

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2017

CORAM

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

W.P.No.3194 of 2017

V.Sethuraman

... Petitioner

Vs.

1. Union of India rep. by
The General Manager,
Southern Railway, Park Town, Chennai - 3.
2. The Chief Medical Director,
Southern Railway,
Park Town, Chennai - 3.
3. The Divisional Railway Manager,
Southern Railway,
Madurai Division, Madurai 625 016.
4. The Senior Divisional Medical Officer,
Southern Railway,
Madurai Division, Madurai 625 016.
5. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records relating to the order of the 5th respondent made in O.A.No.310/01373 of 2013 dated 31.08.2016 to quash the same and to consequently direct the respondents 1 to 4 to sanction compassionate allowance to the petitioner with effect from 11.03.1998 as prescribed in the relevant mandatory provisions.

For Petitioner : Mr.L.Chandrakumar

For R1 : Mr.A.P.Srinivas
For R2 to R4 : No appearance
R5 : Tribunal

O R D E R

K.K.SASIDHARAN, J.

The petitioner was removed from service, pursuant to the disciplinary proceedings initiated against him. The disciplinary authority sanctioned compassionate allowance to the petitioner with effect from 25 June, 2014. Since the effective date was not in accordance with the clarification issued by the railways, the petitioner filed Original Application before the Tribunal. The Tribunal, dismissed the original application. The said order is under challenge in this writ petition.

2. The learned counsel for the petitioner by placing reliance on Rule 65 of the Railway Services (Pension) Rules, 1993 and the Circular dated 4 November, 2008 issued by the Railway Board contended that Compassionate Allowance shall be effective from the date of removal/dismissal. According to the learned counsel, the disciplinary authority erred in postponing the date for payment of Compassionate allowance.

3. We have also heard the learned Standing Counsel for the Southern Railway.

4. The petitioner was appointed in the Medical Department in Southern Railway in 1981. While working as Dresser Grade - II in the Health unit at Mandapam Railway Hospital, disciplinary proceedings were initiated against the petitioner for unauthorised absence from duty. The petitioner failed to respond to the notice issued by the disciplinary authority. Thereafter, enquiry was conducted and ultimately, the petitioner was removed from service. The appeal filed against the said order was rejected.

5. The petitioner submitted a representation to grant him Compassionate Allowance. The disciplinary authority sanctioned Compassionate Allowance to the petitioner with effect from 25 June, 2014. Since Compassionate Allowance was not sanctioned to the petitioner from the date of his removal, original application was moved before the Tribunal. The Tribunal dismissed the original application taking into account the order granting the petitioner 2/3rd of pension.

6. The only question that arises for consideration is as to whether the petitioner is eligible for Compassionate Allowance with effect from the date of his removal from service.

7. There is no dispute that the grant of Compassionate Allowance is a matter of discretion of the competent authority. The competent authority has to consider the case of the

employee, who was dismissed or removed from service. The authority must arrive at a satisfaction that the case of the employee deserves special consideration. In case, the competent authority is of the view that the employee, who was dismissed or removed from service deserves special consideration, it is open to the said authority to sanction Compassionate Allowance not exceeding two-thirds of pension or gratuity or both. In the subject case, the Competent Authority sanctioned Compassionate Allowance to the petitioner as provided under Rule 65(1) of Railway Services (Pension) Rules. The Compassionate Allowance was granted with effect from 25 June, 2014.

8. The Ministry of Railways issued a Circular dated 4 November, 2008 stating that if the Competent Authority sanctions Compassionate Allowance for dismissal or removal, the same shall be effective from the date of removal/dismissal. The Competent Authority, in the case of the petitioner exercised the discretion and granted him Compassionate Allowance. The petitioner is eligible to receive Compassionate Allowance from the date of his removal. Since the petitioner was removed from service on 11 March, 1998, he is eligible for Compassionate Allowance with effect from 1 April, 1998. The Tribunal omitted to consider the Circular issued by the Railways. We are therefore of the view that the impugned order is liable to be set aside.

9. In the result, the order dated 31 August, 2016 is set aside. The original application in O.A.No.310/01373 of 2013 is allowed.

10. The third respondent is directed to pass a revised order sanctioning Compassionate Allowance to the petitioner with effect from the date on which he was removed from service. Such exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

11. The writ petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The General Manager,
Union of India
Southern Railway, Park Town,
Chennai - 3.
2. The Chief Medical Director,
Southern Railway,
Park Town, Chennai - 3.
3. The Divisional Railway Manager,
Southern Railway,
Madurai Division, Madurai 625 016.
4. The Senior Divisional Medical Officer,
Southern Railway,
Madurai Division, Madurai 625 016.
5. The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai-104.

+1cc to Mr.C.Chandra kumar, Advocate, S.R.No.19780
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.19986

RSI (CO)
RS (22/06/2017)

W.P.No.3194 of 2017

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