



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA. 350/00414/2014

Date of Order: 23.9.15

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Smt. P. Venkata Ratnam
Vs.
Union of India & Ors. (S.E. Rly)

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. MK Bandyopadhyay, Counsel

ORDER (Oral)

Per Ms. Bidisha Banerjee, JM:-

This matter is taken up in Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This OA has been filed seeking the compassionate allowance under Rule 165 MOPR. The applicant has also relied upon the Railway Board Circular No. RBE No. 164/2008 which stipulates the following: (extracted with supplied emphasis for clarity)

"3. The Matter has, therefore, been considered by the Board in consultation with Department of Pension and Pensioners' Welfare and it has been decided to reiterate that in cases where a decision has already been taken by the disciplinary authority not to grant compassionate allowance, such a decision is final, which should not be reviewed at any later stage. 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 or the family members of the deceased employees keeping in view the following conditions.

- (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."

3. The respondents have refuted the claim on the ground that since the husband of the applicant was removed from service with effect from 08.06.1978 in a proved case of theft, the case did not merit any consideration in terms of Railway Board's Circular relied upon by the applicant.

4. Citing the aforesaid RBE, the learned counsel has strenuously argued that even in a case of removal due to a proven misconduct of a guilt of theft the case deserved a consideration whether materials suggested imposition of a gravest punishment.

5. I have heard learned counsels for the parties and perused the materials on record and given my anxious consideration on the issue whether the applicant would be entitled to claim compassionate allowance even in a case of removal was due to a proven theft case. It is axiomatic that punishment of removal and dismissal are of the severest magnitude and can be inflicted only for an act of extreme wrongdoing. However, the Railway rules contemplate sanction of a compassionate allowance of upto 2/3 of the pension or gratuity or both which would have been drawn by the punished employee if he had retired on compassionate pension in case of dismissal and removal.

6. In regard to admissibility of compassionate allowance, in a recent decision the Hon'ble Apex Court in **Mahinder Dutt Sharma vs. Union of India**, reported in 2014 (11) SCC 684, has succinctly held that the entire consideration in regard to such grant would be directly or indirectly aimed at determining whether the delinquency committed by the appellant was sufficient and appropriate for the infliction of the punishment of dismissal from service. "This determination is relevant for examining the veracity of the

punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration".

In so far as the determination of the admissibility of the benefits contemplated under Rule 41 of the CCS (Pension) Rules, 1972 is concerned, the Hon'ble Court has held that the same has to be by accepting that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the most severe punishments. The parameters for such consideration have been set out in the following manner:

"14. 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:

14.1 (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.

14.2(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, 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.

14.3(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.

14.4(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.

14.5(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,

pervverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

15. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a widow 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 levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised 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. In the cited decision the Hon'ble Apex Court was determining the factors which would help in evaluating the claim under CCS (Pension) Rules of the employee who has been punished due to unauthorised absence. The case at hand is in regard to Railway employee governed by the Railway Rules seeking benefit of Rule 65 of Manual of Pension Rules under Railways which is in parimateria to Rule 41 of CCS (Pension) Rules. In terms of the Hon'ble Apex Court's judgment (supra) there is no scope of determining the veracity of the punishment order itself. The only determination permissible is of admissibility of benefits in a given situation where a delinquent has been punished with removal or dismissal from service.

8. It is noticed that in the present case the applicant was already found guilty of theft and order of punishment was not challenged by him i.e. he accepted the punishment without demur.

9. Going by the true import of the word "consideration" as would be required for grant of compassionate allowance in terms of the direction of the Hon'ble Apex Court (supra), the Railway Board's order would imply that even in a case of extreme wrongdoing for which a person was removed or dismissed from service, compassionate allowance can be allowed. Here I seek to be guided by the decision of the Apex Court (supra) in the manner in which evaluation of claim of the punished employee should be made.

10. The learned counsel for the applicant has strenuously argued that the fact whether the circumstances has rightly led to infliction of penalty of removal has to be determined. As already stated hereinabove there is no scope for this Tribunal to consider the gravity of the mis-demeanor vis-à-vis the penalty imposed. Such being the situation, it is difficult to concur with the argument put forth by the learned counsel for the applicant that this Tribunal can go into the merits of removal order itself while deciding the claim for compassionate allowance.

11. Be that as it may, since the parameters, as laid down in the judgement (*supra*), have been fixed by the Hon'ble Apex Court which would require the appropriate authority to delve into the allegations levelled for evaluation of the 'claim' while the impugned order is bereft of details as to why the applicant would not be entitled to the compassionate allowance, this OA is disposed of with a direction upon the Disciplinary Authority (in view of RBE No. 164/08) to pass a reasoned and speaking order in regard to the claim of the applicant in terms of the direction of the Hon'ble Apex Court (*supra*) as well as RBE No. 164/2008. Let appropriate orders be issued within 2 months from the date of communication of this order.

12. OA is accordingly disposed of. No costs.

(Bidisha Banerjee)
Member (J)

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