

(2012) 08 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) 2766 of 1999 and C.M. No. 1471 of 2012

Subhakant Agnihotri (Since Decd. Through Legal
Representatives)

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:

Citation : (2012) 08 DEL CK 0137

Hon'ble Judges : Pradeep Nandrajog, J; Manmohan Singh, J

Bench : Division Bench

Advocate : R.K. Saini, with Mr. Arvind Kumar, Along with Mrs. Naranjini Devi and Savita Agnihotri, for the Appellant; Poonam Singh, for Ms. Geetanjali Mohan, for the Respondent

Judgement

Pradeep Nandrajog, J.—Prayer made vide C.M.No.1471/2012 is that the respondents be directed to pay Compassionate Allowance as also gratuity to the petitioner with effect from September 22, 1997 when petitioner was dismissed from service and since the petitioner died on October 16, 2008, such amount with respect to the Compassionate Allowance which is payable to his wife, two unmarried daughters and the unmarried son be released in the name of the wife. With respect to the claim in the writ petition in which the petitioner challenges his services being terminated, Sh.Rakesh Saini, Advocate, on instructions from the wife and the elder daughter and the son of the deceased petitioner who are present in Court, states that challenge to the services being terminated, i.e. penalty of dismissal levied upon the deceased petitioner is given up and limited relief prayed for is that a Compassionate Allowance be sanctioned in the name of the deceased from the date he was dismissed from service and said amount be paid to the wife of the deceased; the amount being till when the deceased died and thereafter such amount as would be payable to the family with reference to the Compassionate Allowance.

2. The respondents do not deny in their pleadings that Rule 65 of the Railway

Services (Pension) Rules 1993 entitles a Railway servant who is dismissed or removed from service to be paid a Compassionate Allowance as also gratuity if the case is a deserving case meriting special considerations and that the Compassionate Allowance could be upto two-third of the Compensation Pension.

3. When he was dismissed from service the petitioner had rendered about eighteen years service. When he was dismissed, apart from his widowed mother, the petitioner had a wife, two daughters and a son to support. He had no immovable assets, and a fact which has surprised us needs to be noted. The wife and the elder daughter as also the only son of the deceased who are present in Court inform us, a fact not denied by learned counsel for the respondent, that the family of the deceased continues to occupy the dilapidated one room tenement at the Railway Station Okhla which was allotted to the petitioner when he was in service; the tenement is without any water or electricity connection; the tenement is in a dilapidated condition and has not even been repaired or white washed for the last twenty years. But, therefrom one fact stands established. Late petitioner and his family have just about no means to even sustain a roof over their head. As per the wife of the petitioner she informs us that the deceased had just no assets.

4. As per office instructions issued by the Railways, but on July 31, 2008, it is the duty of the Competent Authority to take a decision when passing an order dismissing or removing from service a Railway employee whether Compassionate Allowance and gratuity should be paid or denied.

5. Thus, there is hardly any merit in the submission made by the respondents as per their pleadings that during his lifetime the deceased petitioner never made a claim for Compassionate Allowance. Once this claim was made in the pleadings in the instant petition, the respondents ought to have taken the necessary decision.

6. As per the pleadings the stand taken by the respondents is that the deceased petitioner is not entitled to any Compensation Allowance because he was a very irresponsible person and had indulged in insubordination and had made false allegations against superior officers, and being found guilty at an inquiry his services were terminated.

7. We highlight that it is not the stand taken by the respondents that the case of the petitioner is not deserving of a special consideration entitling him to be paid Compensation Allowance.

8. Now, we cannot think of a person being dismissed from service except on a grave misconduct. The very fact that the Pension Regulation permits payment of Compensation Allowance to an employee dismissed from service is recognition of the fact that the nature of the misdemeanour which led to penalty of dismissal from service being inflicted is irrelevant to decide on the entitlement to be paid a Compensation Allowance. Suffice would it be to state that the requirement of the Rule is to consider whether the case is deserving of special consideration, and this would mean a look into the financial condition of the Railway employee and

that of his dependents. Whether he owns a property and has some means to sustain himself and the family would be the relevant facts to be noted and considered.

9. The petitioner does not own any property. He had no means to sustain himself and his family. On his death the family has no means to sustain itself. The two daughters and the son are students. Their penury can be gathered from the fact that they continue to live in a dilapidated quarter of the Railway Authorities to which neither any water nor electricity is being supplied. Who would live in such a hell hole? Except he/she whose compulsion it is to live a virtual animal existence.

10. We would have ordinarily required the respondents to consider paying a Compassionate Allowance to the deceased petitioner and such amount as would be payable to his family upon his death, if the respondents did not have an occasion to consider the said request. But, as noted hereinabove, said request was made as per pleadings in C.M.No.1471/2012 to which the respondents have filed a response, and since as per the response the reason to deny Compassionate Allowance is found to be not tenable in law, we dispose of the writ petition and the application, directing the Competent Authority of the Northern Railway to sanction a Compassionate Allowance in the name of the deceased petitioner as also gratuity payable with reference to the number of years deceased petitioner served the Indian Railways and after computing the amount till petitioner died on October 16, 2008, to pay the said amount to the wife of the deceased petitioner and with effect from October 17, 2008 pay to her such amount as would be payable with reference to the Compassionate Allowance sanctioned in the name of her husband. Since as per the Rule, the Compassionate Allowance has to be a percentage of the Compensation Pension but not exceeding two-thirds thereof, we leave it to the decision of the Competent Authority to determine what percentage of the Compensation Pension would be the appropriate Compensation Allowance. Said decision would be taken within twelve weeks of receipt of the present order and the computed amount would be paid to the wife of the petitioner as also future Compensation Allowance payable to the family of the late petitioner as per rules. No costs.