

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

**Original Application No.20/950/2015**

**Date of Order: 31.07.2019**

Between:

Ch. Venkateswarlu, S/o. Govind,  
Aged about 50 years, Occ: Spl. Trackman,  
(Removed from Service),  
South Central Railway, Guntur Division,  
R/o. H. No. 9-4, Yellamanda,  
Gurvayapalem, Narsaraopet Mandal,  
Guntur District.

... Applicant

And

1. Union of India,  
Represented by the General Manager,  
South Central Railway,  
Rail Nilayam, Secunderabad – 500 071.
2. The Divisional Railway Manager,  
South Central Railway,  
Guntur Division, Guntur.
3. The Senior Divisional Engineer/ Coordination,  
South Central Railway,  
Guntur Division, Guntur.
4. The Divisional Engineer/ North,  
South Central Railway,  
Guntur Division, Guntur.
5. The Assistant Divisional Engineer,  
South Central Railway,  
Guntur Division, Guntur.

... Respondents

Counsel for the Applicant      ...      Mr. M.C. Jacob

Counsel for the Respondents      ...      Mr. N. Srinivasa Rao, SC for Rlys

***CORAM:***

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

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

2. OA has been filed challenging the order of the disciplinary authority dt. 11.07.2009 removing the applicant from service, which was confirmed by the appellate and the revising authorities.

3. Brief facts of the case are that the applicant was appointed as Gangman (re-designated as Trackman) in the respondents organization and later, promoted as Special Track Man. While working so, he could not attend duties from 01.01.2007 on the ground of ill-health and after recouping his health, he could join duty on 12.08.2009. However, he was informed by the respondents that on grounds of unauthorised absence, he was removed from service vide Memo. dt. 11.07.2009. Against the said penalty order, applicant preferred appeal, which was rejected on 12.10.2009. Thereafter, revision petition made also met the same fate on 5.5.2014. Applicant submitted a petition on 21.05.2014 to the 1<sup>st</sup> respondent and the issue was also taken up by the Staff Union vide letter dt. 20.10.2014. As there has been no response from the respondents, the present OA has been filed.

4. Contentions of the applicant are that he was unaware of the charge sheet and the consequential proceedings including the final order removing him from service as they were not communicated to him, in violation of the Discipline and Appeal Rules and this fact has not been properly weighed while deciding his appeal and the revision. As per Rule 65 of the Railway Services (Pension) Rules, 1993, disciplinary

authority, while imposing penalty or removal/ dismissal, shall also issue orders regarding the grant or refusal of compassionate allowance, but the same has not been done in his case. Punishment imposed is disproportionate to the misconduct. He submits that he hails from poor family and that too from a remote village. Disciplinary authority based on the exparte proceedings has imposed the penalty of removal without even serving any notice on him. Representations made were not disposed. Action of the respondents is against the principles of Natural Justice.

5. Respondents in their reply statement have, inter alia, given elaborate details about the number days the applicant was on unauthorised absence. They contend that, in view of his habitual absence, penalty imposed is proper and appropriate.

6. At the time of arguments, learned counsel for the applicant, submitted across the Bar that, though the applicant has filed the OA challenging the penalty of removal imposed by the disciplinary authority, as confirmed by the appellate and revising authorities, and seeking a direction for his reinstatement into service with all consequential benefits, applicant has now reconciled to the fact of his removal from service and he is not pressing the relief sought as mentioned above, and he is praying for grant of compassionate allowance. Learned counsel for the applicant has also submitted a Memo dt. 31.07.2019 enclosing the

letter of the applicant addressed to the Registry, dt. 31.07.2019, to the said effect and the same is taken on record. In view of this, OA was taken up for hearing.

7 (I) Heard learned counsel for the applicant and perused the pleadings. In view of the above submission, this Tribunal feels it is not necessary to delve into the details as to the disciplinary proceedings against the applicant which culminated in his removal. Nevertheless, the applicant was imposed the penalty of removal from service on the charge of unauthorised absence and the misconduct is not on grounds of any fraud or any serious irregularity and the said absence, as claimed by the applicant, was mostly on account of his ill-health.

II. Adverting to the claim of the applicant for compassionate allowance, applicant has made an averment in the OA that as per Rule 65 of the Railway Services (Pension) Rules, 1993 the disciplinary authority ought to have sanctioned compassionate allowance while passing the penalty order, but no such order has been passed. This averment has been contested by the respondents stating that it is the discretion of the competent authority to sanction compassionate allowance or not and in this case, disciplinary authority was not satisfied for sanction of compassionate allowance.

III. Rule 65 of Railway Services (Pension) Rules, 1993 is extracted as under:

*“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)9dated 23.09.13) ”*

Hon'ble Supreme Court has also dealt with this issue in **Mahinder Dutt Sharma** v Union of India & Ors, in CA No.2111 of 2009 vide judgment dated 11.04.2014 and observed as under:

*“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."*

By applying the above principles laid down by the Hon'ble Apex Court to the case on hand, this Tribunal finds that applicant was not involved in any act of moral turpitude nor did he commit any act of dishonesty. He has not acted in a manner which was designed for personal gain nor hurting third party interests. Lastly, conduct of the applicant was neither treacherous, wicked nor perverse. Unauthorised absence of the applicant was mostly because of his health grounds.

Hence, based on the observations of the Hon'ble Supreme Court, applicant is eligible for being considered for compassionate allowance.

IV. Further, Railway Board instructions vide RBE No. 164/2008 dated 04.11.2008 state that, as per proviso to Rule 65 (1) of Railway Services (Pension) Rules, 1993, the disciplinary authority, in deserving cases, can 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. In the said instructions, it is also mentioned that, in case where disciplinary authority has failed to pass any order for compassionate allowance at the time of passing of the punishment order, they can entertain the representation from the employee and consider grant of compassionate allowance. This Tribunal has considered the same and passed orders in OA 453/2019 directing the respondents therein to consider grant of compassionate allowance. In one another OA i.e. OA No. 1078/2018, similar issue was discussed at length considering the instructions of the Railway Board and the impact of the observations of the Hon'ble Apex Court cited supra. According to the observations made therein, request of the applicant for compassionate allowance need to be considered. Though the respondents have stated in their reply that the sanctioning authority was not satisfied for grant of compassionate allowance, their decision has to be in consonance with the law laid down by the Hon'ble Apex Court.

V. Keeping the above in view, applicant is directed to make a representation to the respondents within a period of two weeks from the date of receipt of this order for grant of compassionate allowance and

thereafter, respondents shall dispose of the request of the applicant, in accordance with the extant rules on the subject and the law laid down by the Hon'ble Supreme Court cited supra, within a period of eight weeks from the date of representation from the applicant.

VI. With the above directions, OA is disposed of. There shall be no order as to costs.

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

Dated, the 31<sup>st</sup> day of July, 2019

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