

**CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA**

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O.A. 896 of 2016

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

Smt. Ruma Mitra,
Wife of Late Basab Mitra,
Aged about 46 years,
Residing at 23/F, Rupnarayan Nandan Lane,
Kolkata – 700 025, West Bengal
And the applicant's husband was working
As TC "A" /HWN, the then Sr. TE/Howrah
Under the office of Sr. DCM/HWH,
P.O. & P.S. Howrah,
Eastern Railway,
West Bengal, Pin – 711 101.

..... Applicant.

Versus

1. Union of India,
Through the General Manager,
Eastern Railway,
Office at 17, Netaji Subhas Road,
Kolkata – 700 001.

2. The Chief Personnel Officer,
Eastern Railway,
Having his office at 17, Netaji Subhas Road,
Kolkata – 700 001.

3. The Divisional Railway Manager,
Howrah, Eastern Railway,
Office at Howrah,
District – Howrah, Pin – 711 101.

4. The Sr. Divisional Commercial Manager,
Howrah, Eastern Railway,
P.O. & P.S. Howrah,
District – Howrah, Pin – 711 101.

5. The Sr. Divisional Personnel Officer,
Howrah Eastern Railway,
P.O. & P.S. Howrah,
District – Howrah, Pin – 711 101.

6. The Asstt. Personnel Officer (3)

For Divisional Railway Manager,
Howrah Eastern Railway ,
P.O. & P.S. Howrah,
District – Howrah, Pin – 711 101.

..... Respondents.

For the applicant : Mr. S. Chatterjee, Counsel

For the respondents : Mr. S. Banerjee, Counsel

Reserved on : 12.09.2019

Date of Order : 26.9.19

ORDER

Aggrieved with a speaking order dated 08.04.2016 this O.A. has been preferred to seek the following reliefs:

"8.a) An order do issue quashing and/ or setting aside the order impugned dated 08.04.2016 passed by the respondent No.4 herein.

b) An order do issue directing the respondent authorities to sanction compassionate allowances and Family pension etc. to the applicant in terms of Railway Board's Letter No. F(E) III/2003/PN 1 /5/ dated 04.11.2008 keeping in view the performances of duties of her late husband as well as poverty the family facing and also to honour the above mentioned Railway Board's letter forthwith bearing in mind, the satisfactory performances of duties of deceased employee and also financial suffering of old diseased parents both aged above 80 years and two minor children aged 14 years and 8 years respectively and the applicant as the spouse of the deceased employee who were all dependent upon him.

c) An order do also issue directing the respondents to produce the records before the Hon'ble Tribunal so that after perusal of the same the order impugned dated 08.04.2016 be set aside and/or quashed and the respondents be directed to sanction pension etc. to the applicant forthwith pursuant to the above letter and for survival of the family of the deceased Railway employee.

d) Any other appropriate order or orders or direction or directions be passed upon the respondents as to your Honour may deem fit and proper."

2. The speaking order dated 08.04.2016 issued by Sr. Divl. Comml. Manager/HWH in terms of the direction of this Tribunal in O.A. 2067 of 2015, that is under challenge in this O.A., is extracted hereinbelow for clarity:

SPEAKING ORDER

Sub : O.A.No. 350/02067/2015
Ruma Mitra -vs- U.O.I. & Ors.

Pursuant to Ld. Tribunal/Cal's order dated 25.01.16 in OA No. 350/02067/2015 and appeal of Smt. Ruma Mitra dt.20.12.11 the undersigned, being the Disciplinary Authority and also the respondent No.4, passes the speaking order in terms of RBE No.164/2008 and also in accordance with law in the light of Railway Board's direction regarding grant of compassionate allowance, based on the following observations.

- i) The staff concerned Basab Mitra, TC-A/HWH while functioning as such in Howrah station in the year 2000 had reported sick w.e.f. 16.9.2000 but he neither intimated nor produced any sick certificate to his Office Supervisor or to the Competent Authority till the date of issuance of P/Notice No.COM/TC/long absence/BM/02 dt. 21.12.2006.
- ii) Following Rule-9 of R.S. (D&A) Rules-1968, the staff concerned Basab Mitra, TC-A/HWH was taken up under SF-5 memorandum vide SF-5 memorandum No.COM/TC/Long Absence/BM/2002 dt. 10.6.02 for the **allegation of long unauthorized absence from 16.9.2000 to the date of disposal of the DAR case dt. 21.12.2006.**

The Charged Official was provided all due and reasonable opportunities to be heard in person in the DAR enquiry proceedings and the charged official attended the DAR enquiry proceedings on 18.8.04 (preliminary hearing) and on the dates of Regular Hearings fixed on 28.9.04, 14.12.04 & 7.2.05 respectively.

- iii) During the enquiry proceedings on 28.9.04 the Charged Official Sri Basab Mitra, TC-A/HWH in reply to Q.No.1 & 2 explained that he was a busy TV actor acting by name of Kunal Mitra and he was not able to attend his duty due to his health hazards.

- iv) The enquiry officer drew his findings with reasoned and justified views and established the charge levelled against the Charged Official.

- v) Considering the merit and gravity of the charge i.e. unauthorized absence for prolonged period of time, the Disciplinary Authority passed order following Rule-6 (viii) of R.S. (D&A) Rules-1968 with imposing punishment of Removal from Service without any pensionary benefit vide P/Notice No.COM/TC/Long-absence/BM/02 dt. 21.12.06.

As the charge i.e. prolonged unauthorized absence is a gross misconduct on the part of the Charged Official and the charge has been proved/established by the Inquiry Officer, the Disciplinary Authority has taken the suitable action considering gravity as well merit of the case.

- vi) The charged official did not prefer any appeal before the Appellate Authority against the imposed punishment issued dt. 21.12.06.
- vii) The applicant Smt. Ruma Mitra widow of Late Basab Mitra (the Charged Official) appealed before the Disciplinary Authority on 20.12.11 after expiry of Basab Mitra on 21.01.09 i.e. beyond the stipulated period of Appeal/Revision petition.

The appeal of Smt. Ruma Mitra was duly disposed of by the Competent Authority dt. 11.11.15 with remarks of ----

"since specific orders have been passed in this case, there is no scope in the ambit of norms to consider the case. As such, the representation dt. 20.12.11 of Smt. Ruma Mitra for grant of compassionate allowance of Late Basab Mitra can not be considered at this stage and is regretted."

- viii) In terms of RBE No. 164 of 2008, the past cases where the Competent Authority, in exercise of its discretionary powers, had not sanctioned compassionate allowance at the time of passing orders of removal/dismissal of immediately thereafter cannot be reopened for review on

the basis of representations received from the removed/ dismissed employees and members of their family at a later date.

Further, according to partial modification of Board's letter dated 9.5.2005, 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 employee or the family members of deceased employees.

In this relevant case the Disciplinary Authority clearly and also very distinctly mentioned the term of compassionate allowance by way of "removed from service without any pensionary benefit". Hence question of re-open the case of the deceased employee on the basis of received representation is not supported by the Railway Board's instructions in terms of RBE No.164 of 2008.

- ix) *The DAR case was dealt with according to Rule-9 & 10 of R.S. (D&A) Rule-1968 and punishment was imposed according to Rule-6 (viii) of R.S. (D&A) Rules-1968 and no appeal was preferred by the Charged Official against the punishment notice and also specific order against grant of Compassionate allowance i.e. without pensionary benefit has been clearly specified.*

On scrutiny of Service Record of Late Basab Mitra, the deceased employee and also relevant records, it is found that Basab Mitra while discharging his important and sensitive duty as ticket checking staff at Howrah station remained unauthorized absence without any intimation either to his Office Supervisor or to the Competent Authority for the prolonged period from 16.9.2000 till the date of issuance of punishment notice i.e. more than 06 years. As the staff concerned remained unauthorized absence from his assigned duty without intimation, it is crystal clear and obvious that the employee concerned did not have the requirement to continue his service or to remain in service, even for the livelihood of his family.

The appeal dated 20.12.2011 of Smt. Ruma Mitra has sought for compassionate allowance owing to premature death of her husband on 21.01.2009, for running her family. Late Basab Mitra was however, absenting w.e.f. 16.9.2000 and evidently did not bother for railway remuneration.

All the facts, circumstances and records were duly considered in an impartial and unbiased manner.

As Disciplinary Authority & Respondent No.4, I am of opinion that the punishment as imposed against the charged official is justified in view of gravity of the case and also there is no ground to consider compassionate allowance. Hence appeal of Smt. Ruma Mitra dated 20.12.2011 is hereby regretted.

This is strictly without prejudice.

Sd/-

Sr. Divl. Comml. Manager/HWH

Smt. Ruma Mitra,
Widow Of Late Basab Mitra,
23/F, Rupnarayan Nandan Lane,
Kolkata - 700 025."

3. A bare perusal of the impugned speaking order dated 08.04.2016 would demonstrate and exemplify that the reason for rejection of the applicant's prayer for compassionate allowance in terms of RBE 164 of 2008 is 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 employee or the family members of deceased employees,

Whereas in the present case the Disciplinary Authority had consciously ordered Removal from Service without any pensionary benefit.

4. The Ld. Counsel for the applicant would vociferously submit that such every case, where 'removal' has been ordered by the Disciplinary Authority for unauthorised absence of the employee, ought to be reviewed since act of the employee that resulted in the infliction of punishment, was not an act of moral turpitude and in terms of the decision in Mohinder Dutta Sharma, the Disciplinary Authority ought to have considered that in absence of moral turpitude the family of the employee should not be made to suffer.

The extract of the decision in Mohinder Dutta Sharma would run thus:

"16. We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated 17-5-1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorised and wilful absence from service from 18-1-1995 to 4-12-1995 (i.e. for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices that not taking stern action against the appellant, would create a bad impression on the new entrants in the police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellant's behaviour was incorrigible. Thus viewed, there can be no doubt, that the appellant's behaviour was incorrigible. Thus viewed, there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified. For determining the question of compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in para 14 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellant's behaviour was not one which can be expressed as an act designed for illegitimate personal gains from his employer. The appellant cannot also be stated to have indulged in an activity to harm a third-party interest, based on the authority vested in him, nor was the behaviour of the

appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in para 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration.

17. We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed that the appellant had rendered about 24 years of service prior to his dismissal from service, vide order dated 17-5-1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by the Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even through the charge proved against the appellant pertains to his unauthorised and wilful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brother's wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972.

18. None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view that the consideration of the appellant's claim was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17-5-1996, was legitimate. The basis, as well as the manner of consideration, for a claim for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25-4-2005 (passed by the Deputy Commissioner of Police, 11nd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28-2-2006, and the order passed by the High Court dated 13-11-2006, are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove.

19. Allowed in the aforesaid terms."

5. Per contra the Ld. Counsel for the respondents would vehemently oppose the claim and defend the respondents action as legal and justified.

6. Ld. Counsels were heard and matters on record were perused. We also gave our anxious consideration to the decision extracted supra.

7. ^gWe note the observation in the speaking order itself records that the appeal dated 20.12.2011 of Smt. Ruma Mitra was sought for compassionate allowance owing to premature death of her husband on 21.01.2009, for running her family.

The wife is therefore being deprived of her family pension not ^{due to} ~~duty~~ any grave not of moral turpitude, but due to the unauthorised absence of her husband while in service, which could have been sympathetically considered by the Disciplinary Authority reviewing the case ^{on} ~~as~~ her merit of the claim, keeping in view the financial stringency of the family.

8. O.A. is accordingly allowed. Speaking order is quashed and the matter is remanded back to the Disciplinary Authority to pass appropriate order reviewing the earlier decision not to allow pensionary benefit to the employee, within 2 months with due sympathy for the widow who was never at fault and is sought to be robbed of her right to family pension not because of her husbands' moral turpitude but owing to his absence from duty. No costs.

(Bidisha Banerjee)
Judicial Member

drh