

(2019) 02 CAT CK 0064

In the Central Administrative Tribunal

Case No : Review Application No. 46 Of 2019 In Original Application No. 2379 Of 2016

Gurdhyan Singh

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 11-02-2019

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 41
Railway Services (Pension) Rules, 1993 — Rule 65

Citation : (2019) 02 CAT CK 0064

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

1. The applicant was awarded the punishment of removal from service vide orders dated 13.10.2006, on account of serious charges. The representation against this punishment was made to the Appellate Authority. The Appellate Authority upheld the punishment. However, keeping in view that the applicant has a family to support, the Appellate Authority granted pensionary benefits. Thereafter the representation was made to the Revising Authority wherein the orders of the Appellate Authority were kept unchanged.

Despite these orders by the Appellate Authority, the pensionary benefits were not paid. Feeling aggrieved, the applicant approached the Tribunal in OA No.2684/2012. The OA was dismissed vide judgment dated 28.10.2014.

2. Thereafter the applicant preferred instant OA No.2379/2016 seeking pensionary benefits viz. pension, gratuity, leave encashment, Group Insurance and Provident Fund. During the hearing of this OA, the respondents brought out that vide their order dated 25.09.2018, it has already been decided to allow compassionate allowance at the rate of Rs.3500/- per month as per 6 th Central Pay Commission. It was further advised that revision for the same as per 7th Central Pay Commission will also be issued in due course. Thereafter, the

judgment in this OA was delivered on 08.10.2008. The instant RA has been filed seeking review of this judgment.

3. The present RA has been preferred by the applicant pleading that while deciding OA No.2379/2016, the Tribunal has quoted Rule 41 of CCS (Pension) Rules and ordered as under:

"5.0 The matter has been heard at length. The instant case is of the removed employee from service. He is entitled only a consideration for compassionate allowance pension as provided under relevant rules quoted in para 4.0 above which has since been accorded and PPO issued.

In respect of Provident Fund, Respondents will pass a speaking and reasoned order for all contribution made by applicant while he was in service at all places including Firozpur and Delhi Division within a period of eight weeks. If there is any amount payable, it be paid alongwith GPF rate of interest from date of removal till payment. A copy of this order be supplied to the applicant also."

4. The applicant has pleaded in RA that being a Railway employee, he is governed by Rule 65 of the Railway Services (Pension) Rules, 1993 which have a provision of compassionate allowance as well as gratuity. The applicant pleads that since the Tribunal had relied upon Rule 41 of CCS (Pension) Rules and directed that applicant is entitled only consideration for compassionate allowance pension there is an error in the face of the fact and he needs to be considered under Rule 65 of Railway Services (Pension) Rules, 1993 and granted gratuity also. The applicant has gone on to plead that once the competent authority has granted him compassionate allowance the gratuity is also required to be necessarily paid.

5. The matter has been reviewed. Rule 41 of CCS (Pension) Rules and Rule 65 of Railway Services (Pension) Rules, 1993 are reproduced below:

"41. Compassionate Allowance

(1) A Government 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 compensate pension.

(2) A Compassionate Allowance sanctioned under the proviso to sub-rule(1) shall not be less than the amount of (Rupees three thousand five hundred) per mensem."

"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)."

6. A close reading of the two rules reproduced above, indicate that both are same and both permit compassionate allowance not exceeding 2/3rd of pension or gratuity or both. There is not even an iota of difference in the two rules in this regard.

Even while the OA was under consideration and the judgment was yet to be delivered, the competent authority had already considered the case of the applicant in respect of the "compassionate allowance or gratuity or both", and decided to allow the compassionate allowance vide their PPO dated 25.09.2018. It is thus very clear that this decision was not taken after the judgment by the Tribunal but before it was pronounced. This was, therefore, a decision taken by the competent authority as per their own assessment in accordance with Rule 65 of the Railway Services (Pension) Rules, 1993, as already reproduced in para-5 above.

7. The applicant's plea that once compassionate allowance has been sanctioned, gratuity is also required to be sanctioned necessarily, is not acceptable. The competent authority has already taken the relevant factors into account and decided to allow compassionate allowance.

8. Accordingly, nothing survives in the OA. However, since there was an apparent error in quoting rule 41 in the judgment as it was Rule 65 that should have been quoted.

Accordingly, para-4 & 5 of judgment dated 28.10.2014 in OA-2379/2016 are modified as under:

"4.0 The respondents pleaded that the instant case of employee involves removal from service and since he has been removed from service, he is not entitled for any pensionary benefits in accordance with the rules. However the competent authority in the respondents' department, has considered and granted him compassionate allowance. Delay has occurred as applicant was always seeking normal pension, which is not permissible in this case. Now, relevant papers have been signed by applicant and compassionate allowance, at Rs.3500/- per month as per 6th CPC, has been sanctioned and orders also issued by the respondents vide PPO dated 25.09.20018. The relevant rule 65 of Railway Services (Pension) Rules 1993 reads as under:-

"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 compensate pension.

(2) A compassionate allowance sanctioned under the proviso to sub-rule(1) shall not be less than the amount of (Rupees three thousand five hundred) per mensem."

Respondents had mentioned that this admissible allowance is being revised as per 7th CPC and is also under process and the same shall be sanctioned within a period one month.

The respondents thus pleaded that in compliance to the order of Appellate Authority, the PPO has since been issued on 25.09.2018 and nothing further is feasible in the instant OA"

5.0 The matter has been heard at length. The instant case is of the removed employee from service. He is entitled only a consideration for compassionate allowance or gratuity or both as provided under relevant rules quoted in para 4.0 above. This consideration has since been accorded already and it was decided to grant compassionate allowance and PPO dated 25.09.2018 has been issued to this effect.

In respect of Provident Fund, Respondents will pass a speaking and reasoned order for all contribution made by applicant while he was in service at all places including Firozpur and Delhi Division within a period of eight weeks. If there is any amount payable, it be paid alongwith GPF rate of interest from date of removal till payment. A copy of this order be supplied to the applicant also.

Accordingly, nothing survives in the instant OA and the same is disposed off with these directions. No order as to costs."

9. In view of the foregoing, nothing further survives in OA-2379/2016. The instant RA is disposed off with these corrections as per para 8 above to orders dated 08.10.2018 in OA-2379/2016. No orders as to costs.