. From the above provisions of Rule 65, it is quite clear that the applicant is entitled to be considered for grant the compassionate allowance.

12. It is also noticed that Ministry of Railway have issued circular RBI No. 164/2008 dated 04.11.2008.

The relevant paras thereof are reproduced hereunder:-

- “3.(ii) Each case will have to be considered on its merits and conclusion reached on the question whether there were any extenuating factors associated with the case that would make the punishment of dismissal/removal, which though imposed in the interest of the Railways, appear unduly hard on the individual.
- (iii) Not only the grounds on which the Railway servant was removed/dismissed, but also the kind of service rendered should be taken into account.
- (iv) Award of compassionate allowance should not be considered if the Railway servant had been dishonest which was a ground for his removal/dismissal.
- (v) Though poverty is not an essential condition precedent to the award of compassionate allowance, due consideration can be made of the individual's spouse and children dependent upon him.

4. On review of such cases, if the competent authority sanctions compassionate allowance to a dismissed/removed Railway servant, the same shall be effective from the date of removal/dismissal. In case the competent authority decides to sanction family pension to the spouse or eligible family member of the deceased Railway servant, compassionate allowance shall be sanctioned notionally from the date of dismissal/removal to make the family eligible for family pension and in such cases family pension shall be payable for the

period commencing from the date following the date of death of the removed/dismissal Railway Servant.”

13. It is clear from the above provisions of the Railway Board circular that widow or eligible members can also apply for compassionate allowance that too after death of employee.

14. After perusing the removal order dated 25.05.2006, it is found cryptic, non-speaking and bald and does not at all deal with any of the contentions raised by the deceased. It is also noted that the applicant says that she is at the verge of starvation as there is no source of income for livelihood and to look after the other family members leaving behind her husband. Hence, the provision of Para 3(v) RBE No. 164/2008 dated 04.11.2008 is relevant and attracted in this case.

15. As regards the plea of the respondents that the OA is barred by time, it is stated that the husband of the applicant was dismissed from service on 07.08.2006 and in the year 2009, the applicant was clearly informing the department that her husband died. It is also noted that RBE circular on the subject was issued on 04.11.2008. Quite simply, this circular would have come to the notice of the employee only at least after some time. As such, the present OA is not hit by law of limitation. It is also

noted that the said RBE circular came into existence only on 14.11.2008 and it is wrong to say that the rules do not permit the applicant to apply for compassionate allowance. Accordingly, the order vide L.No.E-142/D&AR/SK.2009 dated 22.02.2010 by the respondents is quashed and set aside.

16. In the light of the discussion made hereinabove, this OA is allowed permitting the applicant to make another application to the authorities with regard to her present financial conditions within a period of 30 days. Thereafter the authorities will get 30 days to consider her case for compassionate allowance and to pass reasoned and speaking order thereon, according to the provisions of Rule 65 of the Railway Servants (Pension) Rules 1993. No order as to costs.

(Nita Chowdhury)
Member (A)

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