

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00126/2018

With

Miscellaneous Application No. 290/00109/2018

Reserved on : 22.10.2019

Jodhpur, this the 25th October, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Idan Puri S/o Shri Devpuri aged 81 years, bycaste Puri, R/o Mahamandir, Juni Bagar, Shiv Mandir Street, Jodhpur Ex-Skilled Fitter, under Deputy CME, Carriage Workshop, Jodhpur under then NR Now NW-Railway, Jodhpur.

.....Applicants

By Advocate : Mr S.K. Malik.

Versus

1. The Union of India through the General Manager, North-Western Railway, Jawahar Circle, Jaipur.
2. The Chief Works Manager, North West Railway, Carriage Workshop, Jodhpur.
3. The Deputy Chief Personnel Officer (W), North West Railway, Carriage Workshop, Jodhpur.
4. The Deputy Chief Mechanical Engineer, North West Railway, Carriage Workshop, Jodhpur.

.....Respondents

By Advocate : Mr Kamal Dave.

ORDER

Per Smt. Hina P. Shah

The applicant in the present OA has approached this Tribunal seeking following relief(s) :

- (i) That, Hon'ble High Court in DBCWP No. 4316/2014 has permitted to withdraw the petitioner with liberty to file representation in light of circular dated 04.11.2008 within one month from the date of receiving the certified copy of this order and also passed the direction that "it is expected from the competent authority that the representation of the petitioner will be decided strictly in accordance with the said circular" but the respondents have not decided the representation of the applicant, with reasoned and speaking order as per respondent's letter dated 31.01.2018, the respondents may be directed to decide representation of the applicant keeping in view the spirit of Learned Judge dated 23.09.1969. the opinion of Learned Sr. Counsel Shri J.P. Joshi dated 18.10.1982 and 24.02.93, whereby the compassionate grant has been sanctioned but the compassionate allowance has been requested to be sanction there fore the respondent may be directed to sanction compassionate allowance in view of para 309/10 of MOPR and Railway Board's letter dated 04.11.2008, hence this applicant is filed, and,
- (ii) Any other order or direction, which this Tribunal deems fit in the facts and circumstances may also be passed in favour of the applicant.

2. The case of the applicant in brief is that he filed OA No. 322/2013 before this Tribunal seeking compassionate allowance but the same was dismissed vide order dated 25.02.2014. The applicant, however, challenged order dated 25.02.2014 passed by this Tribunal before Hon'ble Rajasthan by filing D.B.C.W.P. No. 4316/2014 before the Rajasthan High Court at Jodhpur. The Hon'ble High Court while dismissing the said writ petition as withdrawn wherein the applicant had challenged order 25.02.2014 passed in OA No. 322/2013, and liberty was granted to the applicant to file representation in light of Railway Board's circular dated 04.11.2018 and further observed that "it is

expected from the competent authority that the representation of the petitioner will be decided strictly in accordance with the said circular". In pursuance of the aforesaid order of Hon'ble High Court, applicant preferred representation 13.10.2015 which was dismissed by the respondents vide orders dated 10.02.2016 (Annex. A/2) and 31.01.2018 (Annex. A/1). Hence, applicant approached this Tribunal challenging these impugned orders and direction to the respondents to grant compassionate allowance.

3. The applicant has also filed MA for condonation of delay which is opposed by the respondents by filing reply. However, looking to the entire facts and circumstances of the present case as well as age of the applicant, we deem it appropriate to adjudicate the matter on the preliminary objection of res-judicata raised by the respondents in their reply to the OA. MA is accordingly disposed of.

4. The respondents filed reply raising serious preliminary objection that the applicant time and again is raising the issue which has attained finality, therefore, principles of res-judicata debars maintainability of the present OA. When the matter was taken up for hearing, initiating the arguments, Mr Kamal Dave, learned counsel for the respondents submitted that the applicant is reagitating the same issue again and again by filing Original

Application, hence, OA deserves to be dismissed keeping in mind principles of res-judicata.

5. On the other hand, Mr S.K. Malik, learned counsel for the applicant submitted that he does not deny the facts of filing of various applications/petitions filed by the applicant seeking compassionate allowance but his limited submission is that Hon'ble High Court has directed the respondents vide order dated 23.09.2015 (Annex. A/11) passed in D.B.C.W.P. No. 4316/2014 to decide representation of the applicant strictly in accordance with Railway Board's circular dated 04.11.2018. However, respondents while passing impugned orders dated 10.02.2016 and 31.01.2018 did not consider the aforesaid Railway Board's circular. Hence, he sought intervention of this Tribunal.

6. We have perused the records and considered arguments advanced by both sides on the preliminary objections.

7. It is an admitted position that applicant on being held guilty of theft of Railway Property by the competent court granted benefit of Section 4 of Probation of Offenders Act, 1958 and directed the applicant to keep peace. The Disciplinary Authority, on the basis of Court's order, issued order of dismissal of service dated 27th February, 1971. The applicant challenged his dismissal from service in OA No. 572/1985 before this Tribunal but his OA was rejected vide order dated 16.04.1986 and thereafter review

application No. 16/86 of the said order had also been dismissed. For the first time applicant sought relief of compassionate allowance in OA No. 387/92 which was disposed of by this Tribunal vide order dated 07.09.1994 directing the respondents to decide representation of the applicant in terms of Para 309 and 310 of MOPR. Thereafter, in the year 1999, applicant chose to approach Industrial Tribunal cum Labour Court under Industrial Disputes Act, 1947 vide reference dated 18.06.1999 and adjudication of the said dispute was culminated into the award dated 23.11.2001 passed in Industrial Dispute Central No. 07/99 dated 23.11.2001 holding that not allowing compassionate allowance to the applicant is legal and the applicant is not entitled for any relief. The applicant challenged the said award before Hon'ble High Court in S.B.C.W.P. No. 3748/02 but Hon'ble High Court rejected the writ petition filed by the applicant by judgment dated 16.10.2006 (Annex.R/5). Thereafter a gap of period of approximately 06 years, the applicant approached this Tribunal again in OA No. 322/2013 which was dismissed by this Tribunal vide order dated 25.02.2014. Then a challenge was made to the order dated 25.02.2014 passed by this Tribunal before Hon'ble High Court but the same was dismissed as withdrawn by the Hon'ble High Court vide order dated 23.09.2015 though applicant was allowed to file representation before the respondents and respondents were also directed to dispose of the

same in light of circular dated 04.11.2008. In pursuance of order dated 23.09.2015 passed by the Hon'ble High Court, respondents have passed orders dated 10.02.2016 (Annex. A/1) and 31.01.2018 (Annex. A/2).

8. Preliminary objection has been raised by the respondents that present OA is not maintainable as being barred by principles of res judicata whereas applicant took a plea that he filed present OA in pursuance of order dated 23.09.2015 passed by Hon'ble High Court in DBCWP No. 4316/2014 as the direction therein has given the applicant a fresh cause of action since respondents did not pass the orders impugned in light of Railway Board's circular dated 04.11.2008. Here, we would like to refer to the order dated 25.02.2014 passed by this Tribunal wherein applicant has sought following reliefs :

- 1- By an appropriate Writ, Order or Direction, the respondents may kindly be directed to review the case of the applicant on the authority of the Railway Board's letter dated 4.11.2008 (Annex.A-2) and the judgments delivered by this Hon'ble Tribunal in OA No.150/2009 and 174/2011 in connection with Harish vs. UOI and Ors. delivered on 29.07.2010 and 24.08.2012 respectively.
- 2- By an appropriate Writ Order or Direction, the impugned order dated 24.2.1993 (Annex.A/1) may kindly be declared as illegal and the same may be quashed. Further, the respondents may kindly be directed to pay all the due retiral benefits viz. (i) pension (ii) gratuity, (iii) provident fund (iv) leave encashment (v) medical allowance and (vi) commutation etc.
- 3- By an appropriate Order or direction, the disciplinary authority may kindly be directed to implement compassionate grant to the applicant in its true sense whereas in fact the respondents have complied the compassionate grant sanctioned to the applicant in a wholly camouflaged manner. Further, the **respondents may kindly be directed to grant compassionate allowance to the applicant** as granted in the case of V. Prakasham vs. DRM, South Central Railway, Hubli and Ors. reported in 1989 (2) ATC 692 (Annex.A-4) with due accrued interest and exemplary costs.

- 4- Any other relief which this Hon'ble Tribunal deems just, fit and proper in the facts and circumstances of the case, be also granted in favour of the applicant."

It is clear that one of the relief claimed in relief sub para 3 by the applicant in OA No. 322/2013 was directing the respondents to grant the applicant compassionate allowance. However, this Tribunal considering all aspects of the matter and hearing the parties recorded its findings in para 10 of order dated 25.02.2014 (Annex. R/6) passed in the said OA, which reads as under :

10. From condition No. (iv) it is very clear that in case of Railway servant had been dishonest and which was a ground of his removal/dismissal, payment of compassionate allowance cannot be considered. The applicant was removed on account of the judgment of the Railway Magistrate Court dated 23.9.1969 by which he was found guilty for the offence under RPUP Act. The counsel for the applicant contended that the amount of theft of property was so meager and the punishment order and order for non-payment of compassionate grant are disproportionate and on this account also he is entitled to have review of the order Ann.A/1. So far as this contention is concerned, the same cannot be accepted because the applicant has not challenged the legality of removal or dismissal in this OA and the judgment cited by the counsel for the applicant are passed on different facts in which the legality of dismissal or removal was challenged by the applicant. When the order of the Railway Magistrate dated 23.9.1969 has attained finality, in my considered view, whatever may be the facts, without challenging the legality of the order of removal or dismissal whether the punishment was proportionate to the offence or not, the same cannot be considered. Here it is very import that when the applicant has challenged legality of order Ann.A/1 as well as his removal order before the Industrial Tribunal cum Labour Court, which was dismissed by the Labour Court and the same was challenged by the applicant before the Rajasthan High Court by filing Writ Petition, which too was dismissed by the Hon'ble High Court, therefore, the applicant cannot be allowed to re-agitate the same issue again before this Tribunal.

In the above findings, this Tribunal has clearly recorded that applicant had reagitated the issue in year 2013 which had already been adjudicated by the Labour Court and attained finality at the level of Hon'ble High Court. The applicant challenged the order dated 25.02.2014 passed by this Tribunal before Hon'ble High Court in DBCWP No. 4316/2014, which reads as under :

Heard learned counsel for the petitioner.

After perusing the order impugned dated 25.02.2014 passed by Central Administrative Tribunal, Jodhpur Bench, Jodhpur, we are not inclined to grant any specific order in the instant writ petition. However, the learned counsel for the petitioner submits that the petitioner may be permitted to file representation in pursuance of the Circular dated 04.11.2008 (Annexure-A/2 in Original Application No. 322/2013) and the respondents may be directed to decide the representation filed by the petitioner in accordance with the said circular dated 04.11.2008.

In view of the above, the instant writ petition is hereby dismissed as withdrawn with liberty to the petition to file representation in the light of Circular dated 04.11.2008 within one month from the date of receiving certified copy of this order and it is expected from the competent authority that the representation of the petition will be decided strictly in accordance with the said circular.

From perusal of aforesaid order of Hon'ble High Court, it is clear that at admission stage, Hon'ble Court has dismissed the writ petition filed by the applicant as withdrawn though liberty as quoted in the order has been granted and further desired that respondents shall dispose of the representation of the applicant in light of circular dated 04.11.2008. However, at the same time, Hon'ble High Court has not interfered with the order dated 25.02.2014 passed by this Tribunal in OA No. 322/2013 and the

same has attained finality wherein one of the relief sought by the applicant is grant of compassionate allowance. Despite that, applicant has again approached this Tribunal seeking relief of grant of compassionate allowance in camouflaged manner which is evident from the pleadings made and relief sought by the applicant. In our considered view, non-inclination of Hon'ble High Court to grant any specific order while challenging the order dated 25.02.2014 by the applicant and dismissal of the writ petition as withdrawn, does not give applicant any fresh cause of action to challenge the denial of respondents to grant compassionate allowance by impugned orders dated 10.02.2016 (Annex. A/2) and 31.01.2018 (Annex. A/1) and reagitate the issue again before this Tribunal. In our view, issues raised by the applicant in the present OA had already been settled up to the level of the High Court. Accordingly, present OA is hit by principles of res-judicata and the same is not maintainable.

9. In view of discussions hereinabove made, OA is dismissed as being not maintainable. There shall be no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-