

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00408/2017

Jabalpur, this Tuesday, the 23rd day of July, 2019

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Smt. Girja Bai,
W/o Late Shyamlal Kashiram Kushwaha
Aged about 53 years,
R/o Shivaji Ward Jhansi Gate,
Near O/o MLA Mahesh Rai Bina
District Sagar 470113 (M.P.)

-Applicant

(By Advocate –**Shri S.K. Nandy**)

V e r s u s

1. Union of India,
Through its General Manager,
Western Central Railway,
Indira Market
Jabalpur 482001

2. Divisional Railway Manager,
(Mechanical Branch)
Western Central Railway
Bhopal Division
Bhopal (M.P.) 462001

3. Divisional Railway Manager (P)
Western Central Railway
Bhopal Division
Bhopal (M.P.) 462001

-Respondents

(By Advocate –**Shri Vijay Tripathi**)

(Date of reserving the order: 27.06.2019)

ORDER

This Original Application has been filed by the applicant being aggrieved by the inaction on the part of the respondent-authority in not following the statutory provisions as enshrined in Rule 65 of the Railway Servant (Pension Rules), 1993.

2. The applicant has sought for the following reliefs:-

“8(i) Summon the entire relevant records from the custody of the office of Divisional Railway Manager and DRMP relating to applicant’s service and the records of departmental enquiry for the kind perusal of this Hon’ble Tribunal.

(ii) It is prayed that this Hon’ble Tribunal in absence of records produce by the respondents may go through contents of the charge memorandum and the speaking order dated 30.08.1994 passed by the disciplinary authority and thereafter grant the benefit of compassionate allowance under Rule 65 of the Pension Rules, 1993 to the late Government servant and thereafter to the applicant with all the consequential benefits arising thereto.

(iii) Any other reliefs, which this Hon’ble Tribunal deems fit may also be granted.”

3. The facts of the case are that the applicant is the widow of Late Shyamlal Kashiram Kushwaha who was serving the respondent-department on the post of Running

Room Baira Guna. The applicant's husband was initially appointed as a casual labour through Loco Foreman, Bina and has served the department w.e.f.20.02.1978. Later on the husband of the applicant was absorbed on the post of Group D vide order dated 28.09.1989. Copy of order dated 28.09.1989 is annexed as Annexure A/4. In the year 1992 some physical problem has occurred and the applicant was admitted to the railway hospital and he was out of his senses and his mind was not working in the proper condition. In such condition the applicant's husband has absconded from the hospital and he did not reported to his duties till 15.03.1992.

4. The respondent-department has issued a major penalty charge sheet dated 28.05.1992 (Annexure A/2). The respondent-department has conducted the enquiry under Rule 9 of the Railway Servant (Disciplinary and Appeal) Rules, 1968. Some part of the enquiry was attended by the applicant's husband who later on in a bad state of mind was absconded and was not found. In such

situation the order dated 30.08.1994 was passed and the husband of the applicant was removed from service. On 15.10.1998 appeal was preferred to recall the order dated 30.08.1994 stating that in the enquiry proceedings, the husband of the applicant was given a fair chance to defend his case. The applicant's husband has categorically submitted the medical certificate showing that he was not in a good state of health and mind. The appeal preferred by the applicant's husband was kept pending and no decision has been taken in the same. As the husband of the applicant was absconding and applicant was compelled to spent her life and maintain her family and children by putting her to work. In the year 2015 husband of the applicant appeared and took his last breath and died on 23.12.2015. Copy of death certificate is annexed at Annexure A/5. After the death of the husband of the applicant, the applicant applied for grant of pension and other benefits but not a single penny of dues has been paid to her.

5. The respondents have filed their reply. It has been submitted that the applicant was absconding from sick period from Railway Hospital from 21.10.1991 to 24.10.1991 and further unauthorized absent till 15.03.1992 therefore charge memorandum was issued against the husband of the applicant by Assistant Mechanical Engineer dated 28.05.1992 (Annexure A-2) under the Railway Servants (Discipline and Appeal) Rules, 1968. It has been submitted that in inquiry the charges were proved against the husband of applicant and he was removed from Railway Services on 30.08.1994. It has been specifically submitted by the replying respondents that when the husband of the applicant was removed from service on 30.08.1994, he was not found deserving for special consideration and had not sanctioned the compassionate allowance under the provisions/guidelines issued by Railway Board' letter dated 04.11.2008 (RBE No.164/2008) Annexure R-1. It has been further submitted that the husband of the applicant has expired on

23.12.2015 (Annexure A-5) and the provisions under Rule 65 of the Railway Services (Pension) Rules, 1993 is not applicable in the case of the applicant.

6. The respondent department has also raised the maintainability of this Original Application as the same is barred by limitation.

7. Heard the learned counsel for both the parties and have also gone through the documents attached with the pleadings.

8. From the pleadings there is no dispute regarding the employment of husband of the applicant. It is also clear from the pleadings that the husband of the applicant was absconded from 21.10.1991 to 24.10.1991 and thereafter remained absent till 15.03.1992. It is also admitted fact that charge memorandum dated 28.05.1992 was issued under Rule 9 of the Railway Servant (Disciplinary and Appeal) Rules, 1968. It is further admitted fact that the

husband of the applicant was removed from service on 30.08.1994.

9. The only question for consideration before this Tribunal is whether the applicant is entitled for compassionate allowance.

10. The contention of the applicant is that as per Rule 65 of the Railway Servant (Pension) Rules, 1993, the applicant is entitled for the compassionate allowance. The applicant has relied upon the order passed by co-ordinate Bench of Allahabad in O.A. No.725/2008 dated 15.07.2008 in the case of Smt. Anjana Bhatnagar vs. Union of India.

11. On the other hand, the respondent-department has specifically submitted that at the time of order of punishment, the husband of applicant was considered by the respondent-authority and was not found deserving for the special consideration and as such the compassionate allowance has not been granted to the applicant under the

provisions/guidelines issued by Railway Board's letter dated 04.11.2008 (RBE No.164/2008) Annexure R/1. The relevant portion of Rule 65 of the Railway Servants (Pension) Rules, 1993 is reproduced 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.”**

12. In this provision, the 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 may provide compassionate allowance. In the reply, respondent-department has specifically submitted that at the time of

punishment to the husband of the applicant, the case was considered and was not found deserving under special circumstance, hence, was not sanctioned compassionate allowance. Secondly, the applicant has also sought the benefit of circular issued by the Railway Board No.164/2008. The respondent-department has specifically submitted that this circular is not applicable to the applicant. It is clear from RBE No.164/2008 that only those past cases can be reviewed where records pertaining to D&A proceedings and service records are available and the competent authority have not sanctioned the compassionate allowance if the delinquent employee had retired on compensation pension. Moreover, as per RBE No.164/2008, the gravity of the offence and other aspects involved is not considered then the said RBE is applicable. But in the instant case, the replying respondent has specifically submitted that at the time of punishment the case of the applicant was considered and was not found to be deserving for grant of compassionate allowance. So, it

is clear that the competent authority has considered the matter and has also considered the gravity of the charge. Husband of the applicant was not granted the same.

13. Resultantly, this Original Application has no merits and the Original Application is dismissed. No order as to costs.

**(Ramesh Singh Thakur)
Judicial Member**

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