

**IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH
DATED THIS THE 12TH DAY OF JULY, 2024**

PRESENT

**THE HON'BLE MR CHIEF JUSTICE N V ANJARIA
AND**

THE HON'BLE MR JUSTICE S G PANDIT

WRIT PETITION NO.103347 OF 2018 (S-CAT)

BETWEEN:

1. RAILWAY BOARD,
RAIL BHAVAN,
NEW DELHI: 110001,
BY ITS SECRETARY.
2. GENERAL MANAGER,
SOUTH WESTERN RAILWAY,
HUBBALLI-580020,
FOR AND ON BEHALF OF UNION OF INDIA
AND ALSO AS AN AUTHORITY OF,
SWR, HUBBALLI.
3. CHIEF WORKSHOP MANAGER,
HUBBALLI WORKSHOP,
SOUTH WESTERN RAILWAY,
GADAG ROAD, HUBBALLI-580020.

...PETITIONERS

(BY SRI. M.B. KANAVI, SENIOR C.G.C)

AND:

SMT. GLENDA FERNANDEZ
AGE: 76 YEARS,
W/O. LATE SRI. N.D. FERNANDEZ,
CARE OF DEANNA GOMEZ,
10, KARRAWA CLOSE,
CARSELDINE, QLD 4034,
BRISBANE, AUSTRALIA.

...RESPONDENT

(BY SRI. A.S. PATIL, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO, WRIT OF CERTIORARI QUASHING THE ORDER DATED:03.01.2018 PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL BANGALORE, BENCH IN OA NO.170/00403/ 2017 PRODUCED AT ANNEXURE-A & ETC.,

K M
SOMASHEKAR

Digitally signed by
K M SOMASHEKAR
Location: HIGH
COURT OF
KARNATAKA
DHARWAD BENCH

THIS APPEAL HAVING BEEN HEARD AND RESERVED ON 07.06.2024 AND COMING ON FOR PRONOUNCEMENT OF ORDER THIS DAY, **S.G.PANDIT J.**, MADE THE FOLLOWING:

ORDER

The petitioners-Railway Authorities are before this Court questioning the correctness and legality of the order dated 03.01.2018 in O.A. No.170/00403/2017 passed by the Central Administrative Tribunal, Bangalore Bench (for short, 'the Tribunal') holding that the applicant is eligible for notional grant of compassionate allowance on the date of application along with arrears from the date of the application. Further, it is directed to fix the notional compassionate allowance and also to fix the family pension.

2. Heard Sri. M.B.Kanavi, learned Senior Central Government Counsel for the petitioners, and Sri. A.S.Patil, learned counsel for the respondent. Perused the writ petition papers.

3. Brief facts of the case leading to filing of this petition are that,

(a) The husband of the respondent was working in the petitioners-Railways as Depot Stores Keeper Gr.II,

and he retired from service as a Stores Superintendent on 31.07.1992. While the husband of the respondent was working at Hubballi, a charge memo came to be issued on 27.07.1987 under Railway Servants (Discipline & Appeal) Rules, 1968 (for short, 'the 1968 Rules') for the charges of bribery i.e., for demanding and accepting illegal gratification. In the enquiry, charges were held to be proved, and the Railway Board, by its order dated 28.11.1994 imposed punishment of 100% cut in retirement pension on permanent basis with effect from 01.08.1992. The said order of stoppage of 100% pension was the subject matter of O.A. No.2117/1995 before the Tribunal. The Tribunal, by order dated 03.12.1997, quashed the order of punishment and disposed of the original application with certain direction.

- (b) Aggrieved by the same, the petitioners-Railway Authorities challenged the same before this Court in W.P. No.15852/1998. A co-ordinate Bench of this

Court, by order dated 27.08.2001, allowed the writ petition, set aside the order dated 03.12.1997 and consequently, dismissed O.A. No.2117/1994. While dismissing the said writ petition, the co-ordinate Bench observed that, if the petitioner makes an application for compassionate allowance under the Railway Services (Pension) Rules, 1993 (for short, 'the 1993 Rules') the petitioner may consider the same sympathetically keeping in view the long service rendered by the applicant before his retirement.

- (c) It is relevant to note that, during the lifetime of the husband of the respondent, no application for sanction of compassionate allowance was made, and it was subsequent to his death, the respondent - wife of the railway servant - submitted representation on 27.06.2016 praying for grant of compassionate allowance. The said representation/application for sanction of compassionate allowance was considered by the petitioners and, under communication dated

06.06.2017, the respondent was informed that she is not entitled for compassionate allowance as per Rule 65 of the 1993 Rules. The said communication was challenged by the respondent by filing O.A. No.170/00403/2017 before the Tribunal. The Tribunal under impugned order dated 03.01.2018 allowed the application and directed the petitioners-Railway Authorities to grant and pay compassionate allowance to the respondent – wife of the deceased railway servant.

4. Aggrieved by the order of the Tribunal, the petitioner-Railway Authorities are before this Court.

5. Learned counsel for the petitioners-Railway Authorities would submit that the respondent is not entitled for compassionate allowance and there is no provision to grant compassionate allowance to a Railway servant, who has suffered punishment of 100% cut in pension. Further, it is submitted that the Tribunal failed to notice that the High Court, in its order dated 27.08.2001 passed in W.P. No.15852/1998, had confirmed the order

of punishment of 100% cut in pension and also rejected the contention of the respondent that the punishment is disproportionately excessive, by observing, in the course of its order, that as the charge is serious one relating to bribery, the punishment cannot be said to be excessive.

6. Learned counsel for the petitioners, referring to Rule 65 of 1993 Rules submits that a railway servant, who is dismissed or removed from service shall forfeit his pension and gratuity. Referring to proviso to the said Rule, he also submits that, the competent authority in deserving cases could sanction compassionate allowance not exceeding $2/3^{\text{rd}}$ of pension or gratuity or both which would have been admissible to the dismissed or removed railway servant, but such sanctioning or otherwise of the compassionate allowance is discretionary one and depends on the nature of charge on which the railway servant was dismissed or removed or imposed major penalty. Learned counsel for the petitioners would submit that since the charge of bribery/receiving illegal gratification is proved against the husband of the respondent, rightly, the

petitioners-Railway Authorities came to the conclusion that the respondent would not be entitled to compassionate allowance. Thus, the learned counsel would pray for allowing the writ petition.

7. Per contra, the learned counsel appearing for the respondent supports the order of the Tribunal and would submit that even a dismissed or removed employee would be entitled for compassionate allowance in deserving special circumstances. It is submitted that the husband of the respondent had served the railway authorities and the service of the husband of the respondent was blemish less. In the above circumstances, learned counsel for the respondent prays to dismiss the writ petition.

8. Having heard the learned counsel for the parties and on perusal of the writ petition papers, the only point which falls for consideration is as to whether the Tribunal is right in allowing the original application of the respondent for sanction of compassionate allowance.

9. On hearing the learned counsel for the parties and on perusal of the writ petition papers, we are of the view that the Tribunal is not justified in allowing the original application of the respondent and directing sanction of compassionate allowance to the respondent.

10. There is no dispute with regard to imposition of punishment of 100% cut in pension of the husband of the respondent, after holding an enquiry. The order dated 28.11.1994 imposing punishment of 100% cut in pension was set aside by the Tribunal in O.A. No.2117/1995 which was the subject matter of writ petition before this Court in W.P. No.15852/1998. This Court by order dated 27.08.2001 set aside the order of the Tribunal and dismissed O.A. No.2117/1995 which would mean that the order of punishment of 100% cut in pension is confirmed. It is relevant to note that the punishment of 100% cut in pension is for the proved misconduct of bribery/receiving illegal gratification. To the contention of the husband of the respondent before the High Court [in W.P. No.15852/1998] i.e. the punishment is disproportionately

excessive, the Co-ordinate Bench of this Court has observed that as the charge is serious and one relating to bribery, the punishment cannot be said to be excessive and refused to interfere with the punishment imposed, but made an observation that if the respondent [i.e., the husband of the respondent] made an application for compassionate allowance the Railway Authorities may consider the same sympathetically considering the service rendered by the respondent therein. The husband of the respondent, during his life time, failed to make any application for sanction of compassionate allowance, but it is the respondent herein, who is the wife of the Railway servant, made an application on 21.03.2017, after more than 15 years, for compassionate allowance.

11. Rules 65 of the 1993 Rules reads as follows:

"65. Compassionate allowance – (1) *A railway servant who is dismissed or removed from service shall forfeit his pension and gratuity:*

Provided that the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, 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 above Rule would state that a railway servant, who is dismissed or removed, shall forfeit his pension and gratuity. Proviso to the said Rule authorises the authority, which is competent to dismiss or remove a railway servant from service, to sanction compassionate allowance in deserving of special consideration and if such compassionate allowance is considered it shall not exceed $2/3^{\text{rd}}$ of pension or gratuity or both. Proviso would indicate that sanction of compassionate allowance is a discretion vested with the authority which has power to dismiss or remove a railway servant. While exercising the discretion, the Railway Authority shall have to take note of the nature and gravity of the charge on which the railway servant is removed or dismissed. Unlike pension, one cannot, as a matter of right, seek compassionate allowance.

12. In the instant case, punishment of 100% cut in pension is imposed. For the proved misconduct of demanding and accepting illegal gratification or bribery, appropriate punishment is dismissal or removal. Since the husband of the respondent had retired from the service,

the railway authorities imposed 100% cut in pension. Normally, punishment of removal or dismissal would take away the pension and gratuity. Compassionate allowance could be granted in terms of Rules 65 of 1993 Rules in deserving special circumstances. Each case has to be considered on the merits of its own, and the authorities sanctioning compassionate allowance has to come to a conclusion as to whether such applicant would be entitled to compassionate allowance taking into consideration the punishment imposed, the nature and gravity of the charge and the service rendered by him. If the service is dishonest, one would not be entitled to compassionate allowance.

13. On going through the impugned order, the Tribunal has not assigned any reason for directing grant of compassionate allowance. The Tribunal has also failed to note the special circumstances and how the respondent deserves compassionate allowance. The respondent would not be entitled for compassionate allowance when looked

into the nature and gravity of charge on which 100% cut in pension is imposed.

14. For the reasons recorded above, the impugned order of the Tribunal cannot be sustained and requires to be set aside. Hence, the following:

ORDER

- i) The writ petition is allowed.
- ii) The impugned order, dated 03.01.2018, in O.A. No.170/00403/2017 passed by the Central Administrative Tribunal, Bangalore Bench, is hereby set aside.
- iii) The application in O.A.No.170/00403/2017 stands dismissed.

**Sd/-
CHIEF JUSTICE**

**Sd/-
JUDGE**

KMS
CT:VP