

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/890/2018

**Order reserved on 22.07.2019
Order pronounced on: 25.07.2019**

Between:

Md. Ayesha Begum w/o Md. Yousuf,
Aged about 58 years, Occupation House wife,
R/o H.No.12-1-1123, Shanti Nagar, North Lallaguda,
Secunderabad 500 017. ... Applicant

AND

Union of India rep. by

1. The General Manager,
South Central Railway
Secunderabad.
2. The Principal Chief Personnel Officer
Rail Nilayam, South Central Railway
Secunderabad.
3. The Dy. Chief Material Manager (G&S), MFT
South Central Railway, Secunderabad. .. Respondents

Counsel for the Applicant ... Mr. K. Siva Reddy
Counsel for the Respondents ... Mr. N. Srinath Rao, SC for Railways

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

O R D E R

2. The OA is filed for not granting Compassionate Allowance and Gratuity to the applicant.

3. Brief facts of the case are that the applicant is the wife of Late Md. Yousuf, who worked as Khalasi Helper in the respondents organization from 1974 to 1996. Respondents issued a charge memo to the husband of the applicant for being unauthorisedly absent from duty. After an inquiry, her husband was dismissed from service w.e.f. 09.09.1996. Consequent to the dismissal, applicant has made an application for sanction of Compassionate Allowance on 27.02.2017. Respondents rejected her request on the ground that her husband was irregular to duties and was involved in criminal activities. Aggrieved over the rejection, OA has been filed.

4. The contentions of applicant are that her husband was dismissed from service for unauthorized absence which was due to ill health. The late employee has rendered 23 years of service in the respondents organization. It is not correct to state that the late employee was involved in criminal activities, since no Court has convicted the applicant for any criminal activity. If he were to be involved in criminal activities, then the question of continuing him in service, even after they were in the knowledge of the respondents, would not have arisen.

5. Respondents have resisted the contentions of the applicant by stating that husband of applicant suffered a major penalty of reduction in basic pay for a period of 6 months vide memo dated 6.12.1983 for being

unauthorisedly absent from duty from 15.10.1990 till 28.08.1996. The husband of applicant was later dismissed from service. Applicant's husband did not prefer any appeal against this order, and he expired on 13.5.2004. Respondents also state that the submissions of applicant affirming that the disciplinary authority has to mandatorily pass an order for Compassionate Allowance, while imposing any penalty, is incorrect, in view of Rule 65 (1) of Railway Servants (Pension) Rules, 1993. Further, to grant Compassionate Allowance, as per Railway Board Circular No.169/2008, the kind of service rendered by the employee should also be taken into account. The employee was irregular to duty leading to dismissal. He was also found to be involved in criminal activities. Keeping the above in view, the Compassionate Allowance was not granted.

6. Heard both the counsel and perused the pleadings on record.
7. (I) The husband of applicant was dismissed from service for unauthorised absence. As per Memo dated 4.11.2008, the employees, who were dismissed from service, can be considered for grant of Compassionate Allowance to the extent not exceeding 2/3rd of pension or gratuity or both which should have been admissible to him, if he had retired on compensation pension.

(II) The learned counsel for the respondents raised a preliminary objection of limitation. The applicant husband was dismissed on 9.9.1996 and an application for Compassionate Allowance was made in 2017. i.e., after a gap of 21 years. However, the issue is about grant of Compassionate Allowance which is a form of pension and grant of pension is a continuing cause of action. Therefore, the objection raised by the respondents' counsel is not maintainable.

(III) Now, focusing on the core issue, the respondents have issued the impugned order dated 4.6.2018 rejecting the request of the applicant for Compassionate Allowance by stating as under:

“..... Your request for payment of Compassionate Allowance/family pension has not been agreed to by the Disciplinary Authority as there are no grounds to consider your application requesting for grant of gratuity, family pension and compassionate allowance based on non satisfactory performance of the employee by being irregular to his duties, and getting involved in criminal activities.”

The criminal activities in which the applicant husband was involved were listed in the reply statement. Applicant's husband was arrested in a Gold Chain snatch case and was produced for judicial remand on 28.05.1988, but was released on bail as per letter dated 28.05.1988, issued by the Inspector/RPF/Lallaguda Workshops. Further, as per Crime No.40/88 u/Sec. 324 IPC, vide letter No.49/Cr/CI/LGD/88 dated 08.06.1988, issued by Lallaguda Police Station, the employee was

reported to have whipped out a steel knife and stabbed on the left thigh of M. Krishna resident of Lalapet. Consequently, the employee was arrested and was sent to District Jail, Secunderabad.

(IV) In the background of the above information, the conditions laid down for grant of Compassionate Allowance have to be analyzed. The conditions are as under:

(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 dismissal/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."

As seen from the conditions for grant of Compassionate Allowance, the kind of service rendered by dismissed/removed employee has to be

adjudged. In the present case, the applicant was found to be involved in criminal activities as narrated above. The learned counsel for applicant has strenuously argued that the employee can be construed to be indulging in a criminal activity only if he was convicted by the competent Court. In the absence of such conviction, the criminal activities reported, would not have any significance in considering the case of the applicant for Compassionate Allowance. Another submission of the learned counsel for applicant was that respondents allowing the husband of the applicant to discharge his duties even after the said activities came to their notice would mean that they are not serious enough to take into account for denying the benefit due. The Tribunal is not impressed by these arguments because Compassionate Allowance is essentially given based on the service record, kind of service rendered by the dismissed/removed employee. The employee was dismissed for being irregular to duty and, to top it, he was involved in criminal activities leading to police cases and also being sent to Jail. This conduct of the husband of applicant is definitely unbecoming of a Railway servant. Keeping the same in view respondents rejected the request. Conceding to such requests may not send a proper signal to others in the respondents organization and more so when the conduct of the applicant's husband was against the expected conduct from a dutiful Railway servant.

(V) In view of the above, this Tribunal does not find any merit to intervene on behalf of the applicant to grant Compassionate Allowance. Hence, OA is dismissed with no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 25th day of July, 2019

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