

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

**MA No. 82 of 2019 in
OA No. 794 of 2016**

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Gupteswar Bhoi, aged about 65 years, S/o Late Markanda Bhoi, At – Badamunda, PO – Kandheigaon, Via – Deogaon, Dist. – Bolangir, Ex- Mech. Gr-II Fitter Dies 1 under Senior Diesel Mechanic Engineer, Waltair.

.....Applicant

VERSUS

1. Union of India, represented through its General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
2. General Manager, East Coast Railway, Chandrasekharpur, Bhubaneswar, Dist. – Khurda.
3. Divisional Railway Manager (P), East Coast Railway, Waltair.
4. Divisional Mechanic Engineer (Diesel), Waltair Division, East Coast Railway, At/PO – Waltair, Andhra Pradesh.

.....Respondents.

For the applicant : Mr.P.K.Mohapatra, counsel

For the respondents: Mr. T. Rath, Counsel.

Heard & reserved on : 15.2.2019

Order on : 19.2.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The MA 82/2019 has been filed by the applicant for condoning the delay in filing the OA No. 794/2016, in which the applicant seeks the compassionate allowance under rule 65 of the Railway Services (Pension) Rules, 1993.

2. The applicant had put in about 15 years of service under the respondent-railway before he was charge-sheeted for unauthorized absence from duty and after an ex-parte inquiry, he was removed from service on 3.1.1994. It is the case of the applicant that he became mentally sick while in service and had to remain on leave and the respondents were aware of his problem. But he was issued the charge sheet for unauthorized absence and was removed from service as punishment in gross violation of the principles of natural justice. The applicant was cured from the illness in 2009 and he approached the respondent no. 3 on 9.3.2009 through a representation (Annexure-A/4) to be permitted for duty. Then he represented the respondent no.1 on 22.4.2014 (Annexure-A/5) for grant of pension and on 5.11.2014 for compassionate

pension (Annexure-A/6) taking into account his long years of service, before removal from service.

3. When no action was taken, the applicant approached the Tribunal in OA No. 633/2015 which was disposed of with a direction to the respondents to dispose of his representation. The respondent No. 1 disposed of the matter to approach the disciplinary authority (respondent No.4). The applicant submitted a detailed representation dated 14.3.2016 (Annexure-A/9), which was rejected by the respondent no. 4 vide the impugned order dated 27.4.2016 on the ground that the appeal for grant of compassionate pension is not entertained since the applicant took step at a belated stage.

4. Upon notice, the respondents filed preliminary objection for admission of the OA on the ground it was filed after about 20 years of the applicant's removal from service and the OA cannot challenge the order dated 3/5.01.1994 (Annexure-A/3) as it is barred by limitation. After objection of the respondents, the applicant has filed the MA No. 82/2019 praying for condoning the delay in filing the OA on the following grounds:-

- (i) Since the applicant has prayed for grant of minimum pension on compassionate ground, there is no question of limitation.
- (ii) It is held by Hon'ble High Court in the case of Madan Mohan Das vs. Union of India reported in 81(1996) C.L.T. 601 that the pension matter is not barred by limitation.

5. When the OA was considered by the Tribunal on 25.1.2019, it was seen that the MA No. 82/2019 was not there on record. The matter was posted to 8.2.2019 for hearing on delay condonation. On 8.2.2019, when the matter was taken up for consideration, learned counsel for the respondents was not present. However, the applicant's counsel was heard on MA No. 82/2019 for condoning delay and the respondents' counsel was allowed time till 14.2.2019 to file written submission on MA No. 82/2019.

6. In the MA no. 82/2019, the applicant has referred to his claim for compassionate allowance for which the question of limitation will not apply. It is seen that the order dated 3/5.01.1994 (Annexure-A/3), which has also been impugned in the OA, is the order imposing the penalty of removal from service. There is no prayer in the MA for condoning the delay in respect of the penalty order at Annexure-A/3, since the prayer in the MA is only for compassionate allowance/pension. Hence, the delay cannot be condoned for challenging the order dated 3/5.01.1994 (Annexure-A/3) in this OA due to limitation, for which, the challenge to the order at Annexure-A/3 fails on the ground of limitation.

7. Mr. T. Rath, learned counsel for the respondents had opposed the MA No. 82/2019 for condoning the delay in filing the OA and filed copy of the two judgments of Hon'ble Apex Court in the case of C. Jacob Vs Director of Geology & Ors. in the SLP(C) No. 25795 of 2008 and in the case of Bhoop Singh Vs. Union of India and Ans. 1992 AIR 1414 in support of his argument. In the case of C. Jacob(supra), the petitioner's service was terminated in the year 1982 and he approached the Tribunal after a delay. Hon'ble Apex Court held that the case suffers from delay and latches. However, his claim for pension was duly considered on merit and rejected by Hon'ble Apex Court. Hence, applying the ratio of the judgment, it cannot be said the claim of the applicant in the present OA for compassionate allowance is barred by limitation or delay. In the case of Bhoop Singh (supra) in which, the petitioner had approached the court against the order of termination of service after about 22 years, claiming the benefit of judgment in case of other employees who were similarly placed as the petitioner. It was held that the case was not maintainable on the ground of delay.

8. But in the present OA before us, the relief for grant of compassionate allowance under rule 65 of the Railway Services (Pension) Rules, 1993 is a recurring cause of action as if sanctioned, the same payable every month in view of the ratio of the judgment of Hon'ble High Court in the case of Madan Mohan Das vs. Union of India 81(1996) C.L.T.601 cited by the applicant in the MA No. 82/2019. But after adjudication of the OA on merit if the applicant will be found to be entitled for compassionate allowance, then the arrears payable may be restricted as per law in view of delay in approaching the Tribunal.

9. In view of above, the MA No. 82/2019 is allowed in respect of the relief for compassionate allowance, which was rejected by the respondents vide order dated 27.4.2016 (Annexure-A/10). Hence, the delay in filing the OA for the relief as mentioned above, is condoned.

10. The respondents to file their Counter/Reply in 3 weeks time with respect to the applicant's challenge to the order at Annexure-A/10 rejecting his claim for compassionate allowance. List on 15.3.2018.

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath