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

WRIT PETITION NO. 6154 OF 2022

Ashok Bapu Kamble	}	Petitioner
Versus		
The Sr. Divisional Operations	}	
Manager, BCT, Western Railway	}	Respondent

Mr. Shivani Seema Kunder for the petitioner.

Mr. Rui Rodrigues with Mr. P. J. Khosla for
respondent no. 1.

**CORAM: S. V. GANGAPURWALA, Act.CJ.&
SANDEEP V. MARNE, J.**

DATE: APRIL 25, 2023

P.C.:

- 1.** The petitioner has approached this Court challenging the order of the Central Administrative Tribunal (hereafter “the Tribunal”, for short). The Tribunal has rejected the application for condonation of delay.
- 2.** The petitioner was removed from service after conducting disciplinary proceedings on the ground of absenteeism. Considering that the petitioner is senior citizen and that he is bedridden, we have considered to exercise our writ jurisdiction under Article 226 of the Constitution of India.
- 3.** The order of removal from service was challenged before the Tribunal. The absenteeism was more than 2 (two) years. In view of that, now we are not interfering with the order of removal from service.
- 4.** The authority, on 21st June 2010 had directed the petitioner to vacate the railway quarters if he was in occupation

and observed that he would be entitled for payment of 50% compassionate allowance. However, the petitioner has not been paid 50% compassionate allowance in pension as well as gratuity.

5. Reliance is placed by the learned advocate for the petitioner and the learned advocate for the respondent on circular dated 4th November 2008. A perusal of the same would not totally disentitle the petitioner from claiming compassionate allowance. The removal of the petitioner is not on account of dishonesty. The circular states that each case will have to be considered on its own merits and conclusion can be reached on the question whether there was any extenuating factors associated with the case that would make the punishment of dismissal/removal, which though imposed in the interest of the railways, appears unduly harsh for the individual. It further states that the award of compassionate allowance should not be considered if the railway servant had been dishonest, which was a ground for his removal/dismissal. The said circular provides that though poverty is not an essential condition precedent to the award of compassionate allowance, due consideration can be made of the individual's spouse and children dependent upon him.

6. The petitioner here certainly is not removed from service on the ground of dishonesty. He is removed only on the ground of absenteeism, i.e., intermittent absenteeism for 2 (two) years. In such a case, the circular dated 4th November 2008, relied upon by the parties, would permit the respondent to consider the case of the petitioner for sanction of compassionate allowance. It would be appropriate if the respondent considers the case of the petitioner for compassionate allowance on its own merits.

7. In light of that, we direct the respondent to reconsider the case of the petitioner for grant of compassionate allowance as was earlier observed in the order dated 21st June 2010. The

respondent shall consider that the petitioner is removed from service not on the ground of dishonesty; but for mere absenteeism. Respondent may consider the case of the petitioner with regard to dependence on him and the peculiar health condition. The decision shall be taken by the respondent within 6 (six) weeks from today.

8. The writ petition is disposed of.

9. No costs.

SALUNKE
J V

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(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)