
(2016) 09 MAD CK 0082

In the Madras High Court

Case No : Writ Petition Nos. 36782 of 2015, 40447 of 2015, 40448 of 2015 and 20500 of 2016 and M.P.No. 1 of 2015

S. Tamilarasi

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 65

Citation : (2016) LIC 4572

Hon'ble Judges : Mr. A. Selvam and Mr. P. Kalaiyarasan, JJ.

Bench : Division Bench

Advocate : Mr. R. Pandian, Advocate, for the Petitioner in W.P. Nos. 40447 of 2015 40448 of 2015 and 20500 of 2016; Mrs. V. Bhavani Subbaroyan, Standing Counsel, for the Respondent Nos. 1 and 2 in W.P. Nos. 36782, 40447 and 40448 of 2015; Mr. P.T. Ramkumar, Standing

Final Decision : Dismissed

Judgement

P. Kalaiyarasan, J. - These writ petitions have been filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling for the records of the common order, dated 08.07.2015 made in O.A. Nos.1229 to 1232 of 2014 of the Central Administrative Tribunal (Madras Bench) and quash the same and consequently direct the respondents 1 and 2 to sanction compassionate allowance/family pension to the petitioners with effect from the date of dismissal of the employee concerned.

2. All the four writ petitions are directed against the common order passed by the Central Administrative Tribunal. Since the nature of the claim as well as the issues involved in all the writ petitions are same, common order is passed in these writ petitions.

3. The brief facts of the case are as follows :

(i) In W.P. No. 367682 of 2015, Tamilarasi, wife of the ex-employee K.

Swaminathan has filed the writ petition and in W.P. No.20500 of 2016, Leona Christala, wife of the ex-employee Immanuvel Aboorvaraj has filed the writ petition. In other two writ petitions ex-employees of the Southern Railways are the petitioners.

(ii) They were appointed and had been working under the second respondent. During their employment, they faced disciplinary proceedings for their long unauthorised absence and ultimately they were imposed with punishment of dismissal from service.

(iii) They were not aware of the rules about compassionate allowance. On knowing the same, they made representation with a delay; but the authorities have not taken any action. Therefore, they moved the Central Administrative Tribunal and got direction to consider their representations. Pursuant to the orders of the Central Administrative Tribunal, the authorities considered the representation and rejected the claim of the petitioners herein. Therefore, the husband of the petitioner in W.P. No.20500 of 2016 and the petitioners in other writ petitions again moved the Central Administrative Tribunal against the orders of rejection of the authority dated 19.07.2014 and 30.07.2014.

4. The Central Administrative Tribunal, after considering the divergent contentions of both sides, dismissed the original applications. Aggrieved by the order, the present writ petitions have been preferred.

5. The husband of the petitioner in W.P. No.36782 of 2015, Swaminathan had absented from duty since 07.12.1991 onwards.

The penalty of removal from service was imposed with effect from 13.02.1995. The representation, dated 02.03.2013 requesting for grant of compassionate allowance was made after a lapse of 9 years. On a perusal of the service records, he was unauthorisedly absented from duty for about 1735 days at different spells.

6. The petitioner in W.P. No.40447 of 2015, Raimond Pereira absented from duty for about 100 days from 08.01.1991 (AN) to 21.10.1991 in different spells. The penalty of removal from service was imposed with effect from 21.02.1994. The representation, dated 09.06.2013 requesting for grant of compassionate allowance was made after a lapse of 19 years. On a perusal of the service records, he was unauthorisedly absented from duty for about 445 days at different spells.

7. The petitioner in W.P. No.40448 of 2015, L. Venkatesalu absented from duty from 02.02.1999 to 14.09.1999. The penalty of removal from service was imposed with effect from 17.02.2000. The representation, dated 21.04.2011 requesting for grant of compassionate allowance was made after a lapse of 11 years. On a perusal of the service records, he was unauthorisedly absented from duty for about 1684 days at different spells.

8. The husband of the petitioner in W.P. No.20500 of 2016, S. Immanuel Aboorvaraj absented from duty for about 150 days from 29.01.1997 to

27.10.1997. The penalty of removal from service was imposed and confirmed by the appellate authority with effect from 07.09.1998. The representation, dated 28.03.2013 requesting for grant of compassionate allowance was made after a lapse of 13 years. On a perusal of the service records, he was unauthorisedly absented from duty for about 1292 days at different spells.

9. The learned counsel appearing for the petitioners contends that as per Rule 65 of Railway Services (Pension) Rules, 1993, the Railway employees who are dismissed from service can be given compassionate allowance in deserving cases. It is further contended that the Tribunal without considering the pathetic conditions of the family of the ex-employees, the Tribunal dismissed the original applications. The argument of the learned counsel for the petitioners that right to get compassionate allowance by dismissed employee is subsisting one and therefore, delay does not come in. He cited the Judgment, *M.R. Gupta v. Union of India*, reported in (1995) 5 SCC 628, wherein it has been held that the right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with the rules, is akin to the right of redemption, which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. The above ruling is not applicable to the facts of this case, where the dismissed employees seek compassionate allowance after several years.

10. The learned counsel appearing for the petitioners cited *Mahinder Dutt Sharma v. Union of India*, reported in (2014) 11 SCC 684 and contended that the unauthorised absence is not as grave as a case of moral turpitude or dishonesty etc. In this ruling, it has been held as follows :

"14. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972 will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

14.1. (i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

14.2. (ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or

may not be aimed at personal gains. It may be aimed at benefiting a third party to the prejudice of the employer.

14.3. (iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include acts of double-dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

14.4. (iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third-party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

14.5. (v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration."

11. Rule 65 of the Railway Services (Pension) Rules, 1993 reads thus :

"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 hundred seventy five rupees per mensem."

12. In this case on hand, all the employees concerned in this writ petition had unauthorisedly absented for longer period and apart from the charges, the service records also show that they had unauthorisedly absented for years together though on different spells. That apart there is inordinate delay varying from 9 to 19 years in giving representation for compassionate allowance. Ignorance of rules will not be a ground for the delay.

13. All of them were working in the Southern Railways, which is essential service

in the Nation. Unauthorised long absence will no doubt disrupt the discipline and administration of the system. Such a long unauthorised absence cannot be viewed lightly and it is also equivalent to dishonesty. Therefore, the contention put forth by the learned counsel appearing for the petitioners about the availability of extenuating circumstances is not acceptable.

14. The Central Administrative Tribunal has rightly dismissed the original applications and it does not require any interference and accordingly, the writ petitions are liable to be dismissed.

15. In fine all the writ petitions are dismissed. No costs.

16. Consequently, connected miscellaneous petition is also dismissed.