

CENTRAL ADMINISTRATIVE TRIBUNAL

MADRAS BENCH

DATED THIS 03 DAY OF APRIL, TWO THOUSAND NINETEEN

PRESENT:

THE HON'BLE MR. T. JACOB, MEMBER (A)

OA/310/01280/2017

C. Krishnammal,
W/o Shri K. Chandraraj,
26, Panakal Street,
Melakalkandarkottai,
Ponmalai,
Trichy 620 011.

...Applicant

-versus-


1. Union of India rep., by
The General Manager,
Southern Railwayu,
Park Town, Chennai 600 003.
2. The Workshop Personnel Officer,
Golden Rock Workshop,
Ponmalai, Trichy 620 011.

...Respondents

By Advocates:

M/s Ratio Legis, for the applicant.

Mr. M.T. Arunan, for the respondents.



(Pronounced by Hon'ble Mr. T. JACOB, Member (A))

One Shri K. Chandraraj was appointed as Technician Grade III in the Southern Railway on 22.05.1984 and his normal date of retirement was 28.02.2016. He was found missing from 19.4.2000 leaving behind his wife (the applicant herein) and three children. An FIR was registered on 22.06.2003 about the fact of his missing and after necessary investigation, a non traceable certificate dated 13.03.2009 was issued to the applicant. Administration was informed of the police report obviously with a view to processing the case of the applicant's husband treating him as dead. However, the applicant was informed vide impugned order dated 22.02.2017 that her husband was removed from service on and from 19.04.2001 and on that ground rejected her claim for family pension, which, according to her is in violation of Rule 75 of the Railway Services (Pension) Rules. Thus, the applicant has filed this OA under Sec.19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

"...to quash the impugned order and to order family pension with all the attendant benefits and to quash the impugned order dated 22.02.2017 and to direct the respondents to consider the request of the applicant to grant family pension in terms of Rule 75 treating the applicant's husband as a missing person or under Rule 65 as a removed person eligible for compassionate allowance under the Pension Rules..."

2. Grounds of appeal are as under-

(i) According to OM dated 14.9.2011, family pension would accrue from the date of filing of FIR and as such, denial of the same to the applicant on the ground that her husband was removed from



service is untenable. The said fact was not intimated to the applicant in the year 2008 and the entire fact is post scripted.

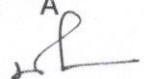
(ii) The police officials after conducting thorough investigation in the work place of the applicant's husband have declared that the applicant's husband was missing from 19.4.2000.

(iii) Compassionate allowance is to be granted to the employee when removal or dismissal was ordered. In the absence of any mention on compassionate allowance, the same can be demanded either by the self or by the legal heir in the event of death of the employee. The impugned order denying family pension by treating the applicant's husband as a missing person is against law.

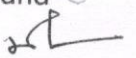
(iv) The applicant ought not to have been denied compassionate allowance on removal from service.

(v) The disciplinary authority did not pass any order on compassionate allowance under Rule 65 of the Pension Rules, 1993 and the Hon'ble Apex Court has ordered that in the case of absence from duty and on consequent removal from service, compassionate allowance should be provided, denial of which is not justified.

3. Per contra the respondents have filed a detailed reply statement in which it is stated that the applicant's husband while working as a Technician Grade III in Cylinder Liner Plating Shop, Central Workshop, Southern Railway, Ponmalai, Trichy was unauthorisedly absent for 76 days in different spells during the period 30.01.2000 to 07.06.2000. Disciplinary action under the Railway Services (Discipline and Appeal) Rules 1968 was initiated by issuing a Charge Sheet for major penalty. As the applicant's husband did not turn up for duty and was continuously absent, the Charge Sheet dated 30.06.2000 was sent to his last known address but the same was returned undelivered. Hence a copy of Charge Sheet was exhibited in his work place duly obtaining two witnesses as per the extant instructions. A



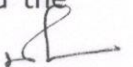
departmental enquiry was ordered. The applicant's husband was given three chances to appear in the enquiry and defend his case but he failed to turn up for enquiry. Hence inquiry was conducted ex-parte in which the charge of unauthorised absence was proved by the Inquiry Officer and based on the enquiry report, order of penalty of removal from service was passed by Dy.CME/DSL/GOC. The service of the applicant's husband was terminated w.e.f. 19.04.2001. No appeal/revision petition was preferred by the applicant's husband against his removal from service. Meanwhile, the applicant filed a complaint on 22.06.2003 in the Ponmalai Police Station, Tiruchirappalli alleging that her husband was missing from 19.04.2000. Contrary to the above statement, the applicant's husband reported at the Office of the Senior Section Engineer, Cylinder Liner Plating Shop, Central Work Shop, Southern Railway, Ponmalai, Tiruchirappalli and submitted a private medical certificate for 23 days from 15.05.2000 to 07.06.2000. The applicant's husband was referred to Railway Hospital, Ponmalai, Tiruchirappalli on 08.06.2000 for obtaining fitness certificate from the medical authorities. After getting the fitness certificate dated 10.06.2000, the applicant again reported for duty on 13.06.2000. As such, the statement of the applicant that her husband was missing since 19.04.2000 is false. The case of the applicant's husband who was removed from service cannot be treated as a case of "Man Missing" and



attendant benefits of the applicant's husband cannot be extended to the applicant on that ground.

4. Heard the learned counsel for the respective parties whose arguments were based on their pleadings and perused the documents on record.

5. Admittedly the applicant's husband while working as a Technician Grade III under the respondents was unauthorisedly absent for 76 days in different spells from 30.01.2000 to 07.06.2000. Disciplinary action under the Railway Servants (Discipline and Appeal) Rules, 1968 was initiated and a charge sheet dated 30.06.2000 for major penalty was issued. But since the applicant's husband did not turn up for duty and was continuously absent, the Charge Sheet was sent to his last known address but the same was returned undelivered. Hence as per extant instructions, a copy of the charge sheet was displayed in his work place duly obtaining two witnesses. Since the applicant did not give any written submission denying the charges, an Inquiry Officer was appointed. The enquiry call letters were sent to his last known residential address by Registered Post with Acknowledgement Due, but the same was returned undelivered by the Postal Authorities with remarks "Intimated - Not Claimed", "Not Claimed", "Door Locked" though the family of the applicant's husband was residing in the same address during the period 2000-2001. Even the FIR filed in 2003 contained the



same address. The applicant's husband and his family members had wilfully and deliberately avoided receiving the letters to avoid participating in the enquiry. Hence the enquiry was held on 10.10.2000, 15.11.2000 and 13.12.2000 and the charges of unauthorised absence were proved ex-parte. The report of the Inquiry Officer was also sent to the applicant's husband's residential address to afford him an opportunity to defend his case but the same was returned undelivered. In view of the above, the disciplinary authority passed an order dated 17.04.2001 imposing a penalty of removal from service on the applicant's husband and terminating his services w.e.f. 19.04.2001. The penalty advice was also sent by Registered Post to the applicant's husband but the same was returned undelivered by the postal authorities with a remark "Not Claimed". No appeal or revision petition was submitted by the applicant against his removal from service. The applicant could have appeared before the respondents to prove his innocence.

6. As seen from the records, the applicant's husband is in the habit of absenting himself unauthorisedly from his duties. Even though the applicant's husband and the applicant are residing hardly 500 meters away from the office at No.196/2, 'C' Type, Railway Colony, Ponmalai, both of them have deliberately avoided receipt of letters/communications sent to the residential address with malafide intention and apparently to claim family pension have produced an FIR dated 22.06.2003 obtained



subsequently from the Police authorities stating that the applicant's husband is missing from 19.4.2000. The applicant's husband having reported for duty and produced a Fitness Certificate, cannot state that he is missing from 19.04.2000 and on that ground make a claim for family pension.

7. I have perused the Medical Certificate dated 15.05.2000 issued by Dr. D.K. Krishnamoorthi, M.D. Assistant Surgeon, Government Hospital, Mudukulathur, which bears the signature of the applicant's husband. The Fitness Certificate dated 07.06.2000 issued by the same doctor also bears the signature of the applicant's husband. Therefore, the applicant's husband cannot be treated to be missing from 19.4.2000. The police authorities have also certified the non traceability of the applicant's husband and have not vouchsafed for the date of missing.

8. It is also seen from the record that after the applicant's husband was removed from service w.e.f. 19.04.2001, the man missing case was filed by the applicant before the police authorities on 22.06.2003, after a lapse of more than two year. That apart, the statement recorded in the FIR that the applicant's husband was missing from 19.4.2000 does not coincide with the Railway records. Due to inherent contradiction in the statement of the applicant in the FIR and the Railway records, the applicant's husband was removed from service for unauthorised absence thereby rejecting the claim of the applicant for



grant of family pension. Since the applicant was removed from service, there is no question of any family pension admissible to the applicant.

9. Now the only issue that remains for consideration in this OA is whether the applicant is entitled to compassionate allowance under Rule 65 of the Railway Services (Pension) Rules, 1993. The said Rule 65 is as extracted below:-

65. Compassionate allowance – (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity provided that the authority competent to dismiss or remove him from service may, if the case is deserving of 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.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than three thousand five hundred rupees per mensem. (Authority: Railway Board's letter No. 2011/F (E) III/1(1)9 dated 23.09.13).

It is submitted that the Railway Board vide its letter dated 09.05.2005 had clarified that the power to sanction compassionate allowance or otherwise is a disciplinary power vested in the authority competent to remove/dismiss the railway servant to be exercised by the authority suo moto at the time of passing order of removal or dismissal from service or immediately thereafter. Further as per letter dated 04.11.2008 of the Ministry of Railways, in the past cases where the Disciplinary Authority had not passed any specific orders with regard to grant of compassionate allowance, and if any such case appeared to be deserving, it could be reviewed by the Disciplinary Authority on receipt of representation of the dismissed/removed employees or the family members of the deceased



employees, keeping in view the conditions laid down in the said letter of the Railway Board. Each case has to be considered on merits. In the instant case, on perusal of the records, it is seen that the Disciplinary Authority has not passed any order regarding compassionate allowance while imposing the penalty of removal from service on the railway employee.

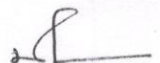
10. The Hon'ble Supreme Court in the case of **Mahinder Dutt Sharma vs, Union of India & Ors. in Civil Appeal No.2111/2009 dated 11.4.2014** while dealing with compassionate allowance, has laid down the following conditions:-

13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

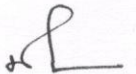


(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

14. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "...if the case is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.

11. In the conspectus of the above facts and circumstances of the case and in the interest of justice, the respondents are directed to consider the case of the applicant for compassionate allowance judiciously and take a rational decision without being trammelled by the conduct of the applicant's husband which culminated into his removal from service and pass a reasoned and speaking order based on the parameters laid down by the Hon'ble Supreme Court hereinabove within a period of three months from the date of receipt of a copy of this order and if the



applicant is entitled to the compassionate allowance, further action in that direction be also initiated and concluded within a reasonable time.

12. The OA is disposed of accordingly. No costs.

