

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
**Order reserved on: 16.09.2019
Order Pronounced on: 05.11.2019**

ORIGINAL APPLICATION NO. 060/00828/2018

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

...

Smt. Chander Kanta,
w/o late Sh. Suresh Kumar
age 66 years, (Group-C),
R/o 8/53, Pakki Sarai,
Near G.T. Road, Ambala Cantt
(Haryana) 133001.

....APPLICANT

(BY ADVOCATE: SHRI KARNAIL SINGH)

VERSUS

1. Union of India through General Manager,

Baroda House,

Northern Railway, New Delhi 110001.

2. Divisional Railway Manager,

DRM Office Complex,

Northern Railway,

Ambala Cantt 133001.

3. Sr. Divisional Personnel Officer, Northern Railway, DRM

Office Complex, Ambala Cantt

....RESPONDENTS

(BY ADVOCATE: SHRI YOGESH PUTNEY)

ORDER
SANJEEV KAUSHIK, MEMBER (J)

The present Original Application (O.A.) is directed against an order dated 25.1.2018 (Annexure A-1), whereby claim of the applicant for grant of compassionate allowance under Railway Services (Pension) Rules, 1993 has been rejected.

2. The facts, which led for filing of the present O.A., are broadly not in dispute.

3. The husband of the applicant late Shri Suresh Kumar was working as Fitter Grade III under the control of DME/OP/ Ambala Cantt. He was removed from service w.e.f. 31.1.1994, after 31 years of service. He died on 31.8.2013, leaving the applicant in penurious condition, who is at the age of 66 years. Claiming that she had no knowledge of rules and law and as such she did not raise any claim for grant of Provident Fund, GIS etc. She submitted representation for the first time only on 12.2.2014 and then on 28.2.2014, giving particulars of working of her husband for grant of dues. Further representations were also submitted on 22.6.2016 for grant of compassionate allowance under Chapter V, Para 65 of Railway Services (Pension) Rules, 1993, including one dated 9.5.2017 (Annexure A-3 coolly). However, the claim of applicant was declined on 25.1.2018, on the ground that her claim cannot even be entertained as at the relevant point of time, when deceased was removed from service, there was no provision for grant of Compassionate allowance and it has come into operation only in 1999 and it was revised in 2008. Hence, the O.A.

4. The respondents have filed a reply. They submit that claim of applicants has been rejected a number of times vide letters dated 24.1.2017, 28.3.2017, 2.5.2018 and 5.12.2017 and then in 2018. They submit that O.A. is barred by law of limitation, delay and laches and as such deserve to be dismissed. Reliance is placed upon **UNION OF INDIA & OTHERS VS. M.K. SARKAR**, 2010(2) SCC 59. They submit that when deceased himself did not claim this amount, the applicant has no locus to file this O.A. They submit that applicant is neither a person aggrieved under section 19 of A.T. Act, 1985, nor a "railway servant" within meaning of Section 3 (23) of Railway Services (Pension) Rules, 1993, and as such she cannot file this O.A. to claim the benefit. Compassionate allowance is not a vested right and requires special consideration in deserving cases at the discretion of the competent authority and in this case, husband of applicant was charged with gross misconduct which resulted into his dismissal from service. Thus, it is a closed chapter.

5. Heard the learned counsel for both sides at length and examined the material on file.

6. The learned counsel for the applicant argued that the deceased had left the family in indigent condition and as such applicant is entitled to compassionate allowance, which is granted to a railway servant, who is dismissed or removed from service, if the case is deserving of special consideration. He argues that applicant is aged 66 years or so and is without any source of income and as such instant O.A. merits acceptance.

7. On the contrary, learned counsel for the arguments submitted that the O.A. is barred by law of limitation and claim is not maintainable under the rules and law and as such O.A. merits dismissal.

8. I have considered the submissions on both sides minutely.

9. A conjunctive perusal of the pleadings would show that deceased was dismissed from service on 31.1.1994. It is also not in dispute that Scheme for compassionate Allowance came into operation in 1999, as revised in 2008. Apparently, the case of the applicant would not be covered by the Scheme which was not even in operation in 1994, when death took place.

10. In any case, during his life time, the deceased employee did not raise any claim for grant of compassionate allowance. For the first time, the applicant submitted a representation on 22.6.2016, which was rejected vide letter dated 24.1.2017, 28.3.2017, 5.12.2017 and then by impugned order dated 25.1.2018 (Annexure A-1) reiterating the earlier orders. The applicant has not even challenged the orders rejecting her prayer in the past during 2017 and has posed a challenge to latest order dated 25.1.2018, despite the fact that orders of 2017, are duly mentioned in the impugned order itself. Thus, the O.A. is even otherwise not maintainable, as applicant accepts the legality of earlier orders which were adverse to her rights.

11. The learned counsel for the applicant tried to wriggle out of bar of limitation by pleading that being a recurring cause, the respondents cannot be allowed to raise a plea of limitation.

Applicant being an illiterate could not file the claim in time hence the O.A. be allowed and the impugned order be quashed and set aside by directing the respondents to grant her compassionate allowance. In support of above plea, Mr. Karnail Singh, learned counsel for applicant vehemently argued that the impugned order be quashed and set aside as the plea of limitation cannot be raised qua the claim of compassionate allowance, which has to be considered as a pension. He also placed reliance upon judgment of Jabalpur Bench of this Tribunal in O.A. No. 210 of 2006 – **SMT. LAXMI BAI PATEL VS. UNION OF INDIA & ORS.** decided on 18.9.2007.

12. As held above, since the deceased had been dismissed from service in 1994 and the very Scheme of Compassionate allowance, came into operation in 1998 and as such same would not cover the case of the applicant and as such the concept of recurring cause of action would not apply. In so far as case of Laxmi Bai Patel (supra) is concerned, in that, the applicant had posed a challenge to disciplinary proceedings which were finalized by dismissal of Revision petition in 2005 and ultimately, the Court held that penalty imposed on railway servant was too harsh and excessive and as such impugned orders were quashed and set aside with liberty to the authorities to have a relook in the matter. This decision, to say the least, does not help the applicant from any angle, at all.

13. Not only that, Mr. Yogesh Putney, learned counsel for respondents pressed into service order passed by this Tribunal in

O.A. No. 60/155/2018- **BALWINDER SINGH VS UNION OF INDIA**

& ANOTHER decided on 16.8.2019 and decision dated 15.3.2019

in O.A. No. 60/1365/2017- **HARBANS SINGH VS UNION OF**

INDIA & ANOTHER decided on 15.3.2019 and order passed by the

jurisdictional High Court in CWP No. 6582-2019 titled **S.C.**

SHARMA VS. UNION OF INDIA & OTHERS decided on 19.3.2019

while affirming order of this Tribunal, where similar plea has been

negated for grant of compassionate allowance in terms of Rule 41 of

Central Civil Services (Pension) Rules, 1972.

14. In the case of Balwinder Singh (supra), the employee had not even challenged his removal order dated 30.6.1995. The O.A. was filed in 2018. His claim for allowance had been rejected on 15.12.2010, which was also not challenged. However, a subsequent order was also passed in 2017 and the Court held that the fresh order cannot extend the period of limitation. Reliance in this regard was placed upon decision in the case of **UNION OF INDIA & OTHERS VS. M.K. SARKAR**, 2010(2) SCC 58 and **S.S.RATHORE VS. STATE OF M.P.** 1989 SCC (4) 582. So, the claim was rejected on the ground of limitation. Court finds that the point of law laid down in that case would apply on all fours to this case also.

15. In the case of Harbans Singh (supra), the applicant was removed from service on 22.3.2005. He filed an O.A. in 2013, which was dismissed as withdrawn. He filed a representation in 2016. Upon direction from this Court, the representation was decided on 26.9.2017. His claim was rejected being barred by law

of limitation and on merit, considering his past conduct and it was held that indicated allowance cannot be claimed as a matter of right.

16. In the case of S.C. Sharma (supra), the applicant was dismissed and his claim for such allowance was declined. The challenge to disciplinary proceedings resulted into dismissal upto Hon'ble Apex Court. Then he claimed Compassionate Allowance in terms of rule 41 of CCS (Pension) Rules, 1972. It was rejected on 12.3.2014. Further proceedings also followed. Then matter was taken to High Court. The Court considered the issue and held that Tribunal or High Court cannot sit in appeal over the judgment of authorities. Indicated allowance cannot be claimed as a matter of right. The authorities have considered and rejected it and the Court upheld the view taken by this Tribunal. I find that the point of law laid down in the indicated cases apply on all fours to the facts of this case. The instant O.A. is barred by limitation, delay and laches and on merits as well and impugned order, Annexure A-1, does not warrant any interference.

17. In the wake of aforesaid discussion, I am of the opinion that the instant O.A. merits rejection and is dismissed accordingly, leaving the parties to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**Place: Chandigarh.
Dated: 05.11.2019**