

(2023) 11 CAT CK 0022

In the Central Administrative Tribunal

Case No : Original Application No. 592 Of 2021

Sandhya Soni

APPELLANT

Vs

Union Of India through the General Manager, North Central
Railway, Allahabad & Ors

RESPONDENT

Date of Decision : 17-11-2023

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 41
Railway Service (Pension) Rules, 1993 — Rule 61, 65, 65(1)

Citation : (2023) 11 CAT CK 0022

Hon'ble Judges : Om Prakash VII, Member (J)

Bench : Single Bench

Advocate : Pradeep Kumar Mishra, Rajesh Kumar, Rajni Kant Rai

Final Decision : Disposed Of

Judgement

Om Prakash VII, Member (J)

1. Present Original Application has been filed by the applicant against the impugned order dated 14/20.08.2020 whereby the mercy petition of the applicant's husband, who was removed from service by order dated 16.10.2008, has been rejected. Be means of this Original Application, the applicant has sought the following reliefs:-

“(I) Hon’ble Tribunal may please to issue an order or direction in appropriate nature, to quash and set-aside the impugned order dated 14/20.8.2020 (Annexure A-1) to this Original Application.

(II) Hon’ble Tribunal may please to issue an order or direction in the appropriate nature to the competent authority to grant the compassionate allowance and compassionate family pension as per provision of rule 65(1) of Railway Services (pension) Rules, 1993 from the date of removal.

(III) Hon’ble Tribunal may please to issue an order or direction in the appropriate nature to the respondents to pay the arrear of the compassionate allowance and

compassionate family pension from the date of removal with 18% interest.

(IV) Hon'ble Tribunal may please to issue an order or direction in the appropriate nature to the competent authority to decide the applicant representation dated 09.01.2021 (Annexure A-12) in the light of rule 65(1) of Railway Services (pension) Rules, 1993 and Railway Board's circular RBE No.164/2008 dated 4.11.2008 within a time frame.

(V) This Hon'ble Tribunal may please to issue any other or further suitable order or direction in facts and circumstances of the case which this Hon'ble Tribunal may deem fit and proper.

(VI) This Hon'ble Tribunal may please to award the cost of the application in favour of the applicant."

2. The facts of this case are that the applicant's husband, Late Suresh Kumar, was posted in North Central Railway on the post of Cabin Master under the control of Senior Divisional Operating Manager, North Central Railway, Prayagraj. The mother of Late Suresh Kumar was suffering from Right sided hemiplegia, hypertension and C.R.F. and Late Suresh Kumar himself was suffering from hepatitis and remained absent from duty on medical grounds. In this regard, Late Suresh Kumar kept his office informed well in time with support of medical certificates, which were issued by the Railway doctor as well as registered medical practitioner. On 20.03.2006, the Divisional Operating Manager, North Central Railway, Allahabad has issued a major penalty charge sheet to the applicant's husband framing the charges of leaving headquarter without permission and irregular unauthorized absence from duty. Consequently, an inquiry was ordered and an inquiry officer was nominated. The applicant's husband could not participate in the aforesaid D&AR inquiry due to his own and his mother's illness about which he had informed the official concerned supported by medical certificates issued by the authorized Railway doctors as well as private medical practitioner. The inquiry was completed ex-parte on 26.03.2008 and submitted its finding to disciplinary authority which stated that charges of unauthorized absence stands proved. Subsequently, the disciplinary authority passed the removal from service order on and from 16.10.2008 without any specific order for sanction of compassionate allowance.

3. Aggrieved with the decision of the disciplinary authority, Late Suresh Kumar filed appeal and revision before the appellate authority and revisionary authority, but the same was rejected and the decision of the disciplinary authority was confirmed. The applicant's husband then preferred a mercy petition before the General Manager under the D&AR Rules, 1968, but the same was rejected by the authorities stating that there are no rules of mercy appeal to the General Manager. Thereafter, the applicant's husband approached the Hon'ble CAT, Allahabad and Hon'ble High Court Allahabad. Hon'ble High Court vide judgement and order dated 22.08.2017 directed the Railway authorities to send the mercy petition of the applicant's husband against the removal order to the President of

India. In compliance of the Hon'ble High Court's order dated 22.08.2017, respondent No.4 wrote a letter dated 15.03.2018 to the applicant's husband asking him to submit a mercy petition to President of India so that the same may be forwarded to the President after which the applicant's husband submitted a mercy petition dated 27.04.2018 addressed to President of India against the order of disciplinary authority, appellate authority and revisionary authority. However, the respondents did not forward the mercy petition to the President. Subsequently, due to ill health of the applicant's husband, applicant approached respondent No.2 through representation dated 18.06.2020 with request of personal hearing for disposal of mercy petition dated 27.04.2020. Meanwhile, the husband of the applicant fell seriously ill and expired on 12.12.2020. The respondents, vide the impugned order dated 14/20.08.2020, rejected the mercy petition of the applicant's husband without sending it to the President. After the death of her husband, the applicant preferred a representation dated 09.01.2021 before respondent No.2 for consideration and grant of compassionate allowance and appointment on compassionate ground for the survival of the family which has not been decided by the respondents.

4. Heard learned counsel appearing for both the parties.

5. Submission of learned counsel for the applicant is that absence of Shri Suresh Kumar from duty was on medical ground and beyond his control in regard to which he had kept the authorities informed furnishing medical certificates issued by the Railway doctor as well as registered medical practitioner. He further states that the inquiry was completed without following the ex parte inquiry procedure laid down by the Ministry of Railway, Railway Board under Bd' letter No.E(D&A) 69 RG/6-20 dated 18.06.1989 and without considering the medical certificates furnished by the applicant's husband from registered medical practitioner. He states that Late Suresh Kumar's absence from duty was neither wilful nor deliberate and only on account of his mother's serious illness and his sickness and compelling circumstances. The inquiry officer has also not produced any evidence of the medical certificates being forged and fabricated. Thus, the penalty order of removal from service was passed by the respondents without application of mind and also without separate order for grant of compassionate allowance for survival of family and also without considering the new facts elaborated in mercy petition, incompetent authority of the Railway rejected the mercy petition of the applicant's husband vide impugned order dated 14/20.08.2020 without even sending it to the President of India. He further states that the applicant's husband died due to financial hardship as he could not get proper medical treatment leaving behind his widowed wife and three unemployed sons who were totally dependent on him and have been left in a poor financial condition. He states that while passing the penalty order, the Disciplinary Authority as well as Appellate Authority and Revisionary Authority did not consider the gravity of charges and quantum of punishment which was the matter of prima facie extraneous consideration for which they utterly failed.

6. Learned counsel for the applicant further submits that as per Rule 65(1) of Railway Services (pension) Rules, 1993, in the case of removal from service, the Railway Servant shall forfeit his pension and gratuity and provided that if the case is deserving of special consideration, the competent authority i.e. Disciplinary Authority may sanction a Compassionate Allowance not exceeding 2/3rd of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. It is further stated that R.B.E. No. 164/2008 dated 4.11.2008 issued by the Railway Board stipulated that out of the past cases in which the disciplinary authority had not passed any specific order 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 representation of dismissed/ removed employees or the family members of the deceased employee. Learned counsel for the applicant states that in similar cases the Jabalpur Bench of this Tribunal in O.A./45/2013, the Hyderabad Bench in case of Sardar Begum Vs Union of India & others and the Ernakulam Bench in O.A./91/2008 had allowed the Original Application. He further referred to the case of Mahinder Dutt Sharma Vs. Union of India

& others in Civil Appeal No.2111 of 2009 where the Hon'ble Apex Court vide judgement dated 11.04.2014 directed the respondents to reconsider the claim of the appellant for grant of compassionate allowance under Rule 41 of the Pension Rules, 1972. The operative para 17 of the judgement dated 11.04.2014 is as under:

17. None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view, that the consideration of the appellants claim, was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17.5.1996, was legitimate. The basis, as well as, the manner of consideration, for a claim for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25.4.2005 (passed by the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28.2.2006, and the order passed by the High Court dated 13.11.2006, are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove."

7. Thus, learned counsel for the applicant prayed that this Hon'ble Tribunal, keeping in view the miserable financial conditions of the dependents of the deceased employee, direct the respondents to grant the compassionate

allowance and compassionate family pension to the applicant.

8. Submission of learned counsel for the respondents is that as per the order of disciplinary authority, the employee i.e. applicant's husband was unauthorisedly absent for last four years i.e. from 19.02.2004 till 16.10.2008 upon which he was removed from service and there is no question for payment of pension to him and consequently to the applicant. He further states that the late husband of the applicant was given repeated opportunities to take part in the inquiry but he failed to do so, therefore, there was no violation of the principles of natural justice in his case. He states that the applicant's husband was a safety category employee and smooth flow of train operation was hit by such conduct and therefore, he was charge sheeted and on this misconduct he was appropriately punished after following all the procedures as laid down under Railway Servant (D&A) Rules, 1968. He also mentions that in the major penalty charge sheet No.T/Goods/TU/D&AR/2005 dated 08.04.2005, there is recital under Article II (3) that no intimation was given nor any documentary evidence like medical certificate etc. was on record to show that the absence from duty of the applicant's late husband was not unauthorized. It is stated that since after scrutinizing the case of mercy petition by the competent authority, it was found that no new facts or evidence were apparent, despite giving the opportunity of personal hearing, as such, the conclusion was that the case did not merit to be sent by the Railway Board for onward submission to the Hon'ble President of India. He avers that Rule 65 of Railway Service (Pension) rules, 1993 do not come in the picture as the late husband of the applicant was removed from service for his gross misconduct as mentioned in the charge sheet (Annexure A-2 of the O.A.) and in the absence of anything regarding compassionate pension by the disciplinary authority, the removal became final without any question of pension etc. Thus, he states that the respondents have not committed any illegality or infirmity in the present case and this original application is liable to be dismissed as such.

9. I have considered the rival contentions of learned counsel appearing for the parties and perused the entire document on record.

10. The applicant's stand is that the sole reason for her husband's absence from duty was his own sickness and the bad health of his mother about which he had kept the authorities informed supported by medical certificates from the Railway doctor as well as registered medical practitioner. It is submitted that the applicant's husband had also informed the official concerned about his inability to participate in the inquiry due to serious sickness. He claims that the respondents passed the order of removal from service on and from 16.10.2008 without considering the medical certificates of Railway doctors as well as Private doctors and death certificate of his mother and that the entire period of his absence was covered by the medical certificates which were un-questioned by the inquiry officer. Respondents on the other hand contend that the unauthorized absence on part of the applicant's husband amounts to grave misconduct as he was a safety

category employee and as such he is not entitled for any consideration for compassionate allowance.

11. So far as the respondents' contention that grave misconduct on part of the late employee Shri Suresh Kumar does not entitle him to any consideration for compassionate allowance is concerned, Rule 65 of the Railway Services (Pension) Rules, 1993 has no provision which would mean that compassionate allowance cannot be considered in favour of an employee against whom charges of serious misconduct have been proved. The rule provides for sanction of compassionate allowance in cases where a railway servant has been dismissed or removed from service provided that the case deserves special consideration by the authorities and it says nothing about the non-eligibility of the employees who were removed or dismissed from service on serious charges.

12. In view of the above facts and discussion, the O.A. is partly allowed with the direction to the competent authority amongst the respondents to consider the case of the applicant for sanction of compassionate allowance and compassionate family pension on merit taking into consideration the financial condition of her family under rule 65(1) of the Railway Service (Pension) Rule, 1993 within three months from the date of receipt of a certified copy of this order. So far as relief No.1 claimed in the matter to quash the impugned order dated 14/20.08.2020 is concerned, no interference is required in the impugned order passed by the competent authority, thus, relief No.1 cannot be allowed.

13. With the above directions, this O.A. along with all the associated M.A.s is disposed of. No costs.