

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/1213/2018

Date of Order: 27.08.2019

Between:

S. Rajaiah, S/o. Pentaiah,
Aged about 43 years,
Occ: Trackman (Removed) (Group C),
In the office of SSE/P.Way/South Central Railway, Tuni,
R/o. H. No. 2/7/SC Colony,
VII Madaram Post,
Bollepalli Mandal,
Yadadri District,
Bhongir – 508 285.

... Applicant

And

Union of India, Rep. by

1. The General Manager,
South Central Railway,
Secunderabad.
2. The Senior Divisional Engineer/ North,
South Central Railway,
Vijayawada Division,
Vijayawada.
3. The Assistant Divisional Engineer,
South Central Railway,
Vijayawada Division,
Vijayawada.

... Respondents

Counsel for the Applicant ... Mr. K. Siva Reddy

Counsel for the Respondents ... Mr. V. Vinod Kumar,
SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER
{As per B.V. Sudhakar, Member (Admn.) }

2. OA is filed for not granting compassionate allowance.
3. Brief facts of the case are that the applicant while working as Trackman in the respondents organization for nearly 20 years, he could not attend duties due to ill-health for about 264 days in different spells between 17.10.2003 and 21.02.2004. Applicant was proceeded on grounds of unauthorized absence by issuing a charge memo dt. 10.06.2004 and after due inquiry, he was removed from service on 04.10.2004, which was confirmed by the appellate authority on appeal. After being removed, applicant represented for compassionate allowance, but the same was rejected on 04.10.2018. Hence, the OA is filed.
4. Contentions of the applicant are that non-availability of records pertaining to disciplinary action is the cause of rejection which does not stand to reason since the respondents should have proceeded with the available records. Removal from service on grounds of unauthorised absence does not bar him from being eligible to be granted compassionate allowance. Applicant is in impoverished state and therefore, compassionate allowance would allow him to eke out a moderate living.
5. Respondents in the reply statement have confirmed that the applicant joined the respondents organization as Trackman and was granted temporary status on 10.09.1984. His services were regularized on 15.11.2000. He was on unauthorized absence for a period of 264 days

and therefore, he was proceeded on disciplinary grounds and removed from service w.e.f. 13.10.2004. He was also paid a sum of Rs.40,897/- towards settlement dues. After a lapse of 14 years, applicant has requested for compassionate allowance. Applicant has represented to the Hon'ble Prime Minister for grant of compassionate allowance vide letter dt. 03.09.2018. His request was processed and rejected vide letter dt. 04.10.2018 on the ground that D & AR case files were not available and that they have been destroyed by termites. Respondents have also stated that once the competent authority has not sanctioned compassionate allowance at the time of passing orders, the same cannot be reopened based upon representations made by the employee at a later date. In respect of the applicant, service record and leave charts are available and that D & AR files have been destroyed by termites. Representation of the applicant was disposed of by the Railways on 04.10.2018. Sanction of compassionate allowance is the discretionary power of the disciplinary authority and applicant cannot claim it as a matter of right. Respondents have also stated that applicant has not made any appeal though he has submitted in the OA that his appeal was rejected. Respondents have also stated that the claim of the applicant attracts Section 21 of the Administrative Tribunals Act in regard to limitation.

6. Heard both the counsel and perused the pleadings on record.

7 (I) Respondents have taken the stand that since they do not have the D & AR case files pertaining to the applicant, they could not process the request of the applicant for compassionate allowance. In this

regard, the instructions issued by the Railway Board vide letter dt. 04.11.2008 (RBE No.164/08) throw light as to how to process the claim for compassionate allowance:

“3 xxxx

- (i) *Only those past cases can be reviewed where records pertaining to D & A proceedings and Service records are available. D & A proceedings are essential to take a fair decision duly considering the gravity of the offence and other aspects involved therein and to confirm that the question of sanction or otherwise of compassionate allowance was not considered by the competent authority at any stage. 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.*
- (ii) *Each case will have to be considered on its merits and conclusion reached on the question whether there were any extenuating factors associated with the case that would make the punishment of dismissal/ removal, which though imposed in the interest of the Railways, appear unduly hard on the individual.*
- (iii) *Not only the grounds on which the Railway servant was removed/ dismissed, but also the kind of service rendered should be taken into account.*
- (iv) *Award of compassionate allowance should not be considered if the Railway servant had been dishonest, which was a ground for his removal/ dismissal.*
- (v) *Though poverty is not an essential condition precedent to the award of compassionate allowance, due consideration can be made of the individual's spouse and children dependent upon him.”*

As can be seen from the above, compassionate allowance should not be granted for those removed/ dismissed employees who were dishonest. However, based on the merits of the case, compassionate allowance can be granted. In the present case, applicant was unauthorisedly absent due to ill-health. Respondents proceeded against him and removed him from service. While doing so, disciplinary authority has not passed any order in regard to compassionate allowance. However, Railway Board order dt. 04.11.2008 provides scope for reviving such cases. Accordingly, applicant has represented for compassionate allowance. Respondents have stated that since D & AR case files were not available, they could not process the request of the

applicant for grant of compassionate allowance. However, applicant has filed the penalty order of removal at Annexure A-4 of the OA, which clearly states that applicant was removed from service for unauthorised absence. Even in the service record of the applicant, entry to the effect of removal from service would also be recorded. Therefore, the ground taken by the respondents that D & AR case files are not available may not be tenable, particularly in the context of the Railway Board Circular dt. 04.11.2008, wherein at para 3.1 as extracted above, clarifies that D & A proceedings are essential to take a fair decision duly considering the gravity of the offence and to confirm as to whether the sanctioning authority has granted compassionate allowance or not. Besides, service records are essential to adjudge the kind of service rendered by the employee and for determining the net qualifying service to grant compassionate allowance. Against this requirement, applicant has produced the order of removal issued by the respondents on grounds of unauthorised absence. His service record is available and as seen from the reply statement, applicant has to put in more than 10 years of service to be eligible for grant of compassionate allowance.

II) Furthermore, unauthorised absence is not a misconduct as observed by the Hon'ble Supreme Court in Krushnakant B. Parmar Vs. Union of India & Anr [2012 (3) SCC 178], as under:

“ 18. Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a Government servant.

19. In a Departmental proceeding, if allegation of unauthorised absence from duty is made, the disciplinary authority is required to prove that the

absence is wilful, in absence of such finding, the absence will not amount to misconduct. “

By applying the principle laid down by the Hon'ble Supreme Court to the case on hand, it is seen that applicant could not attend duty because of ill-health. Therefore, it cannot be construed that he has committed an act of grave misconduct as he was absent due to ill-health.

III) In addition, this Tribunal while dealing with an identical case allowed similar relief in OA No. 21/2013, vide order dt. 20.11.2017. In OA 573/2017, vide order dt. 20.07.2018, in para 11, this Tribunal has observed as under:

“11. As per the settled legal position and also as per the Railway Board’s letter dated 4.11.2018, only when an employee is removed or dismissed from service on account of his fraudulent conduct or misappropriation or dishonesty, compassionate allowance can be refused. For unauthorized absence of any length of time, the competent authority is not supposed to reject compassionate allowance. Further in the earlier O.A., the Tribunal had gone through the rival contentions and concluded that the Applicant is entitled for compassionate allowance and directed the Respondents to consider the case of the Applicant for compassionate allowance. The issue of non-availability of records with the Respondents was also considered and the Tribunal earlier directed the Respondents to decide the issue of compassionate allowance basing on the documents submitted by the Applicant as well as the records available with the Respondents. Unfortunately, the competent authority rejected the claim of compassionate allowance of the Applicant on the very same grounds which were rejected vide order in the earlier O.A. After the disposal of the earlier O.A., the Applicant submitted 12 documents along with representation dated 20.03.2017. Basing on the documents submitted by the Applicant as well as the records available with the department, it could have been possible for the competent authority to dispose of the claim made by the Applicant on merits. But the same was not done by the competent authority and the impugned order passed by the competent authority does not contain any reasons for rejection of the claim put forth by the Applicant.”

Present case is far better placed than the one referred in OA 573/2017, since the order of removal has been submitted by the OA, which gives details required to grant compassionate allowance.

IV) Respondents have cited the observations of the Ernakulam Bench of this Tribunal in OA 522/2008 on the ground that the respondents have discretion to grant compassionate allowance and that there was a long gap in applying for compassionate allowance. Moreover, special consideration is required to grant compassionate allowance. Applicant therein was given series of punishments and that he did not mend himself from the punishments awarded and continued with the habit of unauthorised absence. Unauthorised absence is a serious matter for the Railways implying that it cannot be taken to lightly. Against the observations of the Hon'ble Ernakulam Bench, it is to be mentioned that the Hon'ble Supreme Court has laid down in the judgment cited supra that unauthorised absence *per se* is not a misconduct unless it is proved to be wilful. The applicant on health grounds could not attend duties and therefore, absence was not wilful. Respondents have not established the absence as wilful by any recorded evidence. It is true that respondents have discretion to grant compassionate allowance, but at the same time, they cannot be arbitrary in rejecting the request of the applicant. Grounds for compassionate allowance are that he should have a net qualifying service of 10 years and that he should not have been dishonest or should not have brought any defame to the respondent organization. In the present case, applicant was on unauthorised absence on health grounds. Therefore, it is not a grave misconduct. Hence, decision of the Ernakulam Bench does not apply to this case.

V) Besides, Railway Board vide letter dt. 09.05.2005 (RBE No. 79/2005) circulated vide CPO/SC's Serial Circular NO. 90/2005, compassionate allowance is one class of pension. Therefore, like pension, compassionate allowance is a continuous cause of action. Hence, the clause of limitation under Administrative Tribunals Act does not apply to compassionate allowance.

VI) Thus, from the above, it is abundantly clear that the applicant has put in more than 10 years of service and he has been removed from service because of being on unauthorised absence. His D & AR case files are available to the extent required in the form of Penalty order. Railway Board vide RBE No.164/08, dt. 4.11.2008 provides for review of such cases.

VII) In sum and substance, considering the aforementioned, OA succeeds. Impugned order dt. 4.10.2018 is quashed. Consequently, respondents are directed to consider as under:

- a) Sanction compassionate allowance to the applicant from the date of removal from service with consequential benefits;
- b) Time allowed to implement the order is three months from the date of receipt of this order.
- c) With the above directions, OA is allowed. There shall be no order as to costs.

**(B.V. SUDHAKAR)
MEMBER (ADMN.)**

Dated, the 27th day of August, 2019

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