

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****OA/310/00340/2018****Dated 16 day of July, 2019****PRESENT****Hon'ble Mr.T.Jacob, Administrative Member**

T. Kishore Kumar
No 297, Samon Saroja Street,
Golden George Nagar, Mogappair,
Chennai 600 107.

....Applicant

By Advocate M/s. K. Manickaraj

Vs

1. Union of India, rep by
The General Manager,
Southern Railway,
Park Town, Chennai – 600 003.
2. The Chief Personnel Officer,
Southern Railway,
Park Town, Chennai – 600 003.
3. The Senior Divisional Mechanical Engineer
Chennai Division, Southern Railway
Park-Town, Chennai – 600 003.
4. The Senior Divisional Personnel Engineer
Chennai Division, Southern Railway
Park-Town, Chennai – 600 003.

....Respondents

By Advocate Mr. Y. Prakash

ORDER

Pronounced by Hon'ble Mr.T.Jacob, Member(A))

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

"To call for the records pertains to the impugned A-8 order No.M/M.226/DAR dated 19.07.2017 on the file of the 3rd respondent and quash the same and

I. To direct the respondents to grant compassionate allowance to the applicant from the date of his removal from service as per Rules laid down in Rule 65 and 107 of the Railway Services (Pension) Rules, 1993

II. Such other appropriate orders as deemed fit by this Hon'ble Tribunal to avoid further hardship and thus render justice."

2. The brief facts of the case as submitted by the applicant as follows:

The applicant initially appointed on 31.10.1974 as C&W Khalasi on regular basis in the erstwhile pay Scale of Rs.196-232, successively climbed in the ladder of promotion to reach the level of C&W Fitter in the scale of pay of Rs.1200-1800 (4th CPC) on 30.07.1988. While he was successful in getting promotion in his official career, in his domestic front, he had suffered a setback in as much as his wife, deserting him and two sons of 9 and 7 years and eloped with another Railway employee in August 1991, the impact of which was that the applicant has lost his mental equilibrium and had to undergo medical treatment in the Perambur Railway hospital from 08-05-1993 to 18-08-1993, which period was covered by grant of LHAP and other admissible leave by the Railways. From 20-09-1995 to 05-11-1995 he remained absent,

and in fact was found roaming on streets whereafter, he was sent for treatment at the Institute of Mental Health, Kilpauk for further treatment on 08-12-1997 and 25-06-1998, his friend informed the applicant was removed from service as a matter of penalty vide penalty order dated 18-06-1998 and the same was pasted on the notice board on 22-06-1998. The applicant submitted appeal as well as revision petition which stood rejected. Aggrieved by the above, the applicant filed OA.626/2017 before this Tribunal seeking Compassionate Allowance wherein this Tribunal vide order dated 27.04.2017 disposed of the said OA directing the respondents to consider and pass a reasoned and speaking order on his representation within a period of two weeks. In pursuance of the above order, the respondents have passed the impugned order dated 19.07.2017 rejected the claim of the applicant. Hence the applicant has filed this OA seeking the above reliefs on the following grounds:-

- (a) Rule 65 of the Railway Services (Pension) Rules states that while passing the penalty of Removal/Dismissal from service in a disciplinary proceedings, the disciplinary authority has to decide the admissibility of compassionate allowance or to take action under Rule 107 of Pension rule to refer to Railway Board for its decision. In the case of the applicant, neither the then disciplinary authority acted suo moto nor the Personnel Officer submitted the documents before the disciplinary authority for taking decision with regard to grant of compassionate allowance along with the orders of penalty. He never acted upon the provision of Rule 107. Hence the action of the respondents for not passing orders with regard to compassionate allowance at the time of



passing the order of removal from service of the applicant is against rules and not sustainable in law.

(b) Absence of any specific order relating to compassionate appointment negativity the same, only showed that the competent authority was not averse to grant the said compassionate allowance. But the present disciplinary authority without proper understanding, has passed the impugned order which is against the well established rules.

(c) In terms of Rule 65(1) of Railway Services (Pension) Rules, 1993, the authority competent to dismiss or remove the applicant 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 compassionate pension. This is the discretionary power vested in the authority competent to dismiss/remove a railway servant to be exercised by that authority suo moto at the time of passing the order of dismissal or removal from service or immediately thereafter.

(d) The Railway Board vide Annexure A6 order dated 04.11.2008 (RBE No.164/2008) had clarified that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance may be reviewed by the disciplinary authority concerned on receipt of representations from dismissed/removed employees or the family member of the deceased employees keeping in view the kind of service etc.,

The applicant has relied on the following judgments in support of his

submissions:-

" (i) Principal Bench order in O.A. No. 151/2012 dated 05.10.2012 in the case of Tarsem Chand CM-II Vs Union of India & Anr.

(ii) W.P. No. 18193/2001 dated 21.02.2006 of Hon'ble Madras High Court in the case of Mrs. D. Wodrose Vs. Union of India & Ors.

(iii) Hon'ble High Court Bombay Judgment in Anna Deoream Londhe (Deceased) Vs. State of Maharashtra dated 10.06.1998 reported in 1998(4) BomCR 772, 1999(81) FLR 304, 1998(3)MhLj 435;

(iv) Hon'ble High Court of Calcutta (Appellate Side) judgment in W.P. No.27383(W) of 2006 dated 20.06.2014 filed by Sri Nani Gopal Deb Vs. Union of India;

(v) Hon'ble Supreme Court judgment in Civil Appeal No. 2111 of 2009 dated 11.4.2014 by Mahinder Dutt Sharma Vs. Union of India ;

(vi) Hon'ble Supreme Court judgment in Civil Appeal No. 2106 of 2012 arising out of SLP(C) No.15381 of 2006 dated 15.02.2012 filed by Krushnakant B. Parmar Vs. Union of India."

3. Per contra, the respondents in their reply have stated that the applicant was unauthorisedly absent from duty on several occasions from 20.09.1993 to 22.11.1996 and further also. A Charge Memorandum was issued for the period of unauthorised absence from 20.09.1993 to 06.11.1995 for a period of four years for not following the Railway Medical Attendance Rules and for availing leave without proper authority. Subsequently the applicant was removed from service in 1998. The appellate authority has recorded that the applicant had failed to communicate the reasons for his absence which reflected lack of commitment to work. The disciplinary authority revealed that it was not a case deserving special consideration for sanction of



compassionate allowance. Thereafter the applicant has not made any claim for the last 17 years. Merely because, the name of the applicant figures in the 1991 seniority list, the applicant is not entitled for compassionate allowance. Not passing the order with regard to compassionate allowance at the time of passing the order of removal from service of the applicant has not prejudiced the applicant and hence the respondents pray for dismissal of the OA. The respondents have relied on the following judgments in support of their submissions:

" i) W.P. Nos. 36782 of 2015, 40447 of 2015, 40448 of 2015 and 20500 of 2016 and M.P.No.1 of 2015 dated 16.09.2016 of Hon'ble High Court of Madras."

4. The applicant filed rejoinder and would submit that no rules says that compassionate allowance shall be claimed by the removed employee in the specified time as limitation and if not claimed within that period, such allowance shall not sanctioned irrespective of the reasonableness in the case for consideration. Therefore, the contention of the respondent is not acceptable.

5. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

6. Admittedly the Ministry of Railways vide RBE No.164/2008 dated 4.11.2008 has dealt with the issue of grant of compassionate allowance, the relevant portion of which reads as follows:-

"In terms of proviso to Rule 65(1) of Railway Services (Pension) Rules, 1993, the authority competent to dismiss or remove a Railway servant 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. This is the discretionary power vested in the authority competent to dismiss or remove a Railway servant, to be exercised by that authority suo-moto, at the time of passing orders of dismissal or removal from service or immediately thereafter.

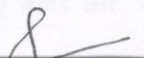
2.
 3. However, in partial modification of Board's letter dated 09.05.2005, it has also been decided by the Board that out of the past cases in which the disciplinary authority had not passed any specific orders for or against grant of compassionate allowance, if any case appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/removed employees of the family members of the deceased employees....."

On the facts of this case, it could be seen on perusal of the records that the competent authority has not passed any order with regard to grant of compassionate allowance. With regard to the grant of compassionate allowance, the Hon'ble Supreme Court in the case of Mahinder Dutt Sharma Vs. Union of India & others reported in 2014 (11)_ SCC 684 has held as follows:-

"13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.



(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

14. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "...if the case is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanor illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration."

7. What is to be ensured is that the individual should be eligible for consideration for compassionate allowance and the competent authority should examine the case keeping in view the law laid down by the Apex Court as extracted above. In so far eligibility is concerned, according to the applicant, he has put in more than 21 years of service, and therefore, is eligible to be considered for grant of compassionate allowance. As regards the merit,

admittedly, the penalty was inflicted not on account of any moral turpitude, nor any dishonesty or affecting the third party interest but on account of his mental ailment and the fact that he had been treated in the Railway hospital as also that it is the Railway authorities which referred him to the mental Institute at Kilpauk are all the eloquent evidence to prove that the absence of the applicant was not wilful but the authorities imposed penalty of removal from service and all that he claims is consideration for compassionate allowance. Thus, the authorities have to keep the above ground realities and arrive at a just conclusion and not just a conclusion.

8. The authority competent to consider the case is certainly the respondent and the Tribunal shall not consider the same, save to remit the matter to the authorities for proper and due consideration. The decision to reject the case vide the impugned order does not reflect that the consideration made is in accordance with the law laid down by the Apex Court.

9. In the conspectus of the above facts and circumstances of the case and the judgements of various Courts/Hon'ble Supreme and discussions herein above, the impugned order is quashed and the case is remitted back to the competent authority to consider the matter afresh for grant of compassionate allowance to the applicant and pass a reasoned and speaking order within a period of two months from the date of receipt of a copy of this order.

10. The OA is disposed of accordingly. No costs.