IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

Original Application No.21/452/2019

Date of Order: 26.08.2019

Between:

B. Shankaraiah
S/o B. Ramaiah,
Aged about 60 years (Group C)
Occupation Gangman (Removed) in the O/o SSE, P.Way
Parli, Secunderabad Division, R/o H.No.13-C2-109, NFC Nagar
Ghatkesar, Medchal District. Telangana State. …. Applicant

AND

Union of India rep by
1. The General Manager
   South Central Railway
   Secunderabad.

2. The Senior Divisional Personnel Officer
   South Central Railway, Secunderabad Division
   Secunderabad.

3. The Assistant Divisional Engineer
   South Central Railway, Secunderabad Division
   Bidar, Karnataka State. … Respondents

Counsel for the Applicant … Mr. K. Siva Reddy

Counsel for the Respondents … Shri Bhim Singh, proxy of Mr. V.V.N. Narasimham, SC for Railways

CORAM:

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

ORAL ORDER

2. The OA had been filed challenging the rejection of the request made by the applicant for Compassionate Allowance.

3. Brief facts of the case are that the applicant was initially engaged as Casual Labour and he worked continuously from 1979 to 1983 as Gangman in the respondents organization. He was granted Temporary Status on 1.1.1983 and regularized on 26.3.1997. Later, the applicant was removed from service for unauthorised absence on 15.10.2004 and applicant did not file any appeal against the removal. On removal, applicant applied for Compassionate Allowance but the same was rejected on the ground that he did not have the requisite qualifying service of 10 years. Aggrieved, OA has been filed.

4. The contentions of the applicant are that as per Rule 65 (1) of Railway Services (Pension) Rules, 1993, which has been cited in Railway Board's Order, RBE No.164/2008, disciplinary authority in deserving cases can sanction Compassionate Allowance, not exceeding 2/3rds of pension or gratuity or both, which would have been admissible to him if he had retired on compensation pension. Further, respondents have ignored the orders of the Hon'ble Supreme Court in **Union of India & Others** v. **Rakesh Kumar** [Civil Appeal No.3938 of 2017, decided on 24.03.2017], wherein it was observed that 50% of the casual service

should be considered for grant of pension. The action of respondents is against Articles 14, 16 and 21 of the Constitution of India.

5. Respondents opposed the contentions of the applicant by stating that the applicant was initially engaged as Casual Labour and granted Temporary Status on 01.01.1983 thereafter his services were regularised w.e.f. 25.07.1997. Applicant was proceeded for unauthorized absence for a period of 296 days from 20.04.1999 to 09.02.2000 and a penalty of deduction in pay was imposed for a period of 2 years with cumulative effect. Despite this penalty, applicant was on an unauthorized absence for a period of 223 days from 1.1.2002 to 19.12.2002 leading to his removal from service on disciplinary grounds, vide order dated 15.10.2004. Thus, the applicant remained on unauthorized absence for a period of 4 years 10 months and 27 days in a total career spanning 21 years 9 months. Respondents, therefore, contend that applicant is found to be habituated in absenting from duties unauthorisedly. In fact, applicant was working in an assignment which was related to safety, and, therefore, being away from duties without getting the leave sanctioned is too serious matter to be ignored. Besides, applicant after lapse of 14 years, represented to the Hon'ble Prime Minister for grant of Compassionate Allowance, Provident Fund, etc.. The request was rejected by informing that the applicant had 9 years 7 months and 5 days of service against the requirement of 10

years for grant of Compassionate Allowance. Respondents state that as per Hon'ble Supreme Court Judgement in **Rakesh Kumar** (supra), 50% of service rendered, after being granted Temporary Service, has only to be counted and that even this counting is only for the purpose of pension. Moreover, respondents claim that Compassionate Allowance is not a pension.

6. Heard both the counsel and perused the pleadings on record.

7. (I) The dispute is about rendering requisite years of service for being eligible to grant Compassionate Allowance. Respondents state that the applicant has rendered only 9 years 7 months and 5 days against 10 years to be granted for Compassionate Allowance. Applicant claim that he has more than 10 years of service by considering 50% of casual labour service rendered in the respondents organization. In this regard, Railway Board issued instructions on 04.11.2008 wherein the following paragraphs are of relevance to the issue on hand:

> "3. The matter has, therefore, been considered by the Board in consultation with Department of Pension and Pensioners' Welfare and it has been decided to reiterate that in cases 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:
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> (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."

Based on the above, the case of the applicant was taken up but rejected for not having the required number of years of service.

(II) Contesting the rejection, applicant has relied upon the Judgement of Hon'ble Supreme Court in **Rakesh Kumar**. The relevant paras are extracted hereunder:

> "3. Before the Tribunal the applicants claimed for following reliefs:- "(a) To direct the respondents to count the services rendered by the applicants in the capacity of casual labour as 50% after counting 120 days and 100% from the date of temporary status till their regularisation for the purpose of pension and pensionary benefits and other benefits as a qualifying service.
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> xxxxx xxxx xxxx
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> 55. In view of foregoing discussion, we hold :
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> i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.
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> ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension."

(III) Hon'ble Supreme Court has emphatically held that the 50% of the casual service rendered by Casual Labour was also to be considered for granting pension. Therefore, the stand of the respondents that only 50% of the service rendered after granting Temporary Status is, thus, incorrect. In the context of the Hon'ble Supreme Court judgement, the applicant is eligible to be granted Compassionate Allowance after considering 50% of his Casual Labour service. Applicant was appointed as Casual Labour on 26.12.1979. He has worked as Casual Labour for 1095 days, 50% of the same would work out to 547 days. In other words, more than an year. If this service is added, then the applicant would have more than 10 years of service and, therefore, would be eligible for Compassionate Allowance.

(IV) The learned counsel for the respondents contended that Compassionate Allowance is not to be treated as Pension. However, his version is far from the truth, since in the reply statement at page 3, respondents have mentioned as under:

> "In terms of para 3 of Railway Board letter 9.5.2005 (RBE No.79/2005) circulated vide CPO/SC's SerialCircular No.90/.2005-Annexure R2 "Compassionate Allowance being one of the classes of pension and a minimum qualifying service of 10 years is a prerequisite for sanction of any class of penson". Before sanctioning compassionate allowance, it is absolutely necessary for competent authority intending to sanction compassionate allowance to a person on whom the punishment of removal/dismissal is imposed, to satisfy itself that such a person has rendered not less than 10 years of qualifying service".

Therefore, the Railway Board Order cited, states in no ambiguous terms that Compassionate Allowance is one form of Pension and, therefore, the submission of the learned counsel for the respondents stating that Compassionate Allowance is not a pension is untenable.

(V) Another objection raised by the learned counsel for the respondents is that there is a delay of 14 years in making the request for Compassionate Allowance. The Railway Board itself has construed that Compassionate Allowance is a form of pension and disbursement of pension being a continuous cause of action, the delay does not matter.

(VI) Besides, this Tribunal while dealing with similar matter in OA 574 of 2017, has held as under:

> **"**7. In so far as the other point is concerned, the respondents did not take into consideration the casual service rendered by the applicant. They have only taken into consideration the temporary status and the service rendered after reguarisation. In this context, it would be relevant to refer to the judgement of the Hon'ble Supreme Court in Civil Appeal No.3938/2017, dated 24.03.2017 in *Union of India & Others v. Rakesh Kumar & Others*……..
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> The same guidelines relating to pension would also apply to the compassionate allowance. If 50% of the casual service and also 50% of the service rendered in temporary status were taken into consideration, together with the service rendered after regularization, there is no dispute of the fact that the applicant has rendered more than 10 years of service. Therefore, the rejection of claim, put-forth by the respondents that the applicant's husband has not rendered 10 years of qualifying service, is entirely incorrect. Further, the competent authority did not examine the condition of the family of the applicant so as to consider whether she can be sanctioned compassionate allowance or not."

(VII) In another case of similar nature, this Tribunal in OA 887/2018 has allowed a similar relief. Thus, as can be seen from the above, the case of the applicant is fully covered as per the Honb'e Supreme Court judgement and also by the verdicts of this Tribunal in OAs cited supra. Hence, OA fully succeeds. The impugned order dated 26.04.2019 is quashed and set aside. Consequently, respondents are directed to consider:

a) Sanction of Compassionate Allowance to the applicant with all consequential benefits from the date of his removal.

b) Paying interest at prevailing GPF rate of interest for the amount to be paid towards arrears of Compassionate Allowance, for the period, from the date due, till the date of payment.

c) The time allowed to comply with the said directions is three months from the date of receipt of a copy of this order.

d) There shall be no order as to costs.

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

Dated, the 26th day of August, 2019

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