

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No.52/2017
Dated the 17th day of October, 2019

CORAM :

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

Gangaben B Baria,
W/o. Bharatbhai G Baria,
Working as Ex-Gangman at Itola,
Aged 47 years,
R/O: at:Bhulvan, Po. Chuchapura,
Ta: Sankheda, Dist: Chotaudaipur. ... 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 Additional Division Engineer(N),
Western Railway,
Pratapnagar, Vadodara – 390 004. ... Respondents

By Advocate Shri M J Patel

O R D E R (ORAL)

Per : M.C.Verma, Judicial Member

1. Applicant in this OA is wife of deceased employee of respondent and being aggrieved by order dated 04.08.2016 (Annexure A/1) whereby compassionate allowance to her was denied she has preferred instant OA having prayer to quash order dated 04.08.2016

(Annexure A/1) and to direct the respondent to release the compassionate allowance from due date with interest.

2 Applicant in her OA though also has pleaded that her husband was wrongly removed from service but she has not challenged the removal order and has sought relief only against denial of compassionate allowance. According to applicant her husband entered into service on 31.09.1985 and was removed from service on 04.05.2006 on the ground of unauthorised absence for 3848 days. She pleaded that her husband in year 2001 fell seriously ill, medical memo dated 17/4/2001, Annexure A/3, was issued by respondents but later on, on 15/5/2001 charge-sheet for unauthorised absence was issued. That second charge-sheet for unauthorised absence was issued on 20/01/2002. That conducting ex-parte inquiry proceeding, her husband was removed from service. That her husband died in year 2007 and thereafter, on 5/8/07 she applied for compassionate allowance. That respondent released the PF on 3/1/2008, however, compassionate allowance was not given. That she on 15/10/14 again gave representation and when no decision was taken by the respondent she knocked at the door of the Tribunal by preferring OA No. 425/15 and the Tribunal, on 19/7/16 directed the respondent to consider and take decision on her representation. That respondent thereafter passed impugned order denying compassionate allowance on untenable

grounds that her husband has not completed minimum ten years of qualifying service. She pleaded that her husband had rendered more than ten year service. MA No.44 of 2017 has also been filed seeking condonation of delay of 12 days by applicant.

3 The case was contested by the respondents and the reply has been filed and it is stated therein that applicant's husband was given sufficient opportunity and when he failed to appear, inquiry was conducted as per rules. That applicant's husband has not completed ten years of qualifying service and hence was not eligible for pension/ compassionate allowance. Respondents have filed reply to MA stating that the reasons and the grounds mentioned in MA are neither cogent nor sufficient and hence MA for condonation of delay as well OA both deserve dismissal.

4 The impugned order dated 04.08.2016 (Annexure A/1) reads as under:-

“Considering proceeding enquiry officer and statement of deceased employee imposed the penalty of removal from service Deceased employee entered into Rly service 31.09.1985 as trackman under SSE/P.WAY BRCP Employee was removed from service 04.05.2006. The total service of Employee is 20 yrs. 07 months 4 days out of which employee was remain absent total 3,848 that is minus 10 year 08 months 8 days from total service.

It has been mentioned HEAD QUARTER Office Churchgate Mumbai. 20's letter No.E/DAR/308/01/Vol.IX dated 16.05.2005 compassionate allowance being one of the classes of pension and a

minimum qualifying service of ten years is a pre-requisite for sanction of any class of pension.

Looking to the above facts and the rule in which that grant compassionate allowance minimum ten service pre requisite conditions which is not fulfil in present case so I do not find any reason to grant compassionate allowance.

As applicant removed from service vide letter No.E/308/A BR.GO Dt.4.5.2006 and over payment Rs.1407.00 (One thousand four hundred seven only) recovered from deceased employee vide money receipt No.Z 521286 Dt. 7.2.2008.”

5 Contention of applicant is that compassionate allowance has been wrongly denied on untenable grounds that her husband has not completed minimum ten years of qualifying service. On last date when this matter came up for final hearing, learned counsel Ms S S Chaturvedi appearing for applicant urged that husband of applicant entered into service on 31.09.1985 and was removed from service on 04.05.2006 on the ground of unauthorised absence for 3848 days. She submitted that period from date of entry into service till date of removal when counted comes to 20 years 07 months and 04 days and even if period of 3848 days is deducted from it, remaining period comes to more than ten years and hence there is wrong calculation or mistake in the impugned order. She requested to quash the impugned order. Shri M J Patel, counsel for applicant did admit factual aspect regarding entry of service, date of removal from service and charge of unauthorised absence for 3848 but he took adjournment to have the glance of original record and also to take help of departmental representative.

6 Today Shri Ashish Chaudhary, Sr Clerk from the Engg (AEN) Department along with original record of the applicant is present with the counsel for respondent and Learned Counsel Shri M.J.Patel Advocate, after having gone through the record stated at Bar that there is calculation mistake and the period of unauthorised absence if is deducted from total period, counting from date of entry into the service to the date of removal, from service, the same comes to slightly more than ten years. He requests that impugned order is suffering from mis calculation, so in situation which has emerged now, it would be appropriate to give fresh opportunity to respondents to consider the case of applicant with reference to order No. E/DAR/308/01/Vol.IX dated 16.05.2005. Learned counsel Ms S S Chaturvedi also gave her consent for fresh consideration of case of applicant but she added that respondents would not take a stand now that applicant has not completed ten years of qualifying service.

7 Considered the entirety, the submissions made at Bar and also have perused the files. In view of the totality impugned order dated 04.08.2016 is quashed and set aside. Respondents are directed to consider the case of applicant afresh for grant of compassionate allowance and to pass a reasoned and speaking order within three months of receipt of a copy of this order. OA accordingly is allowed .

Pending MA , if any is pending also stand disposed of. There shall be no orders as to costs.

(M C VERMA)
MEMBER(J)

abp