

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 5545/2019

Sheikh Jamil S/o Late Sheikh Jumman,
Aged about 55 years, Occu. Nil,
R/o Plot No.42, Snehnagar, Post Godhani, Nagpur
(M.H.) 441123.

PETITIONER

.....VERSUS.....

1. Union of India,
Through it's General Manager, S.E.C. Railway,
Bilaspur (C.G.) 495004.
2. Divisional Railway Manager,
S.E.C. Railway, Nagpur 440 001.

RESPONDENTS

Shri C.L. Deharia, counsel for the petitioner.
Shri N.P. Lambat, counsel for the respondents.

CORAM : A. S. CHANDURKAR AND SMT. M.S. JAWALKAR, JJ.

DATE : 10TH MARCH, 2022.

ORAL JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and heard the learned counsel for the parties.

2. The petitioner is aggrieved by the order passed by the Central Administrative Tribunal dismissing Original Application No.2251 of 2014 dated 01.08.2017. That original application was preferred by the petitioner for challenging the order dated 15.04.2014 passed by the Senior Divisional Mechanical Engineer refusing to grant compassionate allowance.

3. It is the case of the petitioner that he was appointed as Diesel Cleaner with the respondents in the year 1985. On account of illness suffered in the year 1997 he could not attend his duties and his absence was treated as unauthorized. The petitioner was removed from service after holding an enquiry which order of removal was confirmed by the Appellate Authority. The petitioner therefore sought compassionate allowance and he filed Original Application No.47 of 2002 before the Central Administrative Tribunal, Jabalpur on 07.03.2002. The Tribunal permitted the petitioner to make representation for seeking compassionate allowance. By the order dated 16.04.2002 the petitioner was informed of the same. On 25.06.2012 the petitioner issued a notice under Section 80 of the Code of Civil Procedure, 1908 (for short, 'the Code') seeking compassionate allowance. As there was no consideration of the same he again approached the Tribunal by filing Original Application No.2026 of 2013. By the order dated 18.02.2004, the Tribunal directed that the notice issued by the petitioner under Section 80 of the Code be treated as representation. Thereafter on 15.04.2014 the Senior Divisional Mechanical Engineer considered the request of the petitioner and refused the grant of compassionate allowance. Being aggrieved the petitioner filed Original Application No.2251 of 2014. The Tribunal by order dated 01.08.2017 observed that there was delay on the part of the petitioner in submitting the request for grant of compassionate

allowance. On that count the original application came to be rejected. The review application preferred by the petitioner was also dismissed on 19.03.2019. Being aggrieved, the aforesaid order has been challenged.

4. The learned counsel for the petitioner submits that in the earlier proceedings the Tribunal having found that the notice issued under Section 80 of the Code ought to be treated as representation the aspect of delay became redundant. The Authority while deciding the said representation had observed that the old records were destroyed. However it was always possible to direct reconstruction of record and consider the claim. The Tribunal also examined this aspect but instead the proceedings were dismissed on the ground of delay. It was submitted that the original application ought to be considered afresh in the light of the grounds assigned by the Competent Authority.

5. The learned counsel for the respondents supported the impugned order and urged that since there was delay in making the application for grant of compassionate allowance the request was rightly not accepted.

6. On perusing the orders passed in the proceedings it becomes clear that pursuant to the representation/notice under Section 80 of the Code that was issued on 25.06.2012 the same was directed to be treated as representation for grant of compassionate allowance. That representation was rejected by assigning various reasons. The Tribunal in the original application that was filed for challenging that order ought to have considered the same on merits. It appears that the aspect of delay has weighed with the Tribunal while rejecting the original application. This is clear from the observations in paragraph 12 of the impugned order. It was open for the Tribunal to have considered as to whether the petitioner was entitled for grant of compassionate allowance. That independent exercise has not been undertaken. For said reason, we are inclined to direct the Tribunal to reconsider the challenge to the order dated 15.04.2014 passed by the Senior Divisional Mechanical Engineer refusing the request for payment of compassionate allowance.

7. Accordingly, the following order is passed:-

- (I) The order dated 01.08.2017 in Original Application No.2251 of 2014 as well as the order dated 19.03.2019 in Review Petition No.2001 of 2019 is set aside.
- (II) The proceedings are remanded to the Central Administrative Tribunal to reconsider Original Application No.2251 of 2014 on its own merits and in the light of adjudication dated 15.04.2014. All points in that regard are kept open.

(III) Since the petitioner seeks compassionate allowance, the proceedings be decided expeditiously.

8. The writ petition is disposed of. Rule is made absolute in aforesaid terms. No costs. The civil applications filed by the petitioner also stand disposed of.

(SMT. M.S. JAWALKAR, J.)

(A.S. CHANDURKAR, J.)

APTE