

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.790/2013

Dated this Wednesday the 9th day of January, 2019

CORAM: HON'BLE DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Maruti Dattu Kamble
 S/o Dattu Kamble
 Age:-49 (Date of Birth:01.06.1964)
 Formerly working as Ex-Trackman
 under SSE(P/Way) BTW
 Central Railway Solapur.
 Residing at Mukkam Post Bijwadi
 Tal-Indapur, Dist-Pune
 Pin Code - 413 103. **... Applicant**

(By Advocate Ms. Vaishali Agane)

VERSUS

1. The Union of India,
 Through The General Manager,
 Central Railway, CST,
 Mumbai - 400 001.
2. Assistant Divisional Engineer
 (NG)'s Kurduwadi,
 Central Railway, Kurduwadi,
 Solapur - 413 001. **... Respondents**

(By Advocate Shri V.S. Masurkar)

O R D E R

Per: Ravinder Kaur, MEMBER (J)

This application has been filed by the
 applicant under Section 19 of the
 Administrative Tribunals Act, 1985 seeking the
 following reliefs:

“(a) The applicant therefore prays that this Hon'ble Court may be graciously pleased to call for the records of the case from the respondents and after examining the same quash and set aside the order dated 19.04.2013, Annexure A-1 issued by the respondent No.2.

(b) Direct the respondents to grant compassionate allowance to the applicant w.e.f. Removal order dated 02.05.2006 with all the consequential benefits thereafter.

(c) Grant cost & grants any other further relief in the nature of circumstances of the case as the Hon'ble Tribunal deem fit & proper.”

2. The facts are that the applicant was appointed in 1980 and was granted as MRCL on 31.12.1985. He was regularised as Gangman on 15.09.1992 and worked with the respondents till 2005. The applicant suffered burn injury on his chest and thus remained absent from his duty for a period of 188 days between 05.04.2005 to 03.11.2005. A departmental enquiry was initiated against him with the Article of charges alleging imputation of misbehaviour i.e. unauthorised absence from duty and for not following the Medical Rules. Vide order dated 02.05.2006 (Annexure A-2), he was removed from service without granting him compassionate allowance. It is claimed that non grant of compassionate allowance is violation of Rule 65 of the Railway Services (Pension) Rules, 1993. It is stated

that the Railway Board issued order dated 09.05.2005 for grant of compassionate allowance. As per the Railway Board order *"In terms of Rule 65 of the Railway Services (Pension) Rules, 1993, if the case of a removed/dismissed Railway servant is deserving of special consideration, the authority competent to dismiss or remove the Railway servant from service may 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. 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-motu, at the time of passing orders of dismissal or removal from service or immediately thereafter. Hence, 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."*

2.1 It is stated that as per the Railway Board order dated 09.05.2005, the cases in which the Disciplinary Authority did not pass any specific orders for or against the grant of

compassionate allowance, if any case appears to be deserving, it may be reviewed by the Disciplinary Authority concerned on receipt of representation from the dismissed/removed employees or the family members of the deceased employees. To this effect, the applicant has relied upon the Railway Board order dated 04.11.2008 (*Annexure A-4*).

2.2 The applicant has claimed that since the respondents did not decide at the time of passing his removal order, as to whether he was entitled to compassionate allowance, he made representation in the year 2011 in terms of Railway Board orders dated 09.05.2005 and 04.11.2008 respectively but the same was rejected vide order dated 20.03.2012 (*Annexure A-5*) on the ground that the applicant had not completed 10 years service. He submitted another representation dated 05.09.2012 (*Annexure A-6*) explaining as to how the applicant had qualifying service tenure. It is claimed that as per Rule 31 of Railway Service (Pension) Rules, 1993, the Railway servant who is in service on or after the 2nd day of August 1969, half the service period from contingencies shall be taken

into account for calculating pensionary benefits and claims that applicant has fulfilled this eligibility criteria. Therefore, half of his seven year MRCL service should be counted as qualifying service for pensionary benefits. The applicant preferred Revision Petition under Rule 25 of the Railway Servants (Discipline & Appeal) Rules, 1968 dated 14.03.2013 which was rejected vide order dated 19.04.2013 (*Annexure A-1*) on the ground that the applicant had not completed 10 years qualifying service and was thus not entitled for compassionate allowance. It is submitted that as per the removal order dated 02.05.2006, the applicant has been shown as absent from 05.04.2005 to 03.11.2005 i.e. for 188 days only and therefore the applicant worked with the respondents for more than 19 years and 3 months. It is claimed that the applicant is entitled to compassionate allowance w.e.f. 02.05.2006 i.e. date of removal from service till his death and thereafter family pension to his wife in terms of Rule 65 of Railway Services (Pension) Rules, 1993 and Railway Board orders dated 04.11.2008 & 09.05.2005.

3. The respondents in their reply have claimed that the OA is barred by the period of limitation as there is delay of over six years. Further, that the chargesheet (SF-5) was issued to the applicant for remaining unauthorizedly absent and he was removed from service on 02.05.2006. He was not entitled for compassionate allowance as he could not complete 10 years qualifying service. The grant of compassionate allowance is only on compliance of the statutory requirement of Rule 65 of Railway Services (Pension) Rules, 1993 read with Railway Board's letter dated 09.05.2005 (RBE No.79/2005) (*Exhibit R-1*). The respondents have relied upon the judgment of Hon'ble High Court of Delhi in the case of *Sukha Singh Vs. UOI & Ors. [W.P.(Civil) No.11646/2009 decided on 20.01.2010]* and has stated that OA is totally devoid of merit and liable to be dismissed with cost.

3.1 It is further submitted that the applicant was issued chargesheet dated 15.12.2005 for remaining absent from 05.04.2005 to 03.11.2005 for 188 days and vide order dated 02.05.2006 he was removed from service. Further though the applicant has claimed that since he

had suffered burn injury on his chest, had become weak and could not pull on the work of Trackman, was thus absent from duty for medical reasons. However, he did not follow the Medical Rules and procedure in this regard. That the assertion of the applicant that he worked honestly and sincerely till 03.11.2005 but still was not allowed to resume duty, is not true as he remained unauthorisedly absent, most of the time in his entire service for which the chargesheets (SF-5) were issued to him three times, prior to the chargesheet dated 15.12.2005. Details of these three chargesheets dated 20.12.1999, 21.10.2002 and 10.09.2003 respectively are given in the reply of the respondents. That applicant faced disciplinary proceedings under these four chargesheets and apart from the period of absence mentioned therein, he was absent unauthorisedly for other spells also. Regarding the record pertaining to his MRCL service from 31.12.1985 to 15.09.1992, the respondents have submitted that no record is available in their office.

3.2 Regarding Railway Board's order dated 09.05.2005, it is stated by the respondents that

in case of removal/dismissal of Railway servant, the power to sanction compassionate allowance not exceeding 2/3rd of pension or gratuity is discretionary power vested with the Competent Authority to remove/dismiss the Railway servant. However, the applicant was not entitled for consideration of compassionate allowance as he had not completed 10 years qualifying service.

3.3 It is brought to the notice of the Tribunal by the respondents vide its reply in para 16 that applicant was earlier also removed from service on 19.11.2004 in connection with chargesheet dated 10.09.2003 but again mercifully reinstated in service w.e.f. 25.01.2005 by the Appellate Authority. Despite all this, the applicant continued remaining absent.

4. In rejoinder the applicant has reaffirmed his assertion as made in the OA.

5. The respondents have also filed on record reply to the rejoinder wherein they have explained the Railway Services (Pension) Rules, 1993. The respondents have also placed on record the statement of Total Service Verified as *Exhibit RR-1*. As per this statement, the

applicant was absent for a total period of about 3632 days from 31.12.1985 to 02.05.2006.

6. We have heard the arguments addressed by Ms. Vaishali Agane, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents and carefully perused the case record.

7. The admitted facts are that the applicant was granted MRCL on 31.12.1985. He was regularised as Gangman on 15.09.1992. The applicant was issued chargesheet dated 15.12.2005 for remaining unauthorisedly absent for a period of 188 days w.e.f. 05.04.2005 to 03.11.2005. Vide order dated 02.05.2006, punishment of removal from service w.e.f. 03.05.2006 was imposed upon the applicant. Vide this order dated 02.05.2006, the applicant's case was not considered for compassionate allowance. The applicant has claimed that he had filed representation against the order of removal dated 02.05.2006 without granting him compassionate allowance in terms of Rule 65 of Railway Services (Pension) Rules, 1993. In the synopsis filed alongwith the OA, it is mentioned that the applicant had made representation to

the Divisional Railway Manager, Solapur for grant of compassionate allowance though the copy of this representation has not been filed on record. It is claimed that this representation was rejected vide order dated 20.03.2012. However, there is no such order dated 20.03.2012 placed on record. The perusal of record shows that Annexure A-5 dated 22.03.2012 has been placed on record by the applicant and as per the same, he was informed that the Competent Authority held that the applicant was not entitled for compassionate allowance since he had not completed 10 years of qualifying service. After the communication of this order, the applicant submitted another representation dated 05.09.2012 but there is no averment on record as to what was the fate of this representation. The respondents in their reply have denied that the applicant made any such representation. The applicant made another representation dated 14.03.2013 which was rejected by the concerned authority vide order dated 19.04.2013. It is against this order the present OA has been filed. The perusal of the impugned order clearly shows that vide his

representation dated 14.03.2013 the applicant had sought to reduce/modify the punishment awarded vide order dated 02.05.2006 and at the same time, requested for grant of compassionate allowance. Both the prayers of the applicant were rejected. With regard to prayer for compassionate allowance, it is specifically mentioned that since he had not completed 10 years qualifying service, therefore he is not entitled for compassionate allowance. The perusal of the entire OA reveals that the applicant has challenged this impugned order only to the extent that he was not granted compassionate allowance and has expressed no grievance with regard to non reduction of his punishment. Therefore, we have to confine ourselves to the issue as to whether the applicant is entitled to compassionate allowance or not. The Rule 65 of Railway Services (Pension) Rules, 1993 which is relevant and reproduced as follows:-

65. 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 thousand five hundred rupees per mensem (Authority : Railway Board's letter No.2011/F(E)III/1(1)9 dated 23.09.13)

8. Rule 65 deals with compassionate allowance. As per this Rule a Railway servant, who is dismissed or removed from service, shall forfeit his pension and gratuity. However, the competent authority has power to sanction 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.

9. As per Railway Board's order dated 09.05.2005, the compassionate allowance being one of the classes of pension and a minimum qualifying service of ten years is a prerequisite for sanction of any class of pension, before sanctioning compassionate allowance. The relevant para 3 of the Railway Board order dated 09.05.2005 is reproduced as under:-

“3. Recently, a case has come to the notice of the Board, wherein the competent authority, while imposing the penalty of removal from service on a Railway servant, sanctioned compassionate allowance without verifying the qualifying service rendered by the latter. Compassionate allowance being one of the classes of pensions and a

minimum qualifying service of ten years is a pre-requisite for sanction of any class of pension, before sanctioning compassionate allowance, it is absolutely necessary for the competent authority intending to sanction compassionate allowance to a person on whom the punishment of removal/dismissal is imposed, to satisfy itself that such a person had rendered not less than 10 years of qualifying service. Board, therefore, desires that the Head of Office should place before the competent authority the information about the qualifying service and other relevant facts concerning the Railway servant either at the time of imposing the penalty of removal/dismissal or immediately thereafter to facilitate that authority to take a decision as regards sanction of compassionate allowance in terms of Rule 65 of the Railway Services (Pension) Rules, 1993 and guidelines given in para 310 of the Manual of Railway Pension Rules, 1950.

10. As per the Railway Board order referred to above, it is the bounden duty of the Competent Authority to satisfy itself that such a person to whom he is inclined to grant compassionate allowance has rendered not less than 10 years of qualifying service. In the present case, the applicant as per the respondents has not rendered the qualified service of 10 years to his credit and thus he was not granted compassionate allowance.

11. Counsel for the applicant has submitted that the applicant has qualifying service of 19 years and 3 months to his credit and thus he was entitled to grant of compassionate allowance at the time he was removed from service vide order

dated 02.05.2006.

12. Counsel for the respondents has drawn our attention to the fact that by no stretch of imagination the applicant could have qualified service of 10 years or more what to talk of 19 years and 3 months. It is not denied by the applicant that he was issued four chargesheets on the dates 20.12.1999, 21.10.2002, 10.02.2003 and 15.12.2005 respectively. It is vide last chargesheet he was imposed penalty of removal vide order dated 02.05.2006. Prior to that also, he was ordered to be removed from service on 19.11.2004 vide chargesheet dated 10.09.2003 but later on the Appellate Authority vide order dated 25.01.2005 had reinstated him.

13. The respondents have placed on record *Anneuxure RR-1* at page 87 of the OA giving details of the unauthorised leaves taken by the applicant during his entire service tenure. In all the applicant remained absent from duty for a period of 3632 days. Bare glance at the year wise chart of unauthorised absence shows that the applicant did not even work for half of the year for several years so as to say that he was regular in service or there was continuity in

service. This chart has not been disputed by the applicant. As per the same, the applicant remained absent for substantial periods and details of the various years during which he remained absent for more than half of a particular year are given as below in chart form:-

Total service verified		Total days non-qualified	Reason
01/04/88	31/03/1989	145 ^{1/2} days	Absent
01/04/91	31/03/1992	220 days	Absent
01/01/94	31/12/1994	267 days	Absent
01/01/95	31/12/1995	194 ^{1/2} days	Absent
01/01/96	30/11/1996	195 days	Absent
01/01/99	31/12/1999	285 days	Absent
01/01/00	31/12/2000	179 days	Absent
01/01/01	31/12/2001	275 days	Absent
01/01/02	31/01/2002	29 days	Absent
01/02/02	31/12/2002	271 days	Absent
01/01/03	31/12/2003	235 days	Absent
01/01/04	03/09/04	244 days	Absent
04/09/04	18/11/2004	76 days	Absent
April,05	03/08/05	111 days	Absent
04/09/05	02/05/06	169 days	Absent

Apart from above, he remained absent during several years for more than 100 days. All the above years mentioned in the chart cannot be treated as qualified service for the purposes of grant of compassionate allowance. If we deduct these periods from the total service rendered by the applicant, his qualified service is less

than the period of 10 years. Therefore his case was not a deserving one for grant of compassionate allowance.

14. In the circumstances, we find no infirmity in the impugned order dated 19.04.2013. The OA being without merits is hereby dismissed. However, no order as to costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

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