

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION (WP) NO. 6031/2019

Arun Kumar Sharma,
 S/o. Late J.P. Sharma
 Aged about 69 years,
 Occ. Retired
 R/o. Pataleshwar Road, Nai Abadi,
 Ward No. 16, Chhindwara (MP)

..... PETITIONER

// VERSUS //

1. The Union of India
 Through its General Manager,
 S.E.C. Railway, Bilaspur
2. Divisional Railway Manager
 S.E.C. Railway, Nagpur
3. ~~Secretary, Ministry of Railways,
 Railway Board, New Delhi — 110011~~
4. Secretary, Ministry of Personnel,
 Public Grievance & Pensions,
 Dept. of Pension & Pensioners' Welfare,
 Khan Market, New Delhi 110 003
5. The Central Administrative Tribunal
 Bombay, Bench at Nagpur.

.... RESPONDENT(S)

Deleted as per
 Court's order
 dated
 21.02.2022

 Shri S.S. Dewani, Advocate for the petitioner
 Shri N.P. Lambat, Advocate for respondent nos. 1 to 4
 None for respondent no. 5

CORAM : A.S. CHANDURKAR AND G.A. SANAP J.J.

DATED : 21/02/2022

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

For the reasons stated in Civil Application (CAW) No. 790/2020, the civil application is allowed in terms of prayer clause (1).

2. **Rule.** Rule made returnable forthwith. Heard the learned counsel for the parties.

3. The judgment dated 26.11.2018 passed by the Central Administrative Tribunal rejecting the Original Application preferred by the petitioner seeking grant of compassionate allowance is under challenge in this writ petition.

Brief facts are:-

The petitioner was engaged with the Railway Department having been appointed as a Shed Khalasi at Loco Shed/ Motibagh on 27.08.1969. He was thereafter promoted as a Ticket Collector in the year 1973. On account of his unauthorized absence from duty from 10.02.1989, a Departmental Inquiry was conducted against him by following the procedure prescribed by the Railway Servants (Discipline and Appeal) Rules, 1968. At the conclusion of inquiry, the petitioner was dismissed from service on 12.07.1992. Though the order of dismissal was challenged, the same attained finality as Writ Petition No. 2689/2007 preferred by the petitioner before the Madhya Pradesh High Court was dismissed on 28.02.2007.

4. The petitioner thereafter took steps to claim compassionate allowance from the date of his dismissal. For said purpose he had filed a representation seeking compassionate allowance in terms of the letter of the Railway Board dated 04.11.2008. The said representation was rejected on 10.05.2011. The petitioner thus filed Original Application No. 2029/2012. The Tribunal by order dated 28.01.2014 allowed that application and issued directions to review the case of the petitioner in the light of the letter of the Railway Board dated 04.11.2008 and to pass a reasoned order. Thereafter on 20.05.2014 a decision was taken in compliance of the directions issued in the said Original Application by the Divisional Commercial Manager who observed that the dismissal order did not indicate that the petitioner's service was dismissed on account of moral turpitude. It was further observed that the petitioner's qualifying service for a period of at least ten years could not be established on that count. The request made by the petitioner for grant of compassionate allowance was turned down. This order was thereafter challenged by filing another Original Application No. 2005/2015. By order dated 26.11.2018, the Tribunal rejected the Original Application by observing that relief was sought on equitable grounds and such jurisdiction was not available with the Tribunal. Being aggrieved, the petitioner filed the present writ petition.

5. The learned Counsel for the petitioner submitted that undisputedly the petitioner rendered service from 27.08.1969 to 10.02.1989. Thereafter, the disciplinary proceedings were held against him for unauthorized absence which resulted in order of dismissal dated 12.07.1992. He pointed out that from the order of the Divisional Commercial Manager dated 20.05.2014 the authorities had come to the conclusion that the dismissal from service was not on account of moral turpitude. When these facts were clear, there is no reason to deny compassionate allowance to the petitioner by treating him as being in service from 27.08.1969 to 12.07.1992. The claim as made was justified under Circular dated 04.11.2008 and hence, the Tribunal erred in dismissing the Original Application. Moreover, as per guidelines of the Department, the Provident Fund Ledger was required to be preserved for a period of thirty five years. It was thus clear that sufficient material was available with the Department to determine the quantum of compassionate allowance. The petitioner, therefore, was entitled for appropriate relief.

6. The learned Counsel for the respondent nos. 1 to 4 by relying upon the reply filed on behalf of the respondent nos. 1 to 4 opposed the aforesaid submissions. He referred to the Circular dated 04.11.2008 to urge that in the absence of necessary record, it would not

be possible to determine the net qualifying service for paying compassionate allowance to the petitioner.

7. On hearing the learned Counsel for the parties and after perusing the material on record, it is found that certain facts are not in dispute. Firstly, the service of the petitioner from 27.08.1969 after his appointment as a Shed Khalasi and subsequent promotion as a Ticket Collector in 1973 is undisputed. This position is accepted by the respondent nos. 1 to 4 in paragraph 6 of the affidavit filed on their behalf. The petitioner's absence from service from 10.02.1989 is clear from the communication dated 29.06.1992 issued by the Divisional Commercial Superintendent to the petitioner. The petitioner's dismissal from service from 12.07.1992 on account of unauthorized absence is also an admitted position. The Divisional Commercial Manager in his letter dated 20.05.2014 has also concluded that the petitioner's dismissal from service was not on account of moral turpitude. Once this position is clear from the record that there is no difficulty in applying the Circular dated 04.11.2008 in the matter on the ground of compassionate allowance. The service records are necessary for determining whether the dismissal is on account of any moral turpitude coupled with gravity of alleged offence. The respondent nos. 1 to 4 themselves having concluded that the dismissal of the petitioner was on account of absence

from service and not of any ground of moral turpitude. There is no reason to deny the benefit of compassionate allowance to the petitioner. Moreover, the Provident Fund record is required to be maintained for a period of thirty five years and the same is still available with the respondent nos. 1 to 4. In these aforesaid facts, we do not find any reason to deny the petitioner the relief of the direction to re-consider his case for grant of compassionate allowance in terms of the Circular dated 04.11.2008.

8. Accordingly, the following order is passed:-

- i. The order passed by the Central Administrative Tribunal in Original Application No. 2005/2015 dated 26.11.2018 is hereby set aside.
- ii. The respondent no. 2, in the light of the observations made hereinabove, shall take into consideration the entire period of service of the petitioner from 27.08.1969 till 12.07.1992 for grant of compassionate allowance as per Circular dated 04.11.2008.
- iii. Necessary decision in this regard be taken within a period of six weeks from the production of this order and the same be communicated to the petitioner.

iv. If the respondent no. 2 requires the presence of the petitioner, he shall co-operate in the matter.

9. With this directions, the writ petition is allowed and disposed of.

10. Rule is made absolute in the aforesaid terms with no order as to costs.

JUDGE

JUDGE

SANDIP
MAHADEV
GATE

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by SANDIP
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