

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

Original Application No.21/1078/2018

Date of Order: 25.06.2019

Between:

M. V. Rama Manohara Rao, Aged 65 years
S/o Sri M. Rama Krishna Rao, Ex-TTE (Removed)
Central Government Group C Employee
South Central Railway, Secunderabad Division
R/at: H.No.3-26/2, Sri Ram Nagar Colony
NARSAPUR – 502313, Medak Dist., TS. Applicant

AND

1. Union of India represented by its General Manager
South Central Railway, Rail Nilayam
Secunderabad – 500 071, TS.
2. Senior Divisional Personnel Officer
South Central Railway, Secunderabad Division
Secunderabad – 500 071, TS.
3. Divisional Commercial Manager
South Central Railway, Secunderabad Division
Secunderabad – 500 071, TS. ... Respondents

Counsel for the Applicant ... Mr. S. Srinivasa Rao.

Counsel for the Respondents ... Mrs. Vijaya Sagi, SC for Rlys.

CORAM:

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

ORAL ORDER***{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. OA is filed challenging the rejection of Compassionate Allowance sought by the applicant.

3. Brief facts of the case which need to be adumbrated are that the applicant while working for the respondents organisation was removed from service on 11.10.1993 for unauthorised absence during the period 31.5.1990 to 4.7.1995. Consequent to appeal and revision application being rejected on 10.8.1995 and on 1.8.2000 respectively, applicant sought Compassionate Allowance under the relevant rule. The same on not being considered, applicant filed WP No.11344/2013 in the Hon'ble High Court, wherein it was directed to consider the grant of Compassionate Allowance. Accordingly, respondents have examined and rejected the request on grounds that the records were not available. Aggrieved, applicant approached the Tribunal in OA 359/2015, praying for grant of Compassionate Allowance after reconstruction of the record. Respondents in the reply statement submitted in the cited OA have confirmed that the service book was traced but not the disciplinary file and, hence, rejected the Compassionate Allowance. Tribunal, on re-consideration of the facts on record directed to grant the Compassionate Allowance based on extant rules. Respondents, once again rejected the request of the applicant. Hence, the OA.

4. The spinal arguments of the applicant are that he is eligible for Compassionate Allowance as per rules and also as per law. The disciplinary action was taken against the Principles of Natural Justice and that the orders of appellate as well as the revision authorities upholding the order of disciplinary authority are non speaking orders. He is aged 65 years and his wife 61 years. Applicant is finding it difficult to make both ends meet and, therefore, pleads for mercy. The impugned order is a non speaking order. The disciplinary file needs to be preserved up to 2014 since the OA 1106/2001 filed for seeking Compassionate Allowance was dismissed for lack of prosecution in 2004. Railway Board Order RBE 164/2008 and the Hon'ble Supreme Court verdict in CA no 2111 of 2009 are in his favour.

5. Respondents strongly resist the contentions of the applicant by stating that the applicant in OA 359/2015 has submitted that he has been taken to Kakinada for treatment and in the present OA to Guntur. It is not understood as to why the applicant did not get himself treated at Hyderabad Railway Hospital in the context of economic difficulties being faced. The signature of the applicant in the present OA and those made in the service record are differing. The order of revision authority was issued in 2000. Records are to be preserved for 3 years as per Record Retention Schedule of 2012. Hence, they are to be preserved only up to

2003. Even by considering the fact that OA 1106/2001 was dismissed for lack of prosecution in 2004, records ought to be maintained only upto 2007, whereas applicant filed the W.P. only in 2013. Respondents also state that the prescribed period of retention is 10 years for disciplinary cases as per letter dated 20.12.2007. Removal order was issued in 1993 and, hence , records have to be retained only up to 2003. This period of 10 years is only from the date of imposition of the penalty and not from the date of disposal of appeal/revision application/date of filing of OA. Therefore, the assertion of the applicant that records have to be preserved beyond a certain period is not supported by rules. Applicant filed several OAs, viz, 732/2014, 733/2014, OASR 2877/2014, which were disposed based on the Hon'ble High Court order in WP No.11344/2013. The appellate authority and the revision authority have upheld the penalty of removal for unauthorised absence of around 5 years.

6. Heard both the counsel and perused the relevant material papers placed on record.

7. I) It is an undisputed fact that the applicant was removed from service for unauthorised absence. Applicant on approaching Hon'ble High Court in WP No.11344/2013 seeking Compassionate Allowance, it was directed to consider grant of Compassionate Allowance as per

rules. The learned counsel for the respondents submitted that consequent to the order of the Hon'ble High Court, it would be a futile exercise to contest the orders of the disciplinary, appellate and revision authorities respectively. The Tribunal is in agreement with the submission made since the issue is about grant of Compassionate Allowance and not about the penalty imposed. Therefore, the submissions made by either parties, in the OA and the reply statement, in regard to the penalty and subsequent disposals are of no relevance to the present OA. Hence, it would be apt to focus on the issue of grant of Compassionate Allowance.

II) Respondents in compliance with the order of the Hon'ble High Court in WP, referred to hereinbefore, have examined the case and rejected on grounds that the records are not available. When OA 359/2015 was filed, respondents, in response to the directions of this Tribunal to reconstruct the file and consider as per rules, have once again rejected the request on the ground that the service record could be traced but not the Disciplinary proceedings. The later is critical to take a view on the issue.

III) Accepting for a moment that the disciplinary file was not traceable, respondents have admitted in the reply statement that the penalty order of applicant's removal from service for unauthorised

absence imposed by the disciplinary authority was upheld by the appellate authority and the revision authority. This is a clear confirmation that the applicant was removed from service for unauthorised absence. Hence, the availability of the disciplinary file or otherwise would not in any way change the outcome of the applicant being removed from service for unauthorised absence. It would be an empty formality to trace the disciplinary file. An empty formality has no consequence in law as observed by the Hon'ble Supreme Court in **Haryana Financial Corp.**

v. **Kailash Chandra Ahuja**, (2008) 9 SCC 31, as under:-

“40. In Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that no prejudice was caused to M. Referring to several cases, considering the theory of “useless” or “empty” formality and noting “admitted or undisputed” facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it “would not have made any difference” and, hence, no prejudice had been caused to M.”

Therefore, the contention of the respondents that the disciplinary file could not be traced is of no consequence to consider the request of the applicant for Compassionate Allowance. The orders of the Appellate and the Revision authority, which are available, would suffice to take a view on the matter.

IV) Having said what has been said, it now necessary to examine as to whether the applicant is eligible for Compassionate Allowance as per rule and law. The instruction which governs the grant of Compassionate Allowance is laid down in Railway Board order -RBE No 164/164/2008. As per the cited order past cases of Compassionate Allowances can be considered, if not rejected earlier by the disciplinary authority, provided the following conditions are satisfied.

- i) Cases where records of D&A proceedings and service record are available.*
- ii) Gravity of the offense is to be reckoned.*
- iii) Service record of the employee has to be gone through to assess the kind of service rendered.*
- iv) Quantum of allowance to be fixed based on the length of service rendered.*
- v) Penalty was hard on the employee.*
- vi) Should not be granted to employees who have been dishonest.*

- vii) *Dependence of the spouse and children to be reckoned.*
- viii) *Financial condition of the employee.*

The service record was traced by the respondents. After tracing the service record, in the reply statement respondents have not contended anything else except to state that the applicant was removed from service for unauthorised absence. In other words, but for the unauthorised absence, the kind of service rendered is construed to be good. Besides, the appellate order and the revision order of the senior officers of the respondents bear great credence to the fact that the applicant was removed for unauthorised absence. The orders of the appellate and the revision authority do cover the grounds taken by the disciplinary authority/employee and other relevant factors while confirming or rejecting the penalty imposed by the concerned authority. The said orders give a bird's eye view of the case. Hence, the availability of the appellate and revision orders is more than enough to deal with the request of the applicant for Compassionate Allowance. They contain the essence of the D&A case initiated against the applicant. Further, applicant was removed from service for unauthorised absence and not for any dishonest conduct. He is not getting any pension. Applicant was not in good health to appear and defend his case and, hence, the penalty of removal was issued based on an ex-parte finding. Applicant

has reconciled to his fate and in the advanced age he and his wife are in, is requesting for consideration of grant of Compassionate Allowance to take care of the rest of his life. In terms of human compassion the penalty imposed coupled with denial of Compassionate Allowance is too hard on the applicant. Unauthorised absence is not of such a grave nature as to deny Compassionate Allowance. The applicant and his wife need to bear the attendant medical expenses to be met during old age. Without any pension, applicant and his family would be in financial distress. Therefore, the applicant is repeatedly praying for mercy by filing multiple OAs as his economic condition is making it difficult to make both ends meet. He has been pursuing his cause for more than two decades, which is an indication of his desperation to seek Compassionate Allowance. Therefore, on all the parameters laid down in the Railway Board order cited above, the applicant is eligible to be considered for Compassionate Allowance.

V) Now coming to law, Hon'ble Supreme Court in Mahinder Dutt Sharma v Union of India & Ors, reported in CA No.2111 of 2009 has directed, for grant of Compassionate Allowance, to examine as to whether the penalty was imposed:

- i) because of moral turpitude,
- ii) due to dishonesty exhibited towards the employer,
- iii) for personal gain,
- iv) for harming 3rd party interests, or

v) for any unacceptable act like treachery, wicked, depraved, pervasive action.

If any employee does not come under the above 5 categories, it would be easier than otherwise, to extend the benefit of compassionate allowance to the punished employee, subject to compassionate consideration.

The applicant was removed for unauthorised absence as is evident from the orders of the appellate and revision authority. The unauthorised absence is on grounds of health which did not permit the employee to report to duty for as long as 5 years. Unfortunately, the applicant could not defend himself in the disciplinary case. The respondents have processed the disciplinary case as per rules. This action of the respondents cannot be found fault with. However, when it came to grant of Compassionate Allowance the request of the applicant was turned down though the case does not fall in the 5 categories adduced by the Hon'ble Supreme Court referred to above. The condition of the applicant is that he suffered paralysis stroke and he cannot seek any other employment at this age. His wife is dependent on him. Medical expenses are a continuous source of expenditure to the applicant and his aged wife. Applicant has none to approach except the respondents in the said circumstances. Hence, his request requires compassionate consideration too. The case is squarely covered by the verdict of the Hon'ble Apex Court cited supra.

VI) Lastly it not out of place to adduce that the applicant suffered from partial paralysis stroke of the right part of the body and, hence, his signature is varying. Understandable and needs considerate consideration. Besides, the fact that the applicant was suffering from ill heath would suffice and other averments made in regard to the treatment taken in different hospitals at different intervals of time does not in any way impact the core aspect of the case of grant of Compassionate Allowance. Therefore, the contentions of the respondents in this regard are untenable.

VII) Hence, based on the aforesaid circumstances, it is evident that the action of the respondents is against rules, arbitrary and contrary to the legal principle laid down by the Hon'ble Supreme Court on the issue. The impugned order dated 19.3.2018 is thus squashed. Consequently, respondents are directed to reconsider as under:

- i) To grant Compassionate Allowance to the applicant based on the length of service he has rendered as per extant rules and regulations of the respondents organisation.
- ii) Arrears of Compassionate Allowance to be restricted to a period of 3 years prior to the date of filing of the present OA as per Hon'ble Supreme Court observation at para - 5 in **Union of**

India & Others Vs. Tarsem Singh reported in CA No. 5151 of 2008 – 5152 of 2008 .

- iii) Time allowed to implement the judgment is 3 months from the date of receipt of this order.
- iv) No order as to costs.

With the above directions the OA is allowed.

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

Dated, the 25th day of June, 2019

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