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WP No. 27478 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-08-2026

CORAM

THE HON'BLE MR JUSTICE S. M. SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE KRISHNASWAMY GOVINDARAJAN

WP No. 27478 of 2024

Divisional Personnel Officer
Southern Railway Madurai Division,
Madurai

..Petitioner

Vs

1. G Lakshmi
W/o.Late.K.Ganapathy, Ex.Gang
Man/tirunelveli/s.Rly, Madurai Division, 40,
Maveerar Nagar, Kumarapuram, Tiruchendur.
2. The Registrar
Central Administrative Tribunal, chennai

..Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records pertaining to the impugned order dated 5.9.2023 in O.A.No.310/01244/2016 passed by Central Administrative Tribunal, Chennai bench and to quash the same.

For Petitioner :

M/s. S. Indumathi Ravi,
Senior Panel Counsel for Central Government

For Respondents :

No Appearance For R1
R2- Tribunal



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Order**(Order of the Court was made by S.M.Subramaniam J.)**

Southern Railway, Madurai Division has preferred the present writ petition challenging the order of the Central Administrative Tribunal, Chennai Bench dated 05.09.2023 passed in O.A.No.310/01244/2026.

2. Though notice has been served on the first respondent, none entered appearance.

3. The husband of the first respondent was working as Gang Man in the Railways. He remained unauthorisedly absent from attending duty for more than a year. Since he remained continuously absent, he was removed from service as per the Railway Servants (Discipline and Appeal) Rules 1968 on 16.05.1999. He passed away on 24.04.2010. After a lapse of about 14 years from the employee's removal from service and after three years from the death of the employee, his wife / first respondent herein submitted a representation to the authorities for grant compassionate allowance under the Pension Rules. Since it was not considered, Original Application came to be filed.



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4. The Tribunal allowed the application mainly on the ground that the first respondent served the department for 10 years and therefore he is eligible for grant of compassionate allowance. Further, the penalty for removal from service was imposed based on the proven charges of unauthorised absence and it is not related to dishonesty or any moral turpitude. On that basis, compassionate allowance was directed to be paid to the first respondent. Thus, the Railways has preferred the present writ appeal.

5. Section 65 of the Railway Services (Pension) Rules 1993 reads as follows:

“ 65. Compassionate allowance – (1) A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.”



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6. Rule 18(1) of the Railway Services (Pension) Rules 1993 stipulates that persons with less than ten years of qualifying service shall not be eligible for pensionary benefits. That apart, the Railway Board in its Letter No.F(E) III/2003/PN/5 dated 09.06.2005 has stated as follows.

“ Compassionate allowance being one of the classes of pensions and a minimum qualifying service of ten years is a pre-requisite for sanction of any class of pension, before sanctioning compassionate allowance, it is absolutely necessary for the 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 had rendered not less than 10 years of qualifying service.”

7. Learned counsel for the appellant / Railways relies upon the above Rule and contends that the deceased employee was conferred with regular appointment only in the year 1998 and from 1979 to 1988 he held temporary status. Hence, only 50% of that period can be included for determining the period of service as required for the grant of compassionate allowance. Moreover, he was removed from the service for unauthorised absence. After excluding the period of absence, the total period for which the deceased employee served in the Railways comes to only 07 years 06 months and 02



days. Therefore, the deceased employee is ineligible for the compassionate allowance as claimed by her and the Tribunal has erred in allowing the Original Application.

8. Pension is a right conferred under the Pension Rules. However, pension is to be granted in accordance with the Schemes applicable to a government employee. The benefit of pension is to be extended to an employee who has completed the qualifying service and allowed to retire from service.

9. In the present case, the respondent remained unauthorisedly absent for about six years, resulting in removal from service. The effect of removal or dismissal from service has been stated in Rule 40 of the Railway Servants Pension Rules, 1993.

*“ 40. Forfeiture of service on dismissal or removal-
Dismissal or removal of a railway servant from a service or
post shall lead to forfeiture of his past service.”*

10. The circumstances for grant of compassionate allowance would arise when an authority competent to dismiss or remove an employee from service may, if the case is deserving, on special consideration, sanction



compassionate allowance not exceeding two-third of pension or gratuity or both, which would have been admissible to him, if he had retired on superannuation. Thus, compassionate allowance may be granted at the discretion of the competent authority on certain special circumstances. Therefore, the Courts in exercise of the powers of judicial review, cannot issue a direction to grant compassionate allowance, since it is not a right conferred on the employee removed or dismissed from service.

11. A distinction is to be drawn between a right and a concession extended under the Statute or Rules in force. If a Statute or Rules confers an absolute right, then the Courts are empowered to issue direction to enforce the right. However, if it is a concession, the scope of interference by the Courts in exercise of powers of judicial review is limited.

12. In the present case, an employee was removed from service pursuant to his unauthorised absence for about six years. Therefore, while passing an order of removal or dismissal, the competent authority may, if the case is deserving a special consideration, grant compassionate allowance by invoking Rule 65. Pertinently, the language employed Rule 65 is "may". Therefore, the discretion vest with the competent authority to weigh the special circumstances and grant compassionate allowance by invoking Rule



65. Therefore, the Court cannot assume the benefit under Rule 65 of the Railway Services Pension Rules, 1993 right conferred and issue direction to grant pension.

13. In the present case, the competent authority while passing the order of removal, has not considered for grant of compassionate allowance to the respondent under Rule 65 of the Railway Services Pension Rules. Court granting the relief by directing the authorities to sanction compassionate allowance under Rule 65 of the Pension Rules would result in a wrong precedence. All removed and dismissed employees will also claim compassionate allowance under Rule 65 as a matter of right, which is not the scope and object of Rule 65 under the Pension Rules. In respect of dismissed or removed employees, Rule 40 would apply directly. Thus, their past services are forfeited. Grant of compassionate allowance in respect of removed employee is to be considered only by the competent authority while issuing the order of removal or dismissal. Thus, compassionate allowance under rule 40 is not a right, but a concession to be considered by the competent authority. In the absence of establishing any right under the Rules, the Court may not issue a direction to grant compassionate allowance, which would result in larger repercussions since all the dismissed or removed employees will claim compassionate allowance as a matter of right.



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14. In view of the above discussion, the order dated 05.09.2023 in Original Application No.310/01244/2016 is set aside and the writ petition stands allowed. No costs.

(S.M.S.,J.) (K.G.R.,J.)
14-08-2026

Index: Yes
Speakingorder
Neutral Citation: Yes

KST

To

The Registrar
Central Administrative Tribunal, chennai



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**S.M.SUBRAMANIAM J.
AND
KRISHNASWAMY GOVINDARAJAN J.**

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