

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUDHAKAR
&
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No. 26778 of 2009
& M.P.No.1 of 2009

Union of India
represented by
The Chief Workshop Manager
Carriage and Wagon Works
Southern Railway,
Perambur, Chennai - 600 023.

... Petitioner

- Vs -

1. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
2. M.Rathnavelu

... Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of Writ of Certiorari to call for the
entire records of the first respondent in O.A.No.537 of 2008
including the order dated 11.09.2009 and quash that portion of the
order directing payment of interest at 5% per annum for the period
from 8.4.2006 till 17.3.2009.

For Petitioner : Mr.V.G.Suresh Kumar

For Respondents: No appearance - R2
R1- Tribunal

O R D E R

(Order of the Court was made by R.SUDHAKAR,..)

This Writ Petition is filed by the Southern Railway
challenging a portion of the order passed by the Central
Administrative Tribunal dated 11.09.2009 made in O.A.No.537 of
2008 awarding interest at 5% per annum from 08.4.2006 till
17.3.2009.

2. The brief facts of the case are as follows:

The second respondent herein while working as Fitter Grade I in the petitioner institution, was unauthorizedly absent for a period of 189 days. Hence, after completing all the procedures in accordance with law, the second respondent was removed from service with effect from 28.2.1998, which was also confirmed by the Appellate Authority. It is an admitted fact that at the time of removal, the second respondent was not sanctioned compassionate allowance. Hence, the second respondent had made a representation dated 20.6.2005 for sanction of compassionate allowance and the same was sanctioned during April 2006. It is the case of the petitioner that the Railway Board by letter dated 09.05.2005 had issued instructions not to sanction compassionate allowance, when the same was not sanctioned at the time of passing orders of removal/dismissal. Hence, the petitioner had passed an order dated 17.08.2007 withdrawing the sanction of compassionate allowance.

3. Aggrieved by the said withdrawal, the second respondent herein has filed Original Application in O.A.No.537 of 2008 before the Central Administrative Tribunal. Pending the application, the Railway Board has issued a communication dated 04.11.2008 stating that where the Disciplinary Authority had not passed any specific order with regard to grant of compassionate allowance, the same may be reviewed on the request made by the removed employee. Hence, on the basis of such communication, the petitioner reviewed the case of the second respondent and granted compassionate allowance with effect from 01.03.1998. Taking note of the subsequent development, the Tribunal passed an order holding as follows:

"...4. The next prayer of the applicant is for payment of interest on the delayed payment of pension and gratuity amount. Taking into account the facts and circumstances of the case and the fact that the applicant has been sanctioned pension on compassionate ground, we direct the respondents to pay interest at the rate of 5% per annum on the delayed payment of pension and gratuity from the date of sanction i.e. from 08.4.2006 till 17.3.2009 i.e. the actual date of payment. "

Aggrieved by such award of interest, the present Writ Petition has been filed.

4. Learned counsel appearing for the petitioner submits that there is no delay in payment of compassionate allowance, as the letter of the Railway Board dated 09.05.2005 clearly stipulates that the disciplinary authority could not act at a subsequent date for sanction of compassionate allowance, if the same had not been sanctioned at the time of removal. He further submits that there is no provision for payment of interest under the Railway Services (Pension) Rules, 1993.

5. Heard the learned counsel appearing for the petitioner and perused the materials placed before this Court.

6. The issue that arises for our consideration is whether the second respondent is entitled for payment of interest, when there is no provision for payment of interest under the provisions of the Railway Services (Pension) Rules. It is seen from the above-said facts that at the time of removal of the second respondent, no order came to be passed with regard to sanction of compassionate allowance. Subsequently, at the request of the second respondent dated 20.6.2005, the same was sanctioned. However, the said sanction was subsequently withdrawn by order dated 17.8.2007 as per the letter of the Railway Board dated 09.05.2005. It is relevant to note herein that even though the letter dated 09.05.2005 issued by the Railway Board was in existence, the Authority, unmindful of the said letter, has passed the order sanctioning the compassionate allowance on 18.04.2006. Hence, there is no fault at the hands of the second respondent at any stage.

7. It is also relevant to note that the letter of the Railway Board dated 09.05.2005 cannot put an embargo on the Authority competent to consider the claim for compassionate allowance in the case of dismissal or removal from service. Such letter is contrary to the powers of the competent Authority in terms of Rule 65 (1) of the Railway Services (Pension) Rules, 1993, which reads as follows:

"65. Compassion 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.

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

8. It is needless to state that time and again, the Honourable Supreme Court in various cases has observed that when there is a delay in payment of pension or gratuity, the employee is entitled to payment of interest. Therefore, for the delayed payment, the Tribunal has rightly ordered payment of interest at 5% per annum, which is very reasonable, for a period between 08.04.2006 to 17.3.2009.

9. Accordingly, finding no merits to interfere with the order of the Tribunal, this Writ Petition stands dismissed. No costs. Consequently, M.P.No.1 of 2009 is also dismissed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

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To

The Registrar,
Central Administrative Tribunal,
Chennai Bench, Chennai - 600 104.

1 cc to M/s. V.G. Sureshkumar, Advocate, Sr. 6740

W.P.No. 26778 of 2009
& M.P.No.1 of 2009

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