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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, CALCUTTA

APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985

Title of the Case :

O.A. No.350/00 566 / of 2015

SRI KASHI NATH SAHA, son of Late
Haripada Saha, aged about 52 years
Ex-Callman, Eastern Railway,
Azimgunj, Howrah Division, residing
at Village & P.O. Malihati, P.S. Salar,
District Murshidabad, Pin-742401,
West Bengal.

... APPLICANT

-versus-

1. UNION OF INDIA service through
The General Manager, Eastern
Railway, 17, N.S. Road, Fairlie Place,
Kolkata- 700001.
2. THE DIVISIONAL RAILWAY
MANAGER, Eastern Railway, Howrah
Division, Howrah, Pin-711101.



3. **THE DIVISIONAL MECHANICAL ENGINEER (Power)**, Eastern Railway, Howrah Division, DRM Building, Hoarah-711101.

4. **THE SENIOR DIVISIONAL PERSONNEL OFFICER**, Howrah Division, Eastern Railway, DRM Building, Howrah-711101.

5. **THE ASSISTANT MECHANICAL ENGINEER (Power)**, Howrah Division, Eastern Railway, DRM Building, Howrah-711101.

...RESPONDENTS



No. O.A. 350/00566/2015

Date of order: 14.9.2017

Present : Hon'ble Ms. Manjula Das, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. B. Chatterjee, Counsel

For the Respondents : Mr. A.K. Guha, Counsel

O R D E R (Oral)

Manjula Das, Judicial Member:

Mr. B. Chatterjee, Ld. Counsel appears for the applicant and Mr. A.K. Guha, Ld. Counsel appears for the respondents.

2. The matter relates to the prayer for grant of compassionate allowance to the applicant.

3. Mr. B. Chatterjee, Ld. Counsel for the applicant submits that disciplinary proceedings had been initiated against the applicant vide order dated 11.8.2004. The applicant, however, did not participate in the proceedings resulting in exparte order, which was issued on 24.10.2005 by imposing the major penalty of removal. The applicant did not appeal against the punishment of removal passed by the disciplinary authority.

By this application, however, the applicant has prayed for justice by directing the respondents to grant compassionate allowance as applicable under the law.

4. We have heard both the Ld. Counsels, perused the pleadings and materials placed before us.

5. Undisputedly, the applicant was unauthorisedly absent for a period of about four and a half months i.e. w.e.f. 3.2.2004 to 23.6.2004. The fact remains that he did not participate in the disciplinary proceedings. The disciplinary authority also did not grant any compassionate allowance while awarding the order of major punishment to the applicant.

6. After many years, the applicant submitted an application before



the authorities for payment of pension and dues in favour of the applicant vide dated 7.1.2013. Thereafter, he made an application on 13.12.2013 with a prayer for payment of compassionate allowance, pension and other dues admissible as per rules by an early date. On 2.1.2014, the Assistant Personnel Officer (G), Howrah had intimated the applicant that, as there is no mention of compassionate allowance in the punishment order, the order should be treated as removal of the applicant without any compassionate allowance.

7. Being aggrieved, the applicant approached this Tribunal by filing O.A. No. 350/00664/2014 where this Tribunal vide order dated 20.5.2014 disposed of the Original Application by directing the applicant to prefer a representation seeking benefit of RBE No. 164 of 2008 and the judgment of the Hon'ble High Court referred to in the petition thereon enclosing a copy thereof to the disciplinary authority within 15 days from the date of receipt of a copy of the order.

Further ordered, upon receipt of the said representation, the said authority shall consider the same in the light of RBE No. 164 of 2008 and the judgment of the Hon'ble High Court in WPCT No. 131 of 2012 to pass an appropriate order within two months thereafter.

8. Thereafter the applicant did make a representation to the authorities (but not to the disciplinary authority) where the respondent authority vide speaking order dated 29.8.2014 passed an order as hereunder:-

"Removed from his Service as per Removal Order No. P/17/DA dated 24.10.05. Unauthorizedly absent from duty from 3.2.04 to 23.6.04 as per DME(P)/HWH's order No. P/17/DA. Compassionate allowance as per extant rule (2/3rd) may be granted sanctioned by DME(P)/HWH."

Further order contained hereunder:-

"As there is no mention of compassionate allowance in the punishment order, hence it should be treated as the removal of Sh. Saha is without any compassionate allowance."

Sd/- dated 5.6.13

9. By the said speaking order the respondent authorities rejected the case as hereunder:-

"The unauthorised absence of such category staff has a great impact and make a lot of difficulties to depot In charge to run the train in time. In appeal of dated 24.6.14, Sri Saha has not shown any specific ground for consideration of Compassionate Allowance in his favour. The RBE 164/08 has not ordered to grant Compassionate Allowance in each removal/dismissal case but to consider on merit of the case. The appeal of Sri Saha does not bear any valid reason to consider Compassionate Allowance."

10. By this order the Department has not acceded to the prayer of the applicant. We have noted that the relevant Office Memo bearing No. RBE 164/08 on the subject of grant of compassionate allowance, which stipulates as hereunder:-

"(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."

11. It is an admitted fact that the applicant rendered his service in the Railways for a period of more than 19 years and the authority also has utilized his services. The decision placed by the applicant passed of by the Hon'ble High Court in WPCT No. 131/12, where the relevant portion is extracted hereunder:-



" In the present case there is no dispute that the petitioner No. 1's husband was not dismissed on the ground of any dishonesty. He was dismissed because he was absent. Therefore, grant of compassionate allowance would have to be considered in terms of the proviso to Rule 65(I) of the Railway Service (Pension) Rules, 1993 by the disciplinary authority and the appellate authority. The aforesaid order of the Railway Board provides that where final decision not to grant compassionate allowance has been taken, it should not be reviewed at any later stage. The Board has decided that out of the past cases in which the disciplinary authority had not passed any specific order regarding payment of compassionate allowance, the case may be reviewed by the disciplinary authority on receipt of representations of dismissed/removed employees or the member of the family of the deceased employees in deserving cases."

12. In the present case we have noted that there is nothing against the applicant else than the unauthorized absence of 4-1/2 months. It is not the case of dishonesty or corruption or misconduct. He was removed only for his unauthorised absence.

13. In this context we are of the view that the punishment ordered is too harsh to the individual. The fact remains that he did not participate in the disciplinary proceedings or prefer any appeal against the penalty. The authority ought to have, however, considered his representation for compassionate allowance but department remained rigid to the extent of the benefits of compassionate allowance payable to the applicant.

14. In view of the above facts and circumstances, we direct the respondents to grant compassionate allowance to the applicant, if otherwise eligible, within three months from the date of receipt of a copy of this order.

15. With the above observation and direction, the O.A. stands disposed of accordingly. No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Manjula Das)
Judicial Member