

CENTRAL ADMINISTRATIVE TRIBUNAL**CHENNAI BENCH****ORIGINAL APPLICATION No. 310/01304/2016****Dated 24 ,the day of September, 2019****PRESENT****Hon'ble Mr.T.Jacob , Member(A)**

Mahaboob Basha,
Ex Kalasi Helper,
CWS/S.TPJ, Southern Railway,
No.27, Sathyavani Muthu Nagar,
II Street, Ennore,
Chennai.

....Applicant

By Advocate Aparna Nandakumar
Vs

1. The Senior Divisional Personnel Officer,
Chennai Division,
Southern Railway,
Chennai-600 003.
2. The Divisional Railway Manager,
Chennai Division, Southern Railway,
Chennai- 600 003.
3. The Assistant Personnel Officer/ Settlement,
Chennai Division, Southern Railway,
Chennai- 600 003.
4. Union of India,
Represented by its General Manager,
Southern Railway,
Chennai- 600 003.

....Respondents

By Advocate Ms.R.Sathyabama

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:

"I. To direct the respondents to revise the order dated 29.04.2014 and grant compassionate allowance and terminal benefits in terms of Rule 65(1) Proviso of Railway Services (Pension) Rules, 1993 and Railway Board Letter No. F(E) III/2003/ PN 1/5 dated 04.11.2008 to the applicant herein by taking into account the applicant's qualifying service of 15 years and 10 months and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper and thus render justice."

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

The applicant joined the Railway Services on 08.06.1982 as a casual labour. Thereafter, he became a regular employee as a Khalasi in Southern Railway from 01.06.1984 and has rendered about 12 years continuous service. He was absent from duty from 06.12.1993 to 30.06.1994 as he was suffering from jaundice and was undergoing treatment for the same. A departmental enquiry was held and the applicant herein was removed from service w.e.f 20.11.1996 vide Penalty Advise No.M/M 226/ DAR/MS dated 05.11.1996. The Penalty Advice further stated that the applicant had to advise the office as to where and how he wished to be settled and receive payment of dues. The applicant filed departmental appeal on 04.02.1997 for re-instatement before the second respondent herein. However, by order dated 02.04.1997, the applicant's appeal was dismissed and the penalty of removal from service was confirmed. On a revision filed by the applicant the penalty of removal

from service was once again confirmed by the respondents. As per proviso to Rule 65 (1) of Railway Services (Pension) Rules, 1993, the authority competent to dismiss or remove a Railway servant may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding 2/3 of pension or gratuity which would have been admissible to him if he retired on compensation pension. As per Railway Board Letter No. F(E) III/2003/PN 1/5 dated 04.11.2008, if the disciplinary authority had not passed any specific order for grant of compassionate allowance it may be reviewed on a further application. Thus the applicant by letter dated 15.06.1999 prayed to the respondents for Service Settlement including pension as per Railway Board Letter No. F(E) III/2003/ PN 1/5 dated 04.11.2008. As no action was forthcoming from the respondents the applicant made further representation under the RTI Act, 2005 seeking material information on the status of his representations for compassionate allowance. By order in M/P.50/RTIA/2012-13/300 dated 08.08.2012, the first respondent disposed of the representation by stating that his grievance had been forwarded to the third respondent for necessary action. Failing to receive any reply, the applicant filed OA.1023/2014 wherein this Tribunal by order dated 17.04.2014 disposed of the same at the admission stage by directing the first respondent to consider and pass orders on his representation dated 17.04.2014. In pursuance of the above, the first respondent passed order in No.M/P.353/CC/OA1023/2014 dated 24.09.2014 stating that the applicant was not eligible for compassionate allowance as his qualifying service was only 7 years 2

months and 11 days and that the disciplinary authority had wrongly sanctioned the compassionate allowance of 2/3 of pension and gratuity. The applicant once again represented to the first respondent that 50% of his CPC service from 01.08.1979 to 08.06.1982 plus regular service from 08.06.1982 to 20.11.1996 was to be taken into account for calculation of total service which worked out to 15 years and 10 months. The applicant also enclosed the proof of service details to establish that he had completed 15 years and 10 months of service and requested the first respondent to reconsider his representation for grant of compassionate allowance. However even after the further representation dated 10.02.2016 the respondents have not reconsidered the case of the applicant having regard to the qualifying service of 15 years and 10 months for grant of compassionate allowance. The applicant approached the third respondent herein several times for settlement of his dues viz. Compassionate allowance but to no avail. Thus the applicant once again made a representation dated 17.04.2014 to the first respondent for settlement of his dues but till date no action has been taken by the respondents. Hence, the applicant has again approached this Tribunal seeking the above reliefs inter alia on the following grounds:-

- i. The respondents herein ought to have settled the claim of the applicant herein for his terminal benefits in accordance with Rule 65(1) Proviso of Railway Services (Pension) Rules, 1993.
- ii. The respondents herein ought to have seen that the applicant herein was

removed from service as early as 20.11.1996 and that 18 years have lapsed and till now the applicant herein has not received his terminal benefits.

iii. The first respondent herein ought to have seen that the Penalty Advice dated 05.11.1996 specifically states that his terminal dues would be settled. In spite of this, the respondents herein have not granted the settlements benefits even after a lapse of 18 years.

iv. The respondents herein ought to have seen that as per Railway Board Letter No. F(E) III/2003/PN 1/5 dated 04.11.2008 due consideration has to be given to the applicant's spouse and children dependent upon him.

v. The respondents failed to see that the applicant herein had been a casual labour from 01.08.1979 to 07.06.1982 and that 50 % of his service being 1 year and 5 months has to be considered for calculation of total service. Further he was empanelled as Loco-Khalasi viz. Regularisation as temporary service w.e.f 08.06.1982. Thus his service as temporary employee has to be reckoned from 08.06.1982 till 20.11.1996 and the total qualifying service is 15 years and 10 months and thus the applicant herein is eligible for compassionate allowance as per Rule 65/1 Proviso of Railway Services (Pension) Rules, 1993.

3. Per contra the respondents in their reply statement have stated that the applicant was engaged as a Casual Labour w.e.f. 01.08.1979 and regularised as Khalasi on 30.04.1985. He was removed from service on 20.11.1996 for the unauthorised absence from 06.12.1993 to 30.06.1994 for a period of 212 days

without proper authority or following the Railway Medical Attendance Rules. The Disciplinary Authority sanctioned compassionate allowance under Rule 65 of the Railway Services Pension Rules, 1995 to the extent of 2/3rd of both pension and gratuity which would have been admissible to him but since the same was sanctioned without reference to the qualifying service of the applicant, the same was not granted. As per the guidelines issued by the Railway Board vide letter No.F(E)/III/2003/PN 1/5 dated 04.11.2008 with regard to compassionate allowance, service records are essential to adjudge the kind of service rendered by the dismissed/removed employee and to determine the net qualifying service for working out the quantum of compassionate allowance to be sanctioned. The qualifying service of the applicant was worked out to 7 years 2 months and 11 days as against the requisite 10 years of qualifying service and thus not entitled to pension. Grant of compassionate allowance under Rule 65 is subject to the provisions contained for calculating the qualifying service. However, the Retirement Gratuity and Service Gratuity was worked out to Rs.20,240/- and sent to his account in the Indian Bank, Egmore for payment on 05.09.2014. Further, the OA is hit by delay and laches. Hence the respondents pray for dismissal of the OA.

4. Heard the applicant who appeared as party-in-person and the learned counsel for the respondents and perused the pleadings and documents on record.

5. Admittedly the applicant was engaged as a Casual Labour w.e.f. 01.08.1979 and was regularised as Khalasi on 10.04.1985. He was unauthorisedly absent from

duty from 06.12.1993 to 30.06.1994 for a period of 212 days and was removed from service on 20.11.1996 vide Penalty Advice dated 05.11.1996 in which it was mentioned that the applicant would be given compassionate allowance in terms of Rule 65 of the Railway Service Pension Rules, 1995 to the extent of 2/3 of both pension and gratuity as admissible to him. Thereafter he filed departmental appeal on 04.02.1997 for reinstatement but the same was rejected and the penalty of removal from service was confirmed by order dated 02.04.1997. The revision filed by the applicant was also rejected. As per Rule 65 (1) of the Railway Services Pension Rules, 1993, the authority competent to dismiss or remove a Railway Servant, may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding 2/3 of pension or gratuity or both which would have been admissible to him if he retired on compensation pension. Also as per Railway Board Letter No.F(E)III/2003/PN 1/5 dated 04.11.2008, if the disciplinary authority had not passed any specific order for grant of compassionate allowance, it may be reviewed on a further application, The applicant submitted his representation dated 15.06.1999 to the 1st respondent for settlement of his service dues but there was no reply. On securing information under the RTI Act that his representation is pending with the 3rd respondent, he approached the 3rd respondent for settlement of his dues but there was no reply. The applicant submitted representation dated 17.04.2014 to the 1st respondent for settlement of his dues. Failing to receive any reply, he filed OA.1023/2014 wherein this Tribunal by order dated 14.07.2014 directed the 1st

respondent to consider and pass a reasoned and speaking order whereafter the 1st respondent passed order in No.M/P.353/CC/ OA1023/2014 dated 24.09.2014 stating that the applicant was not eligible for compassionate allowance as his qualifying service was only 7 years 2 months and 11 days and that the disciplinary authority had wrongly sanctioned the compassionate allowance of 2/3 of pension and gratuity.

6. It is the case of the applicant that 50% of the CPC service from 01.08.1979 to 08.06.1982 plus regular service from 08.06.1982 to 20.11.1996 ought to have been taken into account for calculation of his total service which worked out to 15 years and 10 month but the respondents have rejected his claim thereby depriving his legitimate grievance.

7. It is the contention of the respondents that the Railway Board vide letter No.F(E)/III/2003/PN 1/5 dated 04.11.2008 has issued guidelines for grant of compassionate allowance. In para 3(1) of the said guidelines, the Railway Board has laid down that the service records are essential to adjudge the kind of service rendered by the dismissed/removed employee and to determine the net qualifying service for working out the quantum of compassionate allowance, if sanctioned. It could be seen on perusal of the Office Note produced by the respondents, the SR has been returned to Accounts Department for further action vide Office letter dated 11.05.2000. Since the SR & LC of the employee could not be located at the Office, the Sr.DEM/MAS has been referred vide the Office letter dated 29.5.2013 to take further action to pass the compassionate allowance of Rs.20240/- duly reconciling

records available with accounts, based on the last information available in the file that the SR was lastly sent to Accounts on 11.05.2000. So far nothing has been heard from the Accounts. In such circumstances, due to non availability of the Service Record, the respondents were left with no alternative but to work out the qualifying service put in by the applicant on the basis of available records ie., Office Note for the purpose of grant of compassionate allowance.

8. I have considered the matter. The fact that it is the discretion of the disciplinary authority to consider grant of compassionate allowance to removed/dismissed Railway servant is absolutely correct. However, the consideration is on judicious basis including the past conduct of the employee as to whether he was earlier penalized for any proved misconduct and refusal to grant compassionate allowance may not be as a matter of routine. Where the nature of misconduct is too grave and severe, which may not justify grant of compassionate allowance, refusal is certainly justified. However, cases where a low paid employee and semi literate is removed from service on account of continued absence, the matter may not be viewed as a grave misconduct so as to deny his family some livelihood by way of compassionate allowance.

9. It is apparent from the order of removal that the applicant was removed from service on account of long period of absence and there is no mention of any other severe misconduct which may come in the way of consideration of his case for grant of compassionate allowance. Further in such cases, normally limitation does not

come in the way as such payment of compassionate allowance is a continuing cause of action for which no limitation will apply as per the judgement of Hon'ble Apex Court in the case of M.R.Gupta Vs Union of India & Ors (1995) 5 SCC 628. In any event such compassionate allowance may not be from the date of removal but could at best be from a date three years prior to the filing of the original application.

10. Service record is an important record to consider and decide the matter pertaining to the grant of compassionate allowance and as the applicant was removed from service way back in 1996 and taking into account the entire facts and circumstances of the case, it is felt appropriate to dispose of this OA with certain directions. The applicant is stated to have received some information through RTI. These are to be consolidated and referred to the authority for considering the case sympathetically, keeping in view the observations contained in para 8 and 9 above. Accordingly the applicant is directed to submit a comprehensive representation to the 1st Respondent consolidating whatever information/ documents available with him along with those obtained under RTI within a period of four weeks from the date of this order. The 1st Respondent is also directed to search more vigorously for the service record of the applicant and on location of the same and on receipt of the information from the applicant, the case may be ruminated by the Disciplinary Authority to arrive at a judicious conclusion as to the grant of compassionate allowance to the applicant in accordance with law and act accordingly. In case the authority feels that this is not a fit case, then the authority shall pass a reasoned and speaking order within a period of four months from today.

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

(T.Jacob)

Member(A)

-09-2019