

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No. 512 of 2017
Ahmedabad, this the 15th Day of November, 2019

CORAM :

Hon'ble Sh. M.C. Verma, Member (Judicial)

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Smt. Lalitaben M. Harijan (Female-53 years) L/R and Widow of Shri Mohanbhai Hirabhai Harijan, Near S.R. High School, Devgadhi Baria, Taluka : Devgadhi Baria, District Dahod – 389380. **....Applicant**

(By Advocate Shri O.P. Khurana)

VERSUS

- 1- The Divisional Railway Manager (E), Western Railway, Ratlam – 457 001.
- 2- The Assistant Divisional Mechanical Engineer, Western Railway, Chhitorgarh–312001. **.....Respondents**

(By Advocate Shri M.J.Patel)

O R D E R (ORAL)

M.C.Verma, Member (J,)

- 1- Instant O.A. has been preferred by applicant Lalitaben M. Harijan, widow of late Shri Mohanbhai, ex-employee of respondents, with the following prayer :

“(i) Admit and allow this application holding the respondents’ action as to imposition of penalty of removal from service on the applicant’s deceased husband as quite arbitrary and illegal for deliberately passing no order as to Compassionate Allowance / Gratuity as admissible under Rule 65 of the Railway Services (Pension) Rules, 1993 and in violation of the Railway Board’s directives as per Railway Board’s letter No. F(E)III/2003/PN1/5(RBE No. 89/2008) dated 31.7.2008 (Ann.A/9);

(ii) Be pleased to hold the impugned orders dated 20.01.2017 and 21.1.2017 (Ann. A/1 and A/2) as quite arbitrary and illegal and quash and set aside the same for having been issued by the ADME and DRM (E) respectively, without any jurisdiction and authority but issuing the same in utter disregard of the Hon.High Court’s order dated 6.5.2016 (Ann.A/7) in MCA No. 2264/2015 for not neither complying with the same in letter and spirit of the order but refusing to grant the compassionate allowance and gratuity in violation of the relevant rules and Hon. Supreme Court’s judgment dated 11.4.2014 in CA 2111/2009 in the matter of Mahinder Dutt Sharma Vs. Union of India and Ors. (AIR 2014 SC 2009);

(iii) Be further also pleased to direct the respondents to grant the Compassionate Allowance and Gratuity in favour of the deceased

husband of the applicant from 21.11.2001 to 12.1.2010, in consideration of about 28 years of blotless services and family pension to the applicant / widow of the deceased employee from 13.1.2010 till further with interest @ 12% p.a.

(iv) Be pleased to direct the respondents to release all the final settlement dues like the correct amount of the PF, GIS and Leave Encashment etc. etc., with interest during pendency of the O.A.

(v) Be pleased to award cost also of this application from the Respondents as the Hon.Tribunal may be pleased”

2. This is not the first round of litigation pertaining to order of removal from service of husband of applicant, previously also litigation qua this removal has come before this Tribunal in O.A. No. 409/2010 and order passed in the O.A. was assailed on the file of Hon’ble High Court in MCA No. 2264/2015 [SCA No. 12075 of 2012] and it was decided by Hon’ble High Court on 06.05.2016. Taking note of previous litigation a query was put to learned counsel for applicant how in said backdrops the prayer relating to assailing of order of removal from service can now again be entertained by this Tribunal and learned counsel answered that applicant had no intent to challenge the order of removal and due to inadvertence and by mistake assertion of assailing order of removal from service has been inserted/ incorporated in relief clause. That applicant is having no grievance against order of removal from service of her husband and the only grievance of applicant is qua non-grant of compassionate allowance and in instant OA applicant wants only her grievance of non-grant of compassionate allowance redressed. Learned counsel explained further that written arguments has been filed from applicant’s side and in written arguments also this fact has been clarified that applicant is not challenging sustainability order of removal from service. Learned counsel urged that prayer made be treated confined to grant of compassionate allowance only and she is agitating the order vide which compassionate allowance, vide Annex.A/1 was denied.

3. Learned counsel then submitted that applicant’s husband was appointed and joined the service as Khalasi on 17.05.1973 and was removed from service alleging unauthorised absence from 06.07.1999 to 21.11.2001. That the absence was not wilful, he was ill, was suffering

from physical and mental ailment and for some time, during aforesaid period had also remained as indoor patient in Railway hospital and even could not attend departmental inquiry also. She reiterated that she is not referring these facts to dent the order of removal from service but is referring the same as the facts may have bearing on grant of compassionate allowance also. She contended that impugned order at Annex. A/1, vide which compassionate allowance denied is scanty one as it does not disclose any reason as to why compassionate allowance could not be granted.

4. Learned counsel also urged that Proviso attached to Rule 65 of Railway Servants (Pension) Rules 1963 also prescribes that Competent Authority may sanction compassionate allowance in deserving cases. That order of Disciplinary Authority in his order of removal from service is silent about compassionate allowance. That when Disciplinary Authority has not mentioned anything about compassionate allowance in his order of removal from service then at later stage the compassionate allowances, in deserving cases, according to the guidelines issued by the Railway Board can be granted. That detailed guidelines and 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 is there in 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 but respondent-department failed to appreciate that in view of said circular applicant deserves compassionate allowance. Learned counsel urged that impugned order, at Annex. A/1 being not legally sustainable may be quashed and respondents be directed to grant compassionate allowance to the applicant, a widow of their deceased employee.

5. Learned counsel Mr. M.J.Patel appearing for respondents at threshold took the undersigned to pleadings made in O.A. No. 322/2017,

to order dated 15.09.2017 passed by the Tribunal in said O.A. and particularly took the undersigned to the language used which is part and parcel of OA and pointed out that same is offending one and that, the conduct of applicant in producing/placing the matter in its present mode, is highly objectionable but taking note of the fact that applicant is a widow and the draft might have been settled by some legal expert so he is not pressing to dismiss the OA on this score. He fairly admits that 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, referred to has bearing upon grant or non grant of compassionate allowance and compassionate allowance can be rejected on the ground provided therein in said Circular. He requests to pass an appropriate order.

6. Considered the submissions put forth by the respective parties and perused the record carefully. Rule 65 of Railway Servants (Pension) Rules 1963 prescribes that a Railway Servant, who had been dismissed or removed from service, would forfeit his pension and gratuity but under the proviso thereto 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 pension on attaining superannuation. Admittedly, disciplinary authority has not mentioned anything about compassionate allowance in his order of removal from service nor has appellate authority touched this aspect while affirming order of removal from service passed by disciplinary authority. 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 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.

7. 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-moto*, 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 a ground for his removal / dismissal was.

(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."

8. The respondent authorities have inflicted punishment of removal from service and the punishment inflicted is not under challenge. Punishment of removal from service may be in the interest of administration but Condition No.(II), enshrined in 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 harsh on the individual looking to the family condition of the applicant. Condition No.(III) enshrined therein 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. As far as instant case relates it is not disputed that the misconduct which yielded into removal of applicant from service was unauthorised absence. Applicant, the widow of the deceased employee applied for compassionate allowances but her request was turned down. The order impugned, Annexure A/1 speaks that in view of the documents and contentions contained in the departmental proceedings as also in the consequential dismissal of appeal, your claim for sanction of compassionate allowance is rejected. The ground assigned cannot be a criteria, much-less to be the sole criteria to reject the case of applicant for compassionate allowance.

9. The impugned order appears to have been passed without taking into consideration spirit of Railway Board's Circulars No.145/95 dated 01.12.1995 & RBE No.164/2008, File No. F(EIII/203/PN1/5 dated 04th November 2008. Even if, the conduct of the ex employee was not up to the mark but other factor, as per spirit of this RBE No.164/2008 dated 04th November 2008 also needed to be considered while allowing or disallowing such allowance but it appears that while passing the impugned order, the authority concerned failed to take note of them.

10. In view of the foregoing discussions, it appears that the respondents have not at all considered the claim of grant of Compassionate Allowance to the deceased widow/applicant in true spirit and rejected it in a cyclostyled manner. It is a fit and appropriate case, to quash and set aside the impugned order dated 20.01.2017 (Annex.-A/1), whereby request for compassionate allowance of applicant was turned down by the respondents and accordingly order dated 20.01.2017 (Annex.-A/1) stand quashed. Respondent No.1., The Divisional Railway Manager (E), Western Railway, Ratlam, is hereby directed to reconsider applicant's case afresh for compassionate allowance, taking note of spirit of RBE No. 164/208 dated 04.11.2008 issued by the Railway Board, and to pass a speaking order expeditiously and in any case this exercise must be done positively within a period of ten weeks from the date of receipt of a copy of this order. Needless to say that the order passed shall be communicated to the applicant.

11. With aforesaid observation and direction O.A. stand disposed of. MA pending, if there is any also stand disposed of accordingly. No costs.

(M.C.Verma)
Member (J)

