

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No.555/2017
Dated the 16th day of October, 2019

CORAM :

Hon'ble Shri. M.C.Verma, Member (J)

Shri Ashokbhai M Vankar,
S/o Shri Maganbhai Vankar,
Aged 51 years,
Working as Ex-Khalashi at Vatva Diesel shed
R/o: Khistri Moholla, At & Po. Boriyavi,
Dist-Anand. ... Applicant

By Advocate Ms S S Chaturvedi

V/s

- 1 Union of India,
Notice to be served through
General Manager, Western Railway
Churchgate, Mumbai – 400 020.
- 2 Sr. Divisional Mechanical Engineer,
Diesel Loco Shed, Vatva Railway Station,
Vatva, Ahmedabad 382 445.
- 3 Additional Divisional Mechanical Engineer,
Diesel Loco Shed,
Vatva Railway Station,
Vatva, Ahmedabad – 382 445. ... Respondents

By Advocate Shri A L Sharma

O R D E R (ORAL)

Per : M.C.Verma, Judicial Member

1 Being aggrieved by order dated 08.08.2009 (Annexure A/1) of respondents, rejecting his request for compassionate allowance; applicant has preferred the instant OA for quashing of order dated

08.08.2009 as well for quashing of communication dated 23/3/16 (Annexure A/2) & dated 20/5/16 (Annexure A/3), whereby he was informed by ADME & Sr. DME respectively that his case for compassionate allowance has already been decided vide order dated 08.08.2009 (Annexure A/1), and for direction to respondents for compassionate allowance. OA has been filed with MA, being MA No. 503/17, for condonation of delay.

2 The brief facts as has been set out by applicant in the OA are that he had worked as Khalasi at Vatva Diesel Shed. That for alleged unauthorised absence of 52 days (from 10.05.2004 to 01.07.2004) he, vide order dated 28.12.2004 (Annexure A/4) was removed from service, that disciplinary authority failed to pass a speaking order and failed to mention about compassionate allowance also. That applicant made an application for compassionate allowance which came to be rejected by impugned order dated 08.08.2009 in which only it had been stated that "Competent Authority had not found any ground to Sanction Compassionate Allowance in his case. That thereafter the applicant approached the Appellate Authority, vide representation dated 19.01.2015 (Annexure A/5), for grant of compassionate pension/allowance but without considering on merit, the same was disposed of vide order dated 23.03.2016 (Annexure A/2) by stating that he had already been informed by earlier order dated 08.08.2009. That he, thereafter gave representation dated 05.04.2016 to the DRM for

grant of Compassionate Allowance but vide order dated 20.05.2016 (Annexure A/3) it was informed to him that in terms of R.B.E. No.164/2008 L No.F(E) III/2003/PNI/5 dated 04.11.08, once the order have been passed by the Disciplinary Authority not to grant compassionate allowances such a decision is final which should not be reviewed at any stage. That he again requested Sr. DME/VTa to reconsider his case for grant of compassionate allowance, vide representation dated 15.06.2016 (Annexure A/7) and also approached the General Manager, vide representation dated 08.09.2016 (Annexure A/8) to reconsider his request to grant compassionate allowance but got no reply and he was orally informed by Sr. DME that their previous reply stands good. Hence being aggrieved by order dated 08.08.2009 (Annexure A/1) of respondents, rejecting his request for compassionate allowance; applicant has preferred the instant OA for quashing of order dated 08.08.2009 (Annexure A/1) & communication , dated 23/3/16 & 20/5/16, Annexure A/2 & A/3 and for direction for compassionate allowance.

3 Respondent contested the case and in their reply has pleaded that the application of applicant for grant of compassionate allowance was considered on merit and disciplinary authority after considering all relevant factors did find that there exists no ground for grant of compassionate pension to applicant did pass order dated 8/8/09. That there being no provision for review of the order passed by disciplinary

authority in respect of compassionate allowance so accordingly pursuant to his application dated 05.04.2016, applicant was informed by order dated 20.05.2016. That there is no violation of any instructions of Railway Board and the case of applicant has been considered strictly in light of instructions and orders issued from time to time. It is also pleaded that applicant was removed from service after due departmental inquiry and said order has never been challenged by him

4 After admission matter was heard for final disposal. Learned Counsel Ms. S S Chaturvedi appearing for applicant at threshold urged that applicant is a poor semi literate person and due to lack of knowledge and poverty he could not approach the Tribunal earlier but he regularly kept on taking up the matter with department and therefore the delay, if any may be condoned and she added that the nature of lis is of continuous cause of action. Referring to merit she urged that impugned order dated 08.08.2009 is a cryptic and non speaking order, it only states that Competent Authority had not found any ground to sanction compassionate allowance in his case. She referred the Order Annexure A/1 and placing reliance on the judgment dated 10.07.2014 of Hon'ble High Court of Delhi passed in W.P. (C) No.2139/2012 submits that order at Annexure A/1 is not legally tenable and that communication at Annexure A/2 & A/3 are merely formal. She urged that order at annexure A/1 was passed in contravention of principles and particularly the manner in which discretion for granting or refusing

compassionate allowance in terms of Rule 41 of the CCS (Pension) Rules and Guidelines as well circular of Railway board has to be exercised, was not exercised in rational way. She has also placed reliance on decision dated 11.04.2014 passed in Civil Appeal No.2111 of 2009 by Hon'ble Supreme Court in case titled *Mahinder Dutt Sharma v/s. Union of India & Ors* contended that competent authority has wrongly denied compassionate allowance. Ms S.S. Chaturvedi concluded his submission urging that applicant will be satisfied if the respondents are directed to pass reasoned and speaking order.

5 Shri A L Sharma Advocate, learned counsel appearing for respondents vehemently opposed the contention of applicant and he stated that the impugned order dated 08.08.2009 was passed taking into account all aspects, there is no illegality and further there is a delay of almost seven years in approaching the Tribunal and MA 503/2017 for condonation of delay does not specify the germane ground for such a long delay. He submits that the OA deserve dismissal being barred by limitation as well on merit.

6 Considered the submissions. Applicant was removed from service, vide order dated 28.12.2004 (Annexure A/4). The removal from service was for unauthorised absence of 52 days. Order, dated 28.12.2004 of Disciplinary Authority is silent about compassionate allowance. It is thereafter only another Disciplinary Authority who was in rein when applicant made an application for compassionate

allowance passed order dated 8/8/2009, impugned in the OA. It has only been averted in Order dated 08.08.2009 that Competent Authority had not found any ground to Sanction Compassionate Allowance. For sake of brevity the averment recorded in body of impugned order dated 08.08.2009 is reproduced hereunder in verbatim:-

" No.E/308/04/5/ADME/G/412

Date:08/08/2009.

*To,
Shri Ashok M,
Ex. Diesel Khalasi,*

Sub: DAR Action against you.

Ref.: Your application dated "NIL" regarding Comp. Allowance.

With reference to the above, Competent Authority had not found any ground to Sanction Comp. Allowance in your Case.

This is for your information.

*Disciplinary Authority &
ADME (DL) Vatva."*

7 Considered the submission made at Bar and perused the record. Rule 65 of Railway Servants (Pension) Rules 1963 though prescribes that a Railway Servant, who had been dismissed or removed from service, should forfeit his pension and gratuity but under the proviso thereto also the Competent Authority has been empowered to sanction compassionate allowance in deserving cases, not exceeding 2/3rd of pension or gratuity or both, as is admissible to such employee, if he had retired on compensation pension. When disciplinary authority has not mentioned anything about compassionate allowance in his order of removal from service then also at later stage the compassionate allowances, in deserving cases, according to the guidelines issued by the

Railway Board can be passed. Railway Board's Circular No.145/95 dated 01.12.1995 & RBE No.164/2008, File No. F(EIII/203/PN1/5 dated 04th November 2008 (Annexure A/10) prescribes detailed procedure for grant of compassionate allowance to employees who had either been removed or dismissed from service and whose order of removal from service is silent about compassionate allowance.

8 Aforesaid letter No. F(EIII/203/PN1/5 dated 04th November 2008 provides that in terms of proviso to Rule 65 (1) of the Rules, the authority competent to dismiss or remove a Railway servant from service may, if the case is deserving 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. It provides further that this is the discretionary power vested in the authority competent to dismiss or remove a Railway servant, to be exercised by that authority *suo-motu*, at the time of passing orders of dismissal or removal from service or immediately thereafter. This letter also covers for past cases wherein order of removal or termination from service has been passed earlier and said order of removal or termination from service is silent about compassionate allowance. The letter provides that in case 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."

9 As far as instant case relates it is not disputed that the misconduct which yielded into removal of applicant from service relates, it, according to charge-sheet dated was 52 days unauthorised absence. He was removed from Railway service on 28.12.2004 and till then, as per pleading in OA he had completed more than year of service. He applied

for compassionate allowances in year 2009 but vide single line order, dated 8/8/09, Annexure A/1 his request was turned down. It is true that applicant was removed from Railway service in year 2004 and the OA was preferred in year 2017 but that cannot be criteria, much-less to be sole be criteria to reject the case of applicant for compassionate allowance. Annex. R/1 dated 04.11.2008 provides that 'not only the grounds on which the Railway servant was removed / dismissed, but also the kind of service rendered should be taken into account, Impugned order dated 8/8/09 does not reflect that Disiplinary Authority took into consideration the kind of service rendered by the applicant. There is no imputation or even a whisper about any misconduct or any unwarranted activities by the applicant except that of unauthorised absence for which order of removal from service was passed. No doubt it is a case of removal from service in the year 2000 but it is not the case that the service record is not available.

10 The respondent authorities have inflicted punishment of removal from service and the punishment inflicted is not under challenge in this O.A. Punishment of removal from service may be in the interest of administration but condition No.(II) , enshrined in Annex. A/10 (letter No. F(EIII/203/PN1/5 dated 04th November 2008) provides that while considering for compassionate allowance, the authorities ought to have see whether the impugned punishment is not unduly hard on the individual looking to the family condition of the applicant. Condition

No.(III) enshrined in Annex.A/10 provides that each case will have to be considered on its merits depending on extenuating factors associated with the case. It is not the case where the ex employee was removed from service being dis-honest. Impugned order is also silent whether these aspects were taken note of.

11 The impugned order date 8/8/09 perhaps has been passed without taking into consideration spirit of Railway Board's Circular No.145/95 dated 01.12.1995 & RBE No.164/2008, File No. F(EIII/203/PN1/5 dated 04th November 2008 (Annexure A/10). Even if the conduct of the ex employee was not up to the mark to grant such allowance but other factor, as per spirit of this RBE No.164/2008 dated 04th November 2008 were also needed to be considered while allowing or disallowing such allowance but it appears that while passing the impugned order the authority concern failed to take note of it.

12 In view of the foregoing discussions, and taking note of facts, in their entirety, I think it is a fit and appropriate case, to quash and set aside the impugned order dated 08.08.2009 (Annexure A/1) of respondents, rejecting his request for compassionate allowance as well communication dated 23/3/16 & 20/5/16, Annexure A/2 & A/3 therefore are quashed and respondents are directed to reconsider applicant's case for sanction of compassionate allowance , in view of RBE No. 164/208 (Annex. A/10) dated 4.11.2008 issued by the Railway Board keeping in

view the spirit of the circular. This exercise be done positively within a period of three months from the date of receipt of copy of this order.

12 With aforesaid observation and direction the OA stand disposed of. Pending MA also stand disposed of.

13 No order as to costs.

(M C Verma)
Member(J)

abp