
(2019) 06 KL CK 0018

In the High Court Of Kerala

Case No : Original Petition (Cat) No. 115 Of 2019

Union Of India

APPELLANT

Vs

J.Sebastian

RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:

Railway Services (Conduct) Rules, 1966 — Rule 3(I)(i), 3(I)(iii)
Railway Services (Pension) Rules, 1993 — Rule 65

Citation : (2019) 06 KL CK 0018

Hon'ble Judges : V.Chitambaresh, J;Ashok Menon, J

Bench : Division Bench

Advocate : James Kurian, T.C.Govindaswamy, Kala T.Gopi

Final Decision : Disposed Off

Judgement

Ashok Menon, J

1. Aggrieved by the order of the Central Administrative Tribunal, Ernakulam Bench ('Tribunal' for short), in O.A.No.180/0048/2017 dated 15.11.2018,

the petitioners are before us, questioning the propriety of the impugned order granting relief to the respondent herein in the form of compassionate

allowance equivalent to half the pension which would have been admissible to him had he retired on the date of dismissal from service.

2. The respondent is a 74 year old man, who served the Railways for 16 years between 1968 to 1984 as Fitter Khalasi. He along with two others,

namely, P.K.Narayanan Nair and I.Solomon, were dismissed from service for having been found near the LSK Siding by the side of Time office,

Carriage Repair Shop, Erode on 12.12.1982, with intention to commit theft of brass materials from the wagon loaded and stabled near LSK Sliding,

while they were on off-duty, and thereby failed to maintain absolute integrity and

behaved quite unbecoming of a Railway servant, violating Rule 3(I)

(i) and (iii) of the Railway Services (Conduct) Rules, 1966. In the case of two other co-accused referred to above, the penalty of Narayanan Nair was

reduced to one of compulsory retirement and that of Solomon was modified to one of compulsory retirement with reduction of pensionary benefits to

one-third of what he would have got had he retired from service on 17.11.1984. Solomon challenged the aforesaid decision before the CAT, Madras,

and on direction of the Tribunal to reconsider the matter and it was decided to treat the period from 17.11.1984 to 31.12.1985 as if he would have

been in service and retired on 31.12.1985 on superannuation and he was found entitled for the pay and allowances for the period from 17.11.1984 to

31.12.1985 and pensionary benefits with effect from 01.01.1986 without any further proceedings.

3. The respondent, after his dismissal on 17.11.1984 was wandering, and his whereabouts were not known to anyone. After returning home in 2005,

he made a representation requesting for compassionate allowance. But the same was never taken up for consideration for more than a decade. He

approached the Tribunal at Ernakulam by filing O.A.No.638/2016 and the Tribunal directed the petitioners herein to consider his application for

compassionate allowance. Vide Annexure A5 dated 24.11.2016, his representation was dismissed.

4. Aggrieved by the dismissal of his representation the respondent approached the Tribunal once again and the Tribunal vide the impugned order

observed that a septuagenarian with no source of income, in his sunset years, deserves sanction of compassionate allowance under Rule 65 of the

Railway Services (Pension) Rules, 1993. Annexure A5 order was set aside and he was directed to be paid compassionate allowance as mentioned

earlier.

5. The main reason for discarding the request made by the respondent herein was that records were not available, being a case of more than 30 years

old, and also for the reason that compassionate allowance should not be considered in case of a dishonest employee, who was removed from service

for attempted theft.

6. We heard the learned CGC appearing for the petitioners and Smt.Kala T.Gopi appearing for the respondent.

7. It is true that the disciplinary action against the respondent finding him guilty cannot, at this length of time, be undone. But the fact remains that the two others, who were co-accused in the same act, were more or less exonerated. The respondent who was similarly placed, was not given the benefit of the mitigating circumstances, because he was wandering till 2005. Even the representation made by him in 2005 was never considered for about more than a decade until he approached the Tribunal and obtained a direction to the authorities to dispose of his application within a period of two months. Nothing has been stated in Annexure A5 regarding the extenuating circumstances for the benevolence shown by the departmental authorities against the similarly placed co-accused, which on the face of it smacks of discrimination.

8. However, the argument of the learned Counsel appearing for the petitioners that there is no scintilla of material to substantiate the fact that the respondent was without any source of income or earning during the prolonged period of his wandering. There is no machinery for the petitioners to verify the whereabouts of the respondent. This argument seems convincing to us, and has to be accepted to some extent.

9. While upholding the impugned finding of the Tribunal regarding the entitlement of the respondent to claim compassionate allowance, we intent to modify the order to the extent that instead of one-half of the pensionary benefits granted to the respondent by the Tribunal, he shall be granted compassionate allowance only to the extent of 40% of the pension, which would have been admissible to him had he retired on the date of dismissal, with effect from 05.07.2016 together with interest as directed by the Tribunal, within a period of three months from the date of receipt of this judgment.

The Original Petition is disposed of. No order as to costs.