
(2008) 06 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28269 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Sardar Begum

RESPONDENT

Date of Decision : 26-06-2008

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 65

Citation : (2008) 6 ALD 385 : (2009) 120 FLR 36 : (2009) 1 SLR 224

Hon'ble Judges : Ghulam Mohammed, J;C.V. Ramulu, J

Bench : Division Bench

Advocate : T.S. Venkataramana, for the Appellant; G. Sanyasi Rao, for the Respondent

Final Decision : Dismissed

Judgement

Ghulam Mohammed, J.—Questioning the order, dated 17.10.2007, passed in OA No. 532 of 2006, on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short "Tribunal"), this writ petition has been filed.

2. Facts in brief are: One Syed Ghouse (hereinafter called as "the deceased employee"), worked as Goods Driver in the South Central Railways for a period of 32 years. While the deceased employee was discharging his services as Goods Driver, on 27.8.1978, there was derailment of 16 goods wagons on arrival to KRA Railway Station. In that regard, a disciplinary enquiry was initiated against him. Similarly, a criminal case was also registered by the Railway Police and a charge sheet was filed before XII-Metropolitan Magistrate for Railways, Secunderabad, and the same was numbered as C.C. No. 155 of 1981. In the disciplinary enquiry he was found guilty of the charge framed against him and accordingly he was dismissed from service on 22.2.1980, whereas in the criminal case he was found not guilty of the charge levelled against him, wherein it was held that there was no evidence to prove the alleged negligent driving on his part. Thereupon, he made a representation to the 2nd petitioner enclosing therewith a copy of the judgment in C.C. No. 155 of 1981, seeking his reinstatement into service. But

unfortunately, during the pendency of the said representation, the deceased employee died on 1.6.1987 due to heart attack. Thereafter, the respondent herein, who is none other than the widow of the deceased employee, made a mercy appeal, dated 9.4.1988, to the 1st petitioner to review the dismissal orders and that she also renewed her request on 1.6.1988. It is stated that though she moved from pillar to post, there was no response from the petitioners-authorities. However, she made another representation, dated 1.10.2004, to the 1st petitioner seeking sanction of compassionate allowance or grant in terms of Rule 65 of the Railway Servants (Pension) Rules, 1993 and Circular of the Railway Board in CPO/SC Lr. No. P(R)500/ XVI, dated 1.12.1995 read with SL Circular No. 145/1995. As there was no response, she approached the Tribunal by filing OA No. 621 of 2005, wherein the Tribunal vide order, dated 11.10.2005, directed the petitioners herein to consider sanction of compassionate allowance to the widow of the deceased employee from the date of removal from service in terms of the abovementioned Rule and Circular within a period of one month from the date of receipt of that order. Pursuant thereto, the 2nd petitioner passed an order dated 18.4.2006 stating that the above said Circular has no prospective effect and as such, it does not cover the case of the deceased employee who was removed from service on 22.2.1980 and died on 1.6.1987 and that as the deceased employee had not been sanctioned the compassionate allowance during his lifetime, the respondent herein cannot be granted compassionate allowance. Assailing the said order, the respondent herein filed O.A. No. 532 of 2006, seeking a direction to the petitioners herein to consider for sanction of compassionate allowance to her from the date of removal of the deceased employee from service. The Tribunal having elaborately dealt with the matter, by its order, dated 17.10.2007, while setting aside the order, dated 18.4.2006 passed by the 2nd petitioner, directed the petitioners to reconsider grant of compassionate allowance in accordance with Rule 65 of Pension Rules in the light of the observations made therein and fix the quantum of compassionate family pension and pay the same with arrears from the date of removal of the deceased employee till that date and continue to pay the family pension in accordance with the above Rule, within a period of three months from the date of receipt of a copy of that order. Challenging the said order, the petitioners filed the present writ petition.

3. It is contended by the learned Standing Counsel for the petitioners that the case of the respondent is not a deserving case for granting compassionate allowance as the deceased employee did not make any application for such allowance immediately after his removal from service, as provided for under Rule 65 of the Railway Services (Pension) Rules, 1993. It is further contended that the Circular of the Railway Board, dated 1.12.1995, has prospective effect and as such, it has no application to the present case.

4. On the other hand, the learned Counsel for the respondent, while supporting the impugned order, vehemently contended that there is no error apparent in granting the compassionate allowance to the respondent.

5. As can be seen from the order of the Tribunal and other material on record, it is clear that since there was clear evidence to the effect that the deceased employee applied brakes and tried to stop the train and also informed the Guard of the train, the deceased employee was exonerated from the criminal case. The fact that there is a down gradient and several accidents took place at the same place further proves the innocence of the deceased employee. It is a well settled proposition of law that when departmental and criminal proceedings are initiated simultaneously, where charges are exactly identical and the employee is exonerated/acquitted in the criminal case on merits, then the departmental case may be reviewed, if the employee concerned makes a representation in that regard. As such, the case of the deceased employee deserves review. Simply because the deceased employee had not made any representation for grant of compassionate allowance immediately after his removal from service, it cannot be said that the respondent is not entitled for compassionate allowance. As rightly held by the Tribunal, the deceased employee was waiting for completion of the criminal proceedings and after his acquittal in the criminal case, he made a representation for his reinstatement. But the petitioners did not pass any orders thereon. When the matter stood thus, the deceased employee died of heart attack. Several representations made by the respondent went unheard. In such circumstances, the respondent prayed for compassionate allowance. Relying on the judgment in *Mrs. Chandra Kala Pradhan v. Union of India* 2002 (1) CAL 25, wherein it was held that right to sue under service jurisprudence devolves upon the legal heirs after the death of the Government employee; therefore, the applicant was entitled to make all the claims which her late husband was entitled to claim had he been alive, the Tribunal observed that the respondent herein is entitled for compassionate allowance and the application made by her must be treated as that was made by the deceased employee. As such, it is a deserving case to consider for grant of compassionate allowance.

6. Insofar as the contention of the petitioners that the application of the respondent is barred by time is concerned, the Tribunal placed reliance on the judgment of a Division Bench of the Madras High Court in *M. Jayalakshmi v. Union of India and Ors.* 2002 (3) ATJ 374, wherein similar contention was raised. In that case also, the widow of the Railway servant sought for compassionate allowance under Rule 65 of the Pension Rules. As the department did not grant compassionate allowance, she filed an O.A. before the Central Administrative Tribunal, Madras Bench with hefty delay and the Tribunal rejected condonation of delay application. Thereafter, writ petition was filed by the widow. The Madras High Court set aside the order of the Tribunal and directed the Tribunal to proceed with the matter on merits. The Madras High Court further observed as follows:

We find that this is a lady who was practically on the streets after the death of her husband. In the first place, she is an illiterate person having been married to a Railway servant who was serving as a skilled Grade II Fitter in the Integral Coach Factory, Chennai. It is an admitted fact that her husband has expired on

4.5.1991 and when he died, he was already removed from the service on account of his unexplained absence.

7. It was further observed that obvious difficulties faced by the lady owing to her illiteracy and poverty should have been viewed with a compassionate approach. In the instant case also, the applicant is an illiterate widow.

8. A Division Bench of this Court in Writ Petition No. 24619 of 2002 also considered condonation of delay in filing application for compassionate allowance. In that case, the applicant complained before the Tribunal that despite his representation dated 16.4.2002 to grant compassionate allowance in terms of Serial Circular No. 145/ 1995 dated 1.12.1995, it was not considered by the Railways. The said application was opposed by the Railways contending that the claim of the applicant is quite stale and belated. The Tribunal upheld the contentions of the Railways and dismissed the application on the ground of inordinate delay in approaching the Tribunal and also in making representation to the Railways. Aggrieved by the order of the Tribunal, the applicant therein approached this Court and this Court set aside the orders of the Tribunal and directed the Railways to consider the representation of the applicant therein in accordance with law in terms of Serial Circular No. 145/1995 dated 1.12.1995. This Court observed that the Serial Circular No. 145/1995 reflects the mind of the Administration of South Central Railway and it thought it appropriate to examine carefully the claims of the personnel who were removed or dismissed from service for award of compassionate allowance keeping in mind the welfare of the ex-Railway servants.

9. In the instant case also, the respondent relied on the Serial Circular No. 145/1995 dated 1.12.1995. Further, the claim for compassionate allowance which is payable every month gives rise to a continuous cause of action and therefore, it cannot be said that it is barred by limitation.

10. It is pertinent to mention here that the Tribunal also placed reliance on the order, dated 8.9.2004, in O.A. No. 77 of 2004, which is almost a similar case. In that case also the widow of the deceased Goods Driver made a representation, dated 26.10.1999 to the Chief Personnel Officer, South Central Railway for sanction of at least compassionate allowance, but the request of the widow was negatived. Then the widow again approached the Tribunal by filing O.A. No. 1305 of 2001 for sanction of compassionate allowance and the Tribunal disposed of the said O.A. with liberty to the applicant to make a fresh representation to the General Manager. Accordingly, the widow made a fresh representation on 27.9.2001 requesting for compassionate allowance as per rules in force. The said representation was also rejected on the ground that the widow had not approached the competent authority for sanction of compassionate allowance within a reasonable period after confirmation of the penalty. The said rejection of the representation was challenged by filing O.A. No. 77 of 2004, wherein a Division Bench of the Tribunal vide orders dated 8.9.2004, issued clear directions to respondents to exercise their discretion in favour of the applicant and sanction

compassionate allowance as prayed for by the applicant within a period of one month from the date of receipt of a copy of that order. Since the facts in O.A. No. 77 of 2004 are similar to the case on hand, the Tribunal rightly held the respondent is entitled for compassionate allowance.

11. In the above facts and circumstances of the case, we are of the view that the respondent herein also deserves compassionate allowance. The technical objections raised by the petitioners are not at all tenable. The petitioners are required to treat the application of the respondent as if it was filed by the deceased employee during his lifetime before the disciplinary authority and grant compassionate allowance/ compassionate family pension in accordance with Rule 65 of the Pension Rules from the date of the order of removal passed against the deceased employee.

12. Having regard to the facts and circumstances of the case, the order of the Tribunal is perfectly justified and we see no reasons to interfere with the same.

13. The writ petition fails and the same is accordingly dismissed. No order as to costs.