

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

OA/021/573/2017

Date of Order : 20.07.2018

Between:

Smt. Narasamma,
W/o.Late Augaiah- Narasaiah, Group-C,
aged about 51 years,
Occ: House wife, R/o. Rampally Dayara Village,
Kesara Mandal, R.R. District.

..... Applicant

AND

1. Union of India rep. by
The General Manager,
South Central Railway,
Secunderabad.
2. The Assistant Divisional Engineer/East
South Central Railway,
Secunderabad.

..... Respondents

Counsel for the Applicant : Mr. K. Siva Reddy

Counsel for the Respondents : Mr. V. Vinod Kumar, Sr. CGSC

CORAM :

THE HON'BLE MR.JUSTICE R.KANTHA RAO, JUDL. MEMBER

ORAL ORDER

{ Per Hon'ble Mr.Justice R.Kantha Rao, Judl. Member }

Heard Shri K. Siva Reddy, learned counsel appearing for the Applicant and Shri Sambasiva Rao, proxy counsel for the Respondents.

2. The O.A. is filed challenging the Proceedings dated 14.6.2017 issued by the 2nd Respondent as arbitrary, illegal and violative of Articles 14 & 16 of the Constitution, to set aside them and consequently direct the Respondents to sanction compassionate allowance to the Applicant with interest @ 18% p.a. and the arrears till the date of payment.

3. According to the Applicant, her husband late Augaiah- Narasaiah, Trackman in Senior Section Engineer (P.Way), Ghatkesar was removed from service on 25.6.2002 for unauthorised absence for a period of 139 days from 01.03.2000 to 7.8.2000. Aggrieved by the said order, the Applicant's husband preferred an appeal and the appellate authority dismissed the appeal by order dated 26.10.2002. Thereafter the revising authority by order dated 9.2.2005 confirmed the same. Subsequently, the Applicant's husband died on 20.7.2003. The Applicant made a representation for compassionate allowance on 16.12.2015 but it was not granted to her. The Applicant filed O.A. No.217/2016 questioning the inaction of the Respondents. The Respondents contested the O.A. by filing reply statement and the Tribunal taking into consideration the contentions urged by both parties, allowed the O.A. by order dated 8.3.2007. The main contentions urged in the earlier O.A. and also in the present O.A. by the Respondents are that the application submitted by the applicant seeking compassionate allowance is belated and the service records

relating to the Applicant are not available with the Respondents and, therefore, it was not possible to grant any compassionate allowance. The Respondents also contended that as the Applicant was unauthorizedly absent for a considerably long time, he is not entitled for compassionate allowance. Their main contention seems to be that the service records are not available and as the case is of more than 14 years old, it is not possible for them to grant compassionate allowance.

4. The Tribunal in the earlier O.A. i.e. O.A. No. 217/2016 recorded a specific finding that the learned Standing Counsel for the Respondents, at the hearing of the O.A. submitted that ordinarily service records have to be preserved and retained for 20 years. The Tribunal, therefore, took a view that the contention of non-availability of service record of the applicant's late husband is not tenable. If the period of retention of service records is 20 years, the records in respect of the applicant who expired on 20.7.2003 should be available as 20 years have not elapsed since the demise of the Railway employee. The Tribunal also recorded that the Respondents have not given any reply to the Applicant's representation dated 16.12.2015. The operative portion of the order passed by the Tribunal is as follows:

“9. In this view of the matter, I deem it appropriate to dispose of this O.A. with a direction to the applicant to submit copies of the D&A proceedings available with her to the 2nd Respondent within a period of six weeks along with a copy of this order as well as her representation dated 16.12.2015. As it is the duty and the responsibility of the Respondents to maintain the service records and as no valid grounds have been given for not preserving the service record of the deceased Railway employee, there shall be a direction to the Respondents to consider the applicant's AnnexureA-1 representation on the basis of the records submitted by her and other relevant records that may be available and pass a reasoned and speaking order and communicate the same to the applicant within a period of three months from the receipt of copies of D & A proceedings from the applicant.”

5. The competent authority rejected the claim of the Applicant for compassionate allowance by the impugned order dated 14.6.2017. The operative portion of the impugned order is as under:

“I have gone through the case file carefully and noted the following contents:

- 01.(L) Sri Augaiah-Narsaiah, Ex.Gangman of SSE/P.W/GT was removed from service w.e.f. 25.6.2002 (i.e.) almost 15 years back.
- 02.His settlement papers are not traceable as certified by Sr.DEM/SC vide his letter No.A/PN/SC/Augaiah Narsaiah of 05/05/2017.
- 03.(L) Sri Augaiah-Narsaiah, Ex.Gangman expired on 20.07.2003 (i.e.) 13 years back.
- 04.As per the statement of SSE/ P.W/ GT, it is certified that there are no SR/ LLR photo copies (Xerox copies) in their office as well as with the Smt. Narsamma, W/o. (L) Sri Augaiah-Narsaiah.

In the above circumstances as a Disciplinary Authority, I have decided to “DENY COMPASSIONATE ALLOWANCE” TO Smt. Narsamma, W/o. (L) Sri Augaiah-Narsaiah (who was removed from service on account of unauthorized absence from duty for 280 days with my discretion power.

“ACCORDINGLY, COMPASSIONATE ALLOWANCE TO Smt. Narsamma, W/o (L) Sri Augaiah IS DENIED.”

6. From the impugned order dated 14.6.2017 passed by the competent authority it is obvious that the Applicant’s request for compassionate allowance was rejected on the very same grounds which were repelled by the Tribunal by order dated 8.3.2017 passed in the earlier O.A. The Railway Board’s Circular dated 4.11.2008 shows that in partial modification of Board’s letter dated 9.5.2005, it has also been decided by the Board that out of the past cases in which the disciplinary authority has not passed any specific orders for or against grant of compassionate allowance, if any case appeared 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 conditions mentioned therein. One of the conditions however is that

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.

7. Shri Siva Reddy, learned counsel appearing for the Applicant would contend that the order impugned in the present O.A dated 14.6.2017 passed by the competent authority does not indicate any reasons for refusing the compassionate allowance. According to the learned counsel, the order speaks of only unauthorised absence of the Applicant for considerable length of time which ultimately resulted in removal from service and also non-availability of records.

8. On the other hand, the learned Standing Counsel for Railways would submit that the records submitted by the Applicant pursuant to the order passed by the Tribunal in the earlier O.A. are not enough to dispose of the Applicant's request for compassionate allowance and since the records from the inception of the service of the Applicant's husband were not available, it was not possible for the competent authority to grant compassionate allowance to the Applicant.

9. Rule 41 of CCS (Pension) Rules, 1972 which deals with compassionate allowance is as follows:

“41. Compassionate Allowance.- (1) A Government 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 the amount of rupees three hundred and seventy five per mensem.”

10. The grounds which were relevant for passing an order for removing or dismissing an employee, are not relevant for considering the issue relating to grant of compassionate allowance. The learned Standing Counsel appearing for the Respondents would submit that even on the earlier occasion also, a punishment was imposed on the Applicant for unauthorized absence and when again he became absent for considerable length of time, an inquiry was held against him and he was removed from service and he is, therefore, not entitled for compassionate allowance.

11. As per the settled legal position and also as per the Railway Board's letter dated 4.11.2018, only when an employee is removed or dismissed from service on account of his fraudulent conduct or misappropriation or dishonesty, compassionate allowance can be refused. For unauthorized absence of any length of time, the competent authority is not supposed to reject compassionate allowance. Further in the earlier O.A., the Tribunal had gone through the rival contentions and concluded that the Applicant is entitled for compassionate allowance and directed the Respondents to consider the case of the Applicant for compassionate allowance. The issue of non-availability of records with the Respondents was also considered and the Tribunal earlier directed the Respondents to decide the issue of compassionate allowance basing on the documents submitted by the Applicant as well as the records available with the Respondents. Unfortunately, the competent authority rejected the claim of compassionate allowance of the Applicant on the very same grounds which were rejected vide order in the earlier O.A. After the disposal of the earlier O.A., the Applicant submitted 12 documents along with representation dated 20.03.2017. Basing on the documents

submitted by the Applicant as well as the records available with the department, it could have been possible for the competent authority to dispose of the claim made by the Applicant on merits. But the same was not done by the competent authority and the impugned order passed by the competent authority does not contain any reasons for rejection of the claim put forth by the Applicant.

12. For the foregoing reasons, the impugned order dated 14.6.2017 is set aside. The Respondents are directed to consider the case of the Applicant for compassionate allowance basing on the material submitted by the Applicant as well as records available with the department and pass an order on merits without taking any technical pleas, within a period of eight weeks from the date of receipt of a copy of the order.

13. The O.A. is allowed as above. No order as to costs.

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

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