

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

OA/310/00103/2017

Dated Monday the 18th day of June Two Thousand Eighteen

PRESENT

HON'BLE SMT. B. BHAMATHI, Member (A)

G.Mohanammal,
residing at:
6/11, Perumal Koil Street,
Venbakkam Village,
Venkatapuram (PO),
Singaperumal Koil (via),
Kancheepuram (Dt),
Pin 603204.Applicant

By Advocate M/s. R. Pandian

Vs

Union of India rep by,
1.The General Manager,
Southern Railway,
Park Town,
Chennai 600003.
2.The Sr. Divisional Mechanical Engineer,
Southern Railway, Chennai Division,
NGO Annexe, Park Town,
Chennai 600003.
3.The Sr. Divisional Personnel Officer,
Southern Railway, Chennai Division,
NGO Annexe, Park Town,
Chennai 600003.Respondents

By Advocate Mr. K. Vijayaraghavan

ORAL ORDER

(Pronounced by Hon'ble Smt. B. Bhamathi, Member(A))

The applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“To call for all the records relating to the respondents' refusal to notionally sanction compassionate allowance to the applicant's husband and to sanction family pension to the applicant from the date of death of her husband and to quash the impugned order No. M/P.353/CC/OA 177/2013 dated 24.10.2016 passed by the 2nd respondent consequently ;

I. To direct the respondents to sanction family pension in favour of the applicant from 19.03.2011 (ie., after the death of her husband) as provided under proviso to sub rule (1) of Rule 65 of Railway Services (Pension) Rules, 1993 read with Railway Board Letter No. F(E) III/2003/PN1/5 dated 04.11.2008;

II. to direct the respondents to pay the amount due towards Provident fund and Central Government Employees Group Insurance Scheme; and

III. to pass such other order / orders as this Hon'ble Tribunal may deem fit and proper and thus render justice.”

2. It is submitted that the applicant's husband who was working as Khalasi Helper under the respondents was removed from service with effect from 10.06.1997 vide order dated for alleged unauthorised absence from duty for the period from 01.11.1995 to 25.03.1996 after conducting an ex-parte enquiry vide Penalty Advice dated 27.05.1997. He made several representations to the respondents for compassionate allowance for sympathetic consideration to which he received no response. He passed away on 19.03.2011. It is submitted that the only condition for sanction of compassionate allowance or consequent family pension could be dispensed with is when the employee is removed or dismissed from service for

offences involving moral turpitude / integrity. The applicant's husband was removed from service for unauthorised absence which is not an offence involving moral turpitude.

2.1. As per Rule 65(1) of Railway Services (Pension) Rules, 1993, the sanction of compassionate allowance had to be made by the Disciplinary Authority while passing the removal / dismissal order or immediately thereafter. In the instant case, no order regarding grant of compassionate allowance was passed by the Disciplinary Authority while passing the penalty order. However, the same could be done even on a later date on representation from the removed / dismissed railway servant or by the family members of the deceased employees as per Railway Board's letter dated 04.11.2008.

2.2. Applicant made a representation on 05.06.2013 for compassionate allowance which was rejected vide letter 16.09.2013. Aggrieved, she filed an OA 177/2015 which was allowed with a direction to reconsider her case sympathetically for compassionate allowance / family pension. However, her case was rejected vide order dated 24.10.2016.

2.3. It is submitted that the applicant's husband was eligible for compassionate allowance as per the dictum laid by Hon'ble Apex Court in ***Mahinder Dutt Sharma vs. UOI & others*** in Civil Appeal No. 2111 of 2009 since he had not committed any misdemeanor.

3. The respondents have filed their reply statement contesting the claim

of the applicant. It is submitted that from the year 1980 till 1997, the employee was on unauthorized absence on many occasions. He was imposed the penalty of removal from service vide penalty advice dated 27.05.1997 on account of unauthorised absence of around 1717 days during his period of service. However, the penalty was not challenged or appealed against by the employee. Also the applicant had submitted the representation for compassionate allowance after the death of the employee ie., nearly after 14 years.

3.1. Rule 65 of Railway Services (Pension) Rules, 1993 stipulates as follows:

“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 three hundred seventy five rupees per mensem.”

3.2. It is submitted that the Railway Board vide its letter dated 09.05.2005 had clarified that the power to sanction compassionate allowance or otherwise is a discretionary power vested in the authority competent to remove / dismiss the railway servant to be exercised by that authority suo-moto at the time of passing order of removal or dismissal from service or immediately thereafter.

3.3. Further, as per letter dated 04.11.2008 of the Ministry of Railways, in the past cases where Disciplinary Authority had not passed any specific

orders with regard to grant of compassionate allowance, and if any such case appeared to be deserving, it could be reviewed by the DA on receipt of representations of the dismissed / removed employees or the family members of the deceased employee, keeping in view the conditions laid down in the said letter of the Railway Board. Each case was to be considered on merits.

3.4. In the light of the above rule provision, the representation of the applicant dated 05.06.2013 was reviewed by the Disciplinary Authority who observed that there were many periods of unauthorised absence during the service. When the employee was issued with a charge memo, he failed to attend the DAR enquiry and even did not utilize the opportunities of appeal and revision petitions during the period from the date of removal from service to the date of his death. No representations were received from the employee during this period ie., till his death in 2011. The disciplinary proceedings were concluded in the year 1997 and from the available service records, it was seen that from 05.05.1979 upto the date of removal from service on 10.06.1997, the employee was absent from duty very frequently and to the extent of around 1717 days during his entire service. As such, the Disciplinary Authority concluded that there was no need for any special consideration for grant of compassionate allowance and rejected his case vide letter dated 16.09.2013 which was communicated to the applicant.

3.5. It is further submitted that in compliance of the order dt. 20.07.2016 of this Tribunal in OA 177/2015 (supra), the applicant's case was sympathetically reconsidered by the Disciplinary Authority duly taking into account the length of service rendered by the deceased railway servant and the observations made by the Tribunal. There was no special circumstances deserving of special consideration in the sanction of compassionate allowance and hence it was rejected.

3.6. The respondents rely on the order of this Tribunal dated 08.07.2013 in **OA 1229 to 1232 /2014** which were dismissed. The said order has been upheld by the Hon'ble High Court in **WP 36782 of 2015**.

3.7. It is submitted that there is a delay of more than 18 years in filing the OA which is not explained by the applicant. Respondents rely on the order of this Tribunal dt. **06.08.2008 in OA 824/2006** in which it was held that the grant of compassionate allowance is a discretionary power vested with the Disciplinary Authority.

3.8. Hon'ble Apex Court had held that the unauthorized absence is a serious misconduct and it paralyses the government functioning in the case of *State of Rajasthan Vs. Mohamed Ayub Naz* (2006 SCC [L&S] 175). It was held that the order of removal from service was the only proper and proportionate punishment to be awarded to an employee who is wilfully absent for three years without intimation to the Government. It was further held that absenteeism from office for a prolonged period without prior

permission by Government servants was a principal cause of indiscipline. As such, the Disciplinary Authority had already considered the factual details and merits of the case and in exercise of his discretionary powers, found the case not deserving any special consideration in view of the unauthorised absence of about 1717 days. Accordingly respondents pray for dismissal of the OA.

4. Heard the learned counsels and perused the records.

5. It is not in dispute that the applicant's husband was unauthorisedly absent for nearly 1717 days during his service from 1979 to 1997. It is also not in dispute that the deceased employee did not file any appeal or revision against the order of DA removing him from service on completion of disciplinary proceedings through an ex-parte order. The competent Disciplinary Authorities under the D & A Rules had the power to condone the delay for filing appeal and revision. This opportunity was not exhausted by applicant even though the order of removal was an ex-parte order. That delay has not been explained in this OA.

6. It is also not in dispute that the deceased employee did not file any representation till his death in the year 2011 for grant of compassionate allowance in the light of the para 3 of the extant RBE circular dated 04.11.2008 which requires that in cases where no suo moto order could be passed for grant of compassionate allowance by the DA, in a deserving case, such case may be reviewed by DA on receiving representation from

employee or family members of the deceased employee. The 2008 circular had liberalised the provisions of the Rule 65 of the Railway Services (Pension) rules, 1993 and RBE Circular of the year 2005 in this regard, ie., reviewing all the cases based on filing of representation, at a later date. This meant that even if there was delay, the case could be reopened in this regard ie., filing of representation even with delay after 2008. But applicant did not file any representation till his death.

7. It is true that till 2005, as per RBE circular of 2005, in cases where suo moto orders have not been passed by DA for grant of compassionate allowances on removal, filing of representation would not qualify for reopening / review of cases based on representations by employees or by family members on a later date. But, representations became mandatory after 2008 and applicant's husband had the time to file representations before his death in the year 2011. There was delay. This delay has not been explained in this OA.

8. In view of the above, the cumulative delay was about 20 years and not 3 years after the RBE circular of 2008 came into existence. The delay from the date of death of employee ie., 2011 till the date of filing the first representation is some what explained by way of representation dated 27.07.2011 and 05.06.2013 by the widow of the deceased employee in the 1st and 2nd stage litigation in this and earlier OA. But, no MA has been filed in this OA for the Tribunal to consider condonation of any delay, leave

alone the cumulative delay, since the cause of action arose following the removal order in the year 1997.

9. It is settled law that it is for the Courts to consider the delay by way of MA filed for condonation of delay with explanation for / justification of delay. Since no MA is filed to condone delay, as per settled law, OA is not maintainable on grounds of delay.

10. As regards the merits of the case, the Tribunal draws its attention to the RBE circular of 2008 relied upon by both parties. The relevant paras of which are reproduced as follows :

“2. Para 1 of Board's letter of even number dated 09.05.2005 stipulated that past cases where the competent authority, in exercise of its discretionary powers, had not sanctioned compassionate allowance at the time of passing orders of removal / dismissal or immediately thereafter, cannot be reopened for review on the basis of representations received from the removed/dismissed employees and members of their family at a later date. In this connection, a number of representations have been received from different quarters for reviewing deserving genuine cases where the competent authority had not passed specific orders for or against grant of compassionate allowance. The issue has also been raised in DC/JCM meeting held in December 2007.

3. The matter has, therefore, been considered by the Board in consultation with Department of Pension and Pensioners' Welfare and it has been decided to reiterate that in cases where a decision has already been taken by the disciplinary authority not to grant compassionate allowance, such a decision is final, which should not be reviewed at any later stage. However, in partial modification of Board's letter dated 09.05.2005, it has also been decided by the Board that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, if any case appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/removed employees or the family members of the deceased employees keeping in view the following conditions:

(i) Only those past cases can be reviewed where records pertaining to D&A proceedings and Service records are available. D&A proceedings are essential to take a fair decision duly considering the gravity of the offence and other aspects involved therein and to confirm that the question of sanction or otherwise of compassionate allowance was not considered by the competent

authority at any stage. Service records are essential to adjudge the kind of service rendered by the dismissed/removed employee and to determine the net qualifying service for working out the quantum of compassionate allowance, if sanctioned.

(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."

11. As per the said circular the power to sanction or otherwise of compassionate allowance is a discretionary power vested in the authority competent to dismiss the Railway employee. As such, the grant of compassionate allowance is not an absolute right as per the RBE circular of 2008. The legal position is that the competent authority can examine and determine the facts and circumstances, exercise his decision and grant or reject compassionate allowance. This position in terms of Rule 65 had not changed either in 2005 or any time later as per the extant circular of 2008.

12. The above position has been interpreted in the judgment of the Hon'ble High Court of Madras in **WP No.26528/2015** dated 14.03.2017 as hereunder:

"The grant of compassionate allowance is a matter of discretion of the competent authority. The competent authority has to consider the case of the employee, who was dismissed or removed from service. The authority must arrive at a satisfaction that the case of the employee deserves special

consideration.” (emphasis supplied)

13. Keeping the above legal position in view, the respondents examined the applicant's case as per RBE Circular, 2008. Para 3(i) is not required to be addressed in this OA, since neither party is raising the issue of non-availability of documents related to disciplinary proceedings. Paras 3(ii) & 3(iii) has been invoked by the respondents and have been duly addressed through the impugned order dated 24.10.2016 issued pursuant to the order of this Tribunal in OA 177/2015. Very specifically as per para 3(iii), the respondents have considered the applicant's representation regarding 'the kind of service' rendered. This was done in the light of the observations of the Tribunal in OA 177/2015 that the applicant's case did not involve any moral turpitude or lack of integrity or corruption, etc., and that unauthorised absence alone cannot be a ground for non grant of compassionate allowance. However, in the impugned order, this point has been clarified with full details regarding unauthorised absence on 1717 days during a period of 17 years of service. These periods were periods of leave without pay (LWP). As shown in the second column of the impugned order at page 24 of the OA, the applicant did not challenge each order of LWP on the respective date of order pertaining to unauthorised absence. This meant that applicant's husband had accepted the order of LWP for unauthorised absence during the period of 1980 to 1997 which was never ever challenged till his death or at the time of passing of each order of LWP or in the course of the disciplinary proceeding or on the conclusion of

proceeding or after 2008 till his death in 2011. Hence, award of LWP for absence and its acceptance without any demour for a period of 1717 days had attained finality. It would also mean that applicant's husband was prone to habitual unauthorised absence. The circular of the year 2008 did not say that unauthorised absence cannot be a ground for non-grant of compassionate allowance. It only said “quality of service” rendered should be considered, in which unauthorised absence could be factored in for rejection of applicant's case as per para 3(iii) of the circular. Para 3(iv), without diluting para 3(iii) said that if it involved a case of proved dishonesty then the circular would not come to the rescue of a dismissed/removed employee.

14. Hence, there is force in respondents' contentions that no special circumstances existed before the respondents to consider grant of compassionate allowance pursuant to the Tribunal's direction in OA 177/2015 and the observations made therein regarding grant of compassionate allowance.

15. Further, even though there was no case of corruption or moral turpitude, the respondents have rightly relied upon the case of ***State of Rajasthan Vs. Mohamed Ayub Naz*** (supra) which completely covers all facts and circumstances applicable to this OA.

16. The other ground quoted in the applicant's representation is regarding her poor economic condition as stated in her representation dated

27.07.2011. There is nothing on record in the representation or in this OA regarding her poor economic condition. The OA is bereft of supporting facts. However, as per para 3(v) of the RBE circular of 2008, poverty is not an essential condition for grant of compassionate allowance. Hence, para 3(iii) of the RBE circular of 2008 came to be the overwhelming ground to reject the applicant's claim for grant of compassionate allowance. The Tribunal is not in a position to question the discretion exercised by the representation by choosing inter-alia the essential ground as contained in para 3(iii) as compared to the non-essential ground contained in para 3(v) to reject the applicant's case for grant of compassionate allowance.

17. The issue of sickness raised by the applicant is stated in the representation of July 2011, but no documents containing details of health / medical issues are on record in this OA. Nor is there any reference made any time earlier before the respondents at the relevant time when deceased employee failed to file appeal, revision in the DA proceedings and later failed to file any representation till his death.

18. This Tribunal had dismissed a similarly situated **OA 824/2006** vide order dated 06.08.2008. This Tribunal had dismissed another similarly situated batch of OAs 1229-1232/2015 which was also upheld by the Hon'ble Madras High Court vide order dated 16.09.2016 in WP 36782/2015 and batch. The said precedential orders are binding in nature.

19. In view of the above, the Tribunal is of the considered view that no

ground based on merits or law has been made out to interfere with the impugned order. The OA being bereft of merits based on both facts, circumstances and position of law, the OA is liable to be dismissed on merits. Nor is it maintainable also on the grounds of delay.

20. Accordingly, OA is dismissed. No costs.

(B. Bhamathi)
Member(A)
18.06.2018

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