

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 30TH DAY OF NOVEMBER 2015/9TH AGRAHAYANA, 1937

WA.No. 1569 of 2011 ()

AGAINST THE JUDGMENT IN WP(C) 20336/2007 DATED 22-11-2010

APPELLANT(S)/PETITIONER:

K.PRABHAVATHI,W/O.LATE K.SREEDHARAN,
SREERANJGAM, NEDUMPANA P.O., KOLLAM

BY ADVS.SRI.SHABU SREEDHARAN
SRI.C.K.PRASAD
SRI.T.S.ANURAJ
SRI.B.BALA PRASANNAN

RESPONDENT(S):

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1. UNION OF INDIA, REP.BY THE SECRETARY,
MINISTRY OF RAILWAYS, NEW DELHI
 2. THE CHIEF SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE,
SOUTHERN RAILWAY, MADRAS
 3. THE DIVISIONAL SECURITY COMMISSIONER,
RAILWAY PROTECTION FORCE, PALAKKAD.

BY SRI.C.S.DIAS,STANDING COUNSEL, RAILWAYS

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 30-11-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 1569 of 2011

APPENDIX

PETITIONER'S EXHIBITS

ANNEXURE -1 : TRUE COPY OF THE DEATH CERTIFICATE OF THE WRIT PETITIONER
DATED 30.9.2009.

RESPONDENT EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

SOu.

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 1569 OF 2011

Dated this the 30th day of November, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard both the sides. This writ appeal has been filed against the judgment dated 22.11.2010 passed in W.P.(C) No.20336 of 2007, which is filed by K.Sreedharan, Ex-Constable, Railway Protection Force.

2. The writ petitioner was charged with the offence of murder under Section 302 of the Indian Penal Code for murdering one of his colleagues. He was tried and convicted by the Sessions Court, Palakkad and on conviction he was dismissed from service. On 06.03.1979 this Court acquitted the petitioner and he was reinstated in service on 28.07.1980. Again he was suspended on 03.08.1980 pending disciplinary enquiry. Disciplinary enquiry was held and on finding that the petitioner is guilty, he was dismissed from service. The petitioner, on 14.09.2004, filed a representation claiming enhancement of subsistence allowance for the period when he

was under suspension and also compassionate allowance under Rule 65 of the Railway Service (Pension) Rules, 1993. Learned Single Judge considered both the claims and as far as the enhancement of subsistence allowance is concerned, learned Single Judge held that Ext.P3 was filed after six years hence the said claim is barred by delay and laches. With regard to the compassionate allowance learned Single Judge considered the same in paragraph 5 and held as follows:

"5. The rules relating to the compassionate allowance are contained in Rule 65 of the Railway Service (Pension) Rules, 1993, which reads thus:

"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

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than three hundred seventy five rupees per mensem."

(underlining supplied)

Going by the same, the petitioner is not entitled to compassionate allowance as of right. Sanctioning of the same is a discretion vested with the authority concerned to be exercised only if the case is deserving of special consideration. Therefore, the petitioner has to prove that his case is one deserving special consideration. Here he has been found guilty of causing death of one of his colleagues, which punishment has been confirmed by a Division Bench of this Court in W.A. No. 573/1993. I do not think that such a person is entitled to compassionate allowance under Rule 65 especially when the petitioner is an employee of an Armed Force of the Union of India, who is expected to protect the lives of others, and not to take lives of others. In the above circumstances, I am not inclined to exercise my discretionary jurisdiction under Article 226 of the Constitution of India, in favour of the petitioner and accordingly, this writ petition is dismissed.”

3. Learned counsel for the appellant submits that the appellant is no more and now survived by his wife. He submits that Court may take a sympathetic view and direct for payment as claimed by the deceased petitioner. Both the claims raised by the petitioner have been duly considered by learned Single Judge and valid reasons have been given for rejecting the said claims.

We do not find any error in the judgment of learned Single Judge which may warrant interference by exercising the appellate jurisdiction. The view taken by learned Single Judge for rejecting the claim raised by the petitioner is that only after six years he has approached the authority for enhancement of subsistence allowance which was barred by delay and laches.

4. We do not find any infirmity in the decision of learned Single Judge in so far as sufficient reasons have been given in paragraph 5 of the judgment.

In view of the foregoing discussion, the Writ Appeal is dismissed.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**