



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

WRIT PETITION NO. 1490/2023

Smt. Jagmiabai Wd/o Late Devkaran
Vs.

Union of India through it's General Manager, South East Central
Railway, Bilaspur and others

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. C.L. Deharia, Advocate for Petitioner
Mr. C.J. Dhumane, Advocate for Respondent Nos.1 to 3

CORAM: AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

DATED : 4th SEPTEMBER, 2024

1. The petition challenges the judgment dated 29.03.2019, passed by the learned Central Administrative Tribunal, Nagpur in Original Application No. 2274/2014, by which the claim of the petitioner for compassionate allowance on account of the removal of her husband, who was working as a Porter with the respondents has been rejected.

2. Mr. Deharia, learned counsel for the petitioner submits, that the refusal to grant compassionate allowance, is contrary to the policy of the respondents dated 27.01.2009 (page 29) and since it is an admitted position,

that the husband of the petitioner was engaged, but was removed the refusal to grant such compassionate allowance, is unwarranted and contrary to the said policy. He, therefore, submits, that this action of refusal and rejection of the Original Application by the learned Central Administrative Tribunal be quashed and set aside and the respondents be directed to pay the compassionate allowance to the petitioner.

3. Mr. Dhumane, learned counsel for the respondents submits, that the grant of compassionate allowance, is not as a matter of right, but is discretionary based upon cases deserving special consideration and since the husband of the petitioner, who was working as Porter was removed on account of absenteeism, the exercise of discretion is correct.

4. It is not in dispute, that the husband of the petitioner was appointed as Causal Labour with the respondents and had thereafter worked as temporary Gangman and became permanent on 26.10.1964, however, due his absenteeism on account of illness he was removed from the service w.e.f. 31.7.1975, under the Disciplinary Rules. He is said to have passed away on 06.02.1984 on account of TB. The policy for compassionate allowance as framed on

27.01.2009, in terms of the proviso to Rule 65(1) of the Railway Services (Pension) Rules, 1993, indicates, that where an employee is dismissed or removed and ineligible to get the pension, in cases deserving of special consideration sanction of a compassionate allowance not exceeding two-thirds of the pension or gratuity or both which would have been admissible to him if he had retired on compensation pension would be considered. Such power is vested in the authority competent to appoint or dismiss a railway servant, which has to be exercised by the said authority *suo motu*, at the time of passing of order of dismissal or removal from service or immediately thereafter.

5. Rule 65 of the Railway Services (Pension) Rules, 1993, which contemplates compassionate allowance, mandates that a railway servant who has been dismissed or removed from the service shall forfeit his pension and gratuity. The proviso thereto, however, permits the competent authority empowers to dismiss or remove him if a case is made out deserving of special consideration, to sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him, if he had retired on

compensation pension. The grant of such compassionate allowance, in terms of the communication dated 09.05.2005 of the Railway Board Establishment, is akin to grant of a pension, though at a lesser rate and, therefore, the requirements for grant of pension have to be complied with which would be minimum permanent service of ten years. The communication dated 27.03.2014 indicates, that the husband of the petitioner was empaneled for regular appointment as Porter on 03.11.1972 and was removed from service as a disciplinary measure w.e.f. 31.7.1975 vide order dated 29.07.1975. The initial engagement of the husband of the petitioner, as a Shed Khalashi was on 26.10.1964, he, however, stood discharged from such temporary engagement on 20.6.1966. He thereafter came to be appointed as a Sub-Porter on 22.08.1966. It would, therefore, be apparent, that the minimum period of ten years, necessary for claiming pension had not been completed by the husband of the petitioner. That apart, the question of grant of compassionate allowance in terms of the proviso to Rule 65(1) of the Railway Services (Pension) Rules, 1993 has to be considered at the time when an employee is sought to be removed or

dismissed from the service by the authority competent to do so. The policy dated 27.01.2009, cannot be said to be an independent policy, but it only clarifies and reiterates the position as provided in the proviso to Rule 65(1) of the said Rules. That being the position, in our considered opinion, no ground has been pointed out to indicate, that discretion has been incorrectly exercised by the authorities. We do not see any reason to interfere in the impugned judgment dated 29.03.2019 by the learned Central Administrative Tribunal, Nagpur. The petition is dismissed. No costs.

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

(AVINASH G. GHAROTE,J.)

MP Deshpande