

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 361 OF 2017

Shobha S. Dhangar	...Petitioner
Versus	
Union of India	...Respondent

Mr. A.D. Joshi for the Petitioner.
Mr.T.J.Pandian for the Respondent – UOI.

**CORAM : SMT. V. K. TAHILRAMANI, Acting C.J. &
M. S. SONAK, J.**

DATE : 17th APRIL 2018.

ORAL JUDGMENT:

1] Heard learned counsel for the parties.

2] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the judgement and order dated 15th June and 2016 made by the Central Administrative Tribunal (CAT), Mumbai in O.A. No. 412 of 2014 instituted by the petitioner seeking compassionate allowance under Rule 65(1) of Railway Services (Pension) Rules, 1993 (Pension Rules) read with Railway Board's

Order No. 164 of 2008.

4] Mr. Amol Joshi, learned counsel for the petitioner, submits that in terms of Rule 65(1) r/w. R.B.E. No. 164 of 2008, discretion is vested in the respondent to award compassionate allowance to the family members of railway employee, who is dismissed or removed from the services. He submits that such discretion is neither unfettered nor untrammelled, but such discretion has to be exercised in judicious manner. He submits that R.B.E. No. 164 of 2008 has prescribed guidelines in the matters of exercise of such discretion. He submits that in the present case, the compassionate allowance has been denied to the petitioner without advertng to guidelines prescribed by Railway Board itself or in any case by misconstruing such guidelines. For this reason, Mr. Joshi submits that the communication dated 11th November 2013, by which the respondent declined compassionate allowance to the petitioner is liable to be set aside.

5] Mr. Joshi submits that the petitioner's husband was not removed/dismissed from the services on the ground of

any dishonesty. He submits that dismissal was only on the ground of alleged unauthorised absence. He submits that reference to prosecution of the petitioner's husband under certain sections of Indian Penal Code was quite misconceived because, the petitioner's husband expired on 18th March 2010 and such prosecution, abated.

6] Mr.Joshi submits that since the petitioner's husband was never convicted, the presumption of innocence continues and compassionate allowance could not have been denied. For all these reasons, Mr. Joshi submits that the impugned judgment and order made by the CAT may be set aside and further the impugned communication dated 11th November 2013 may also be set aside. Mr. Joshi submits that a direction may be issued for award of compassionate allowance to the petitioner in terms of Rule 65(1) r/w. R.B.E. No. 164 of 2008.

7] Mr. T.J. Pandian, learned counsel for the respondent - UOI, submits that no person can demand for compassionate allowance as a matter of right. He submits that in the present case, the prosecution under sections

420 and 468 of IPC was launched against the petitioner's husband. The petitioner's husband secured anticipatory bail, but failed to comply with conditions imposed upon him. The petitioner's husband in fact absconded, so as to avoid arrest. The petitioner's husband was dismissed from service on the ground of unauthorised absence, which, again, is related to dishonesty on the part of the petitioner's husband in fleeing from justice to avoid prosecution. Taking all these circumstances into consideration, the petitioner request for compassionate allowance was declined. He submits that there is nothing illegal, arbitrary in the exercise of discretion. For all these reasons, he submits that this petition may be dismissed.

8] The rival contentions now fall for our determination.

9] Rule 65 (1) of the Pension Rules makes a provision for award of compassionate allowance even where a railway employee has been removed or dismissed from service, on account of misconduct. The power to award compassionate allowance is discretionary. However, as rightly pointed out

by Mr. Joshi, the discretion is neither unfettered nor untrammelled.

10] In fact, the Railway Board vide R.B.E. No. 164 of 2008 has prescribed guidelines to guide the exercise of discretion in such matters. One of the guidelines prescribes that award of compassionate allowance should not be considered, if the railway employee has been dishonest, which was also a ground for his removal/dismissal.

11] From the record, it is apparent that a prosecution was launched against the petitioner's husband for offences under sections 420, 468, 471 and 34 of IPC. Thereafter, it appears that the petitioner's husband applied for anticipatory bail and even secured the same, subject to certain conditions. The conditions were flouted and in fact, the petitioner's husband absconded in order to avoid arrest.

12] Since, the petitioner's husband was absconding to avoid arrest after flouting the conditions subject to which he was released on anticipatory bail, disciplinary

proceedings were initiated against the petitioner's husband for unauthorised absence. The charge was proved and the petitioner's husband was dismissed from service. The petitioner's husband did not even bother to challenge his dismissal.

13] In the aforesaid circumstances, the respondent had regarded the dismissal of the petitioner's husband on the ground of dishonesty attributable to him. The CAT, has also endorsed this line of reasoning.

14] Taking into consideration the limited scope of judicial review in such matters and also the fact that award of compassionate allowance is not in the realm of any right as such, we are disinclined to interfere with the exercise of discretion by the respondent authorities as well as the CAT. Besides, we cannot say that this is a case where exercise of discretion is vitiated by any illegality or on account of consideration of any extraneous circumstances. This is also not a case where relevant circumstances have been ignored. Most importantly, this is also not a case where the view taken by the respondent authorities is so absurd that

parties reasonably informed of the facts and the legal position could never have taken such a view. In short, applying *Wednesbury* principle,^{*} we do not deem it appropriate to exercise powers of judicial review in the matter of this nature.

15] Even though, the prosecution against the petitioner's husband may have abated on account of his demise, it cannot be said that his dismissal from service involved no charge of any dishonesty on his part. This is not a case where the petitioner's husband remained absent on grounds of any health issues or similar reasons. Rather, this is a case where the petitioner's husband was charged with serious offences punishable under section 420, 468, 471 and 34 of IPC. The petitioner's husband secured an anticipatory bail, but jumped the conditions of bail and absconded so as to avoid facing the trial. The unauthorised absence from duties was not for any good reason, but because the petitioner's husband was absconding by jumping the bail conditions and in order to avoid trial. On such basis, if the authorities and the CAT, perceived the

^{*} Associated Provincial Picture Houses Ltd. Vs. Wednesbury Corporation – (1947) 2 ALL ER 680 1

dismissal as having a nexus with dishonesty of the petitioner's husband, it cannot be said that the view taken by them is absurd or implausible so as to exercise the extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India.

16] For all the aforesaid reasons, this petition is dismissed. Rule is discharged. There shall be no order as to costs.

(M.S. SONAK, J.)

(ACTING CHIEF JUSTICE)