

**CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH**

**OA/021/236/2020**

HYDERABAD, this the 31<sup>st</sup> day of March, 2023



**Hon'ble Mr. B. Anand, Administrative Member**

K. Muthaiah S/o. Ramaiah, Aged about 65 years,  
Occ: Trackman(Removed) Group C,  
O/o. Senior Section Engineer, P-Way, Tuni,  
South Central Railway, Vijayawada Division,  
R/o. C/o. S. Anush Kumar, H.No.28/5, Gandhi Nagar,  
Ghatkesar(M), Medchal Dist., Telangana State.

.... Applicant.

(By Advocate : Mr. K Siva Reddy)

Vs.

Union of India, rep. by

1. The General Manager,  
South Central Railway,  
Rail Nilayam, Secunderabad.
2. The Divisional Personnel Officer,  
South Central Railway, Vijayawada Division,  
Vijayawada.

... Respondents.

(By Advocate: Mrs. M Swarna, Addl.CGSC)

---

**ORAL ORDER****(As per Hon'ble Mr. B Anand, Administrative Member)**

This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:



“a) To call for the records pertaining to the order passed by the Respondent No.2 in proceedings No.B/P500/SCRLY/P/2019/00695 dt. 27.01.2020 is arbitrary, illegal and violative of Articles 14, 16 and 21 of the Constitution of India and set aside the same;

b) Consequently, direct the respondents to sanction the compassionate allowance to the applicant with all consequential benefits from the date of removal and direct to pay the interest @18% per annum on the arrears till the date of payment and;

c) To pass such orders as this Hon'ble Court deems fit and proper in the circumstances of the case.”

2. I) The brief facts of the case are that the Applicant was initially engaged as Casual Labour in the respondents' organization from 03.12.1980 to 18.10.1981 and again re-engaged w.e.f. 11.09.1983. He got Temporary Status on 11.09.1984 and regularized w.e.f. 22.05.1998. While working as Senior Trackman, due to ill-health, he was admitted in Private Hospital at Hyderabad. Thereafter, he could not attend the duties.

II) It is submitted that a Charge Memo dt. 22.06.2006 was issued to the applicant by the Disciplinary Authority for the unauthorized absence of 281 days from duty i.e. from 26.03.2005 to 31.12.2005. An inquiry was conducted and, the Disciplinary Authority, vide Order dt. 01.04.2007, removed the applicant from service w.e.f. 09.04.2007. While doing so, the Disciplinary Authority has not passed

any order in regard to compassionate allowance. Further, the applicant did not prefer any appeal against the said order and it has become final.

III) The Applicant's counsel has contended that, as per Rule 65(1) of Railway Services (Pension) Rules, 1993, which has been cited in Railway Board's Order, RBE No.164/2008, the Disciplinary Authority in deserving cases can sanction Compassionate Allowance, not exceeding 2/3<sup>rd</sup> of pension or gratuity or both, which would have been admissible to him if he had retired on compensation pension. Further, as per Railway Board Order dt. 04.11.2008, the authorities can entertain representation from the employee and consider sanction of compassionate allowance, in cases where the Disciplinary Authority failed to pass orders for compassionate allowance at the time of removal. Accordingly, the Applicant made several representations to the Respondents for sanction of compassionate allowance. As there was no response, the Applicant made another representation to the Hon'ble Prime Minister of India on 17.12.2019, which was forwarded to the Respondents for necessary action in the matter. Thereafter, the Respondent No.2 passed Order dt. 27.01.2020 stating that the applicant has represented after a lapse of 12 years and it is difficult to trace out the SR and Leave Account and rejected grant of compassionate allowance. The Applicant's counsel has stated that wherever the Disciplinary Authority failed to pass orders on compassionate allowance, such cases have to be considered taking into account the financial condition of the employee and the respondents have failed to do so. Moreover, the Respondent No.2 has rejected the case of the Applicant on the ground of limitation. The Applicant's counsel stated



that, as per Railway Board Letter dt. 09.05.2005(RBE No.79/2005) circulated vide CPO/SC's Serial Circular No.90/2005, compassionate allowance is also a form of pension which is a continuous cause of action and limitation does not arise. In this regard, he has relied upon the Order of this Tribunal in OA/452/2019 dt. 26.08.2019.



IV) The Applicant's counsel stated that the applicant has worked for more than 23 years but, 10 years of service is sufficient to sanction compassionate allowance. Further, he relied upon the Orders of this Tribunal in OA/895/2019 dt. 13.03.2020 & OA/573/2017. The Applicant's counsel prayed to allow the OA as the applicant have two unmarried daughters and wife, who are completely dependent on the applicant.

3. The Respondents have filed a detailed reply and submitted that the applicant made a representation after 12 years of his removal from service for grant of compassionate allowance. The Applicant never attended the inquiry for defending himself. Further, the Applicant has not acquired requisite qualifying service of 10 years for sanction of compassionate allowance, as the Applicant was regularized on 22.05.1998 and removed from service on 09.04.2007. Further, according to the Railway D&A Rules, if an employee was removed from service, he is not eligible for any retirement benefits. Moreover, the Compassionate Allowance can only be given in exceptional circumstances where the case is found to be deserving of special consideration and it is the discretion of the Disciplinary Authority. In the instant case, the Applicant was a regular absentee to duties and has not submitted any representation/appeal. The respondents' counsel has

relied upon Order of the Ernakulum Bench of this Tribunal in OA/522/2008 dt. 09.06.2009 & the judgment of the Hon'ble High Court in the case of S. Tamilarasi Vs. Union of India in W.P. No.36782/2015 & Ors. decided on 1.09.2016. She prayed to dismiss the OA.



4. Heard the learned counsel for the parties at length and perused the pleadings on record.

5. I) The issue raised in the present original application is whether the Applicant is eligible for grant of compassionate allowance or not. The dispute is about rendering requisite years of service for being eligible to grant Compassionate Allowance. The Applicant was engaged as Casual Labour w.e.f. 11.09.1984 and regularized on 22.05.1998. Thereafter, he was removed from service w.e.f. 09.04.2007. The respondents have calculated the service of the applicant from the date of his regularization i.e. 22.05.1998. However, the legal position on the subject matter has been decided by the Hon'ble Supreme Court in the case of *Union of India & Ors. Vs. Rakesh Kumar [CA No.3938 of 2017] decided on 24.03.2017*, where it was categorically held that 50% of temporary/casual service rendered prior to regularization shall be counted for the purpose of Pensionary benefits. In view of this, 50% of the Applicant's casual service should be taken as qualifying service for the purpose of pension. In terms of Para 3 of Railway Board Letter dt. 09.05.2005(RBE No.79/2005) circulated vide CPO/SC's Serial Circular No.90/2005, "Compassionate Allowance being one of the classes of pension and a minimum qualifying service of 10 years is a prerequisite for sanction of any class of pension. Before sanctioning compassionate allowance, it is

absolutely necessary for competent authority intending to sanction compassionate allowance to a person on whom the punishment of removal/dismissal is imposed, to satisfy itself that such a person has rendered not less than 10 years of qualifying service”. From the above, it is clear that Compassionate Allowance is one form of Pension. Therefore, as the applicant worked as Casual Labour from 11.09.1984 to 22.05.1998 which is more than 13 years of service, 50% of the same should be treated as qualifying service for the purpose of compassionate allowance. If this service is added, the applicant would have more than 10 years of service and, therefore, would be eligible for Compassionate Allowance.



II) The respondents’ counsel has contended that the applicant is a habitual absentee and the period of unauthorized absence is willful in nature. The applicant’s counsel has opposed the same and submitted that unauthorized absence is not a misconduct. Therefore, this Tribunal has to distinguish whether the unauthorized absence of the Applicant is willful or not.

III) Having heard both the counsel and, under the facts and circumstances of the case, this Tribunal is of the opinion that the applicant’s unauthorized absence is willful, as the applicant has not even bothered to give any explanation for the period of his absence or produced Medical Certificate. Be that as it may, a duty is cast upon the Disciplinary Authority to pass orders regarding compassionate allowance or otherwise at the time of taking a decision of removing the applicant from service. This aspect has been omitted by the Disciplinary Authority. The Railway Board’s Circular dt. 04.11.200

makes it very clear that it is the responsibility of the respondents to pass orders on compassionate allowance.



IV) Further, the respondents have rejected the representation of the applicant for grant of compassionate allowance on the ground that the SR and Leave records are not available to review the case of the Applicant. This Tribunal has already dealt with this subject matter in OA/1213/1018 dt. 27.08.2019 and not agreed to the stance of the respondents that only on account of not having access to records for verifying the service, it cannot be a ground for not granting compassionate allowance. However, a duty is cast upon the applicant to claim his rights and ask for compassionate allowance and he represented to the Railway Administration on 02.12.2019, after more than 12 years from the date of removal from service i.e. 09.04.2007. Therefore, taking into account the circumstance of willful absence from duty by the applicant, this Tribunal is not inclined to grant compassionate allowance from the date of his removal from service. However, the applicant, being not educated much, some compassion is warranted and, therefore, the respondents are directed to grant compassionate allowance to the applicant from the date of his representation i.e. 02.12.2019, within a period of three months from the date of receipt of this order.

V) With the above observations, the OA is disposed of. There shall be no order as to costs.

**(B. ANAND)**  
**ADMINISTRATIVE MEMBER**

/Ram/