

CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 350/00269/2015

Date of order : 19.2.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Bulbul Sengupta,  
Aged about 50 years,  
Unemployed,  
Wife of Late Tapash Sengupta,  
Who worked as Khalashi Helper,  
Ticket No. 596 under  
EMU Car Shed,  
Tikiapara,  
South Eastern Railway,  
Residing at North Baksara Govt. Colony,  
P.O. Baksara,  
District: Howrah,  
Pin - 741 110.

Applicant

VERSUS -

1. Union of India,  
Service through the  
General Manager,  
South Eastern Railway,  
Garden Reach,  
34, Garden Reach Road,  
Kolkata - 700 043.
2. The Divisional Railway Manager  
South Eastern Railway,  
Kharagpur Division,  
Kharagpur,  
District : West Midnapore,  
Pin - 721301.
3. The Senior Divisional Electrical Engineer (TRS),  
South Eastern Railway,  
Tikiapara,  
District Howrah Pin - 711 101.
4. The Assistant Divisional Engineer (TRS),  
South Eastern Railway,  
Tikiapara,  
District - Howrah,

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Pin – 711 101.

.. Respondents

For the Applicant : Mr. B. Chatterjee, Counsel

For the Respondents : Ms. G. Roy, Counsel

**ORDER (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached this Tribunal in second stage litigation, primarily seeking grant of compassionate allowance and the following relief in particular:-

- (a) An order do issue directing the respondents to treat the suspension period from 30.10.1993 to 07.07.1999 in respect of the husband of the applicant as on duty for the purpose of qualifying service for grant of compassionate allowance;
- (b) An order do issue directing the respondents to quash the impugned order dated 06.08.2014 issued by the Senior Divisional Electrical Engineer (TRS)/Tikiapara, South Eastern Railway;
- (c) An order do issue directing the respondents to grant her compassionate allowance taking into account the period of service from 01.01.1985 to 07.07.1999 i.e. the date of revocation of suspension order as qualifying service for the purpose of grant of compassionate allowance;
- (d) An order do issue directing the respondents to sanction compassionate allowance in favour of the applicant in terms of the Railway Board's Circular being RBE No. 164 of 2008 dated 4<sup>th</sup> November, 2008 along with all arrears, interest as well as the consequential benefits;
- (e) Any order and/or further order or orders as the Hon'ble Tribunal may deem fit and proper.

2. Heard both Ld. Counsel examined pleadings and documents on record.

3. The case of the applicant, as submitted through her Ld. Counsel, is that her spouse, an ex-employee of the respondent authorities, had been removed from service on grounds of unauthorized absence in 2004. The said ex-employee expired on 25.4.2009, and, thereafter, the applicant preferred a representation praying for compassionate allowance in terms of Rule 65(1) of Railway Service (Pension) Rules, 1993 read with RBE No. 164 of 2008. The respondent

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authorities, not having responded favourably to such representation, the applicant has approached this Tribunal with the instant Original Application.

4. Ld. Counsel for the respondents argues that, in response to the Tribunal's order dated 17.6.2014 in earlier O.A. No. 350/00720/2014, preferred by the applicant, the respondents had indeed passed a speaking order and the applicant's prayer for compassionate allowance was rejected on grounds as quoted hereunder:-

"Reg.: Implementation of Hon'ble CAT/CAL's Order Dt. 17.6.2014 of O.A. No. 350/00702 of 2014 in the matter of Bulbul Sengupta - vs. - UOI & others.

XXXX XXXX XXXX XXXX XXXX XXXX

On going through the Para 3 of RBE No. 164/2008, it is observed that the said RBE No. 164/2008 is issued in partial modification of RBE No. 79/2005 (S.E. Rly. E.S. No. 133/2005) keeping in view some conditions to be followed by the appropriate authority before review/consideration the grant of compassionate allowance.

Further at Para 3 RBE No. 79/2005, it is categorically stated that before sanctioning compassionate allowance, it is absolutely necessary for the competent authority intending to sanction compassionate allowance to a person on whom punishment of removal is imposed, to satisfy itself that such a person has rendered not less than 10 years of qualifying service.

For the aforesaid reasons, service record of Late Tapas Sengupta has been adjudged to satisfy the kind of services rendered by him and to determine the net qualifying services for working the quantum of compassionate allowances, if sanctioned, from which it is observed that:

- (i) He was appointed as Ty. Khalasi under IOW(Con)/SRC on 1.1.85.
- (ii) He was regularized as Khalasi on 06.11.85 on posting under Sr. DEE/TRS/TPKR at EMU Carshed/TPKR.
- (iii) He was placed under deemed suspension w.e.f. 30.10.93 against a criminal case registered by RPF post at Uluberia vide No. 2(5)93 dt. 24.5.93 under Section 3(a) RP(UP) Act, 66 and forwarded to SDJM/Uluberia on 30.10.93 for which he was in Police Custody for more than 48 hours although subsequently released on Bail by the Hon'ble High Court / Calcutta.
- (iv) The order of deemed suspension was revoked on 07.07.99.
- (v) He was transferred and posted at KGP vide posting order No. RS/TPKR/316/1563 dt. 08.07.99.
- (vi) He was removed from Rly. Service on 30.9.2004.
- (vii) The Criminal Case registered by RPF Post at Uluberia is still under trial in the Hon'ble ACJM Court/Uluberia.
- (viii) On revocation of deemed suspension, he did not resume duty even for a day after the date of deemed suspension till the date of removal. Thus the period from 30.10.93 to 30.09.2004 has been treated as Non-qualifying service as per rules in force.
- (ix) During the period of actual service rendered by Late Tapas Sengupta from 01.01.85 to 29.10.93, he was on absent/extra ordinary leave with medical certificate for 199 days which is considered as non-qualifying services as per rules and the rest period is treated as qualifying service.

From the above, it is clear that Net qualifying services of Late Tapas Sengupta is less than 10 years which becomes a Prime bar to consider the sanction of compassionate allowance in form of pension and family pension as well as caused unnecessiated to examine / go through the criteria, terms and conditions laid down at Para 3 of RBE No. 164/2008 for grant of compassionate allowance."

And hence, as the ex-employee, namely, the spouse of the applicant had accumulated qualifying service of 9 years 7 months and 15 days and such qualifying service, having fallen short of the mandatory requirement of 10 years, the applicant was not entitled to compassionate allowance.

5. During hearing, Ld. Counsel for the applicant furnishes before us an order of the Hon'ble Apex Court in **Prem Nath Bali vs. Registrar High Court of Delhi & anr. Civil Appeal No. 958 of 2010** and vociferously urges that, in the light of the ratio of such judgment, the period of suspension should have been taken into account by the respondents for determining the applicant's right to compassionate allowance. The ratio in the aforesaid judgment of the Hon'ble Apex Court is extracted as below:-

"34. Now coming to the facts of the case in hand, we find that the respondent has fixed the appellant's pension after excluding the period of suspension (9 years and 26 years). In other words, the respondents while calculating the qualifying service of the appellant for determining his pension did not take into account the period of suspension from 06.02.1990 to 01.03.1999.

35. Having regard to the totality of the facts and circumstances, which are taken note of supra, we are of the view that the period of suspension should have been taken into account by the respondents for determining the appellant's pension and we accordingly do so."

6. Both parties agree that the respondents may be directed to review the prayer of the applicant in the light of the Hon'ble Apex Court's order in **Prem Nath Bali (supra)**.

7. Hence, without entering into the merits of the matter and, with the consent of the parties, we direct the respondent No. 3, namely, the Senior Divisional Electrical Engineer (TRS), South Eastern Railway, Tikiapara to review the decision arrived at on 6.8.2014 in the context of the applicant's prayer for compassionate allowance in the light of judgment in **Prem Nath Bali (supra)** and

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to issue a reasoned and speaking order in accordance with law within a period of six weeks of the receipt of copy of this order. Decision arrived at should be conveyed immediately to the applicant concerned and in case of favourable decision, the entitlements of the applicant should be released within a further period of eight weeks thereafter, as per rules.

8. With these directions, the O.A. is disposed of. No costs.

(Dr. Nandita Chatterjee)  
Administrative Member

(Bidisha Banerjee)  
Judicial Member

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