**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR. JUSTICE AMIT RAWAL**

**&**

**THE HONOURABLE MR. JUSTICE EASWARAN S.**

**WEDNESDAY, THE 3RD DAY OF JULY 2024 / 12TH ASHADHA, 1946**

**OP (CAT) NO. 230 OF 2018**

**AGAINST THE ORDER DATED 27.06.2018 IN OA NO.771 OF 2016 OF CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH**

**PETITIONERS/RESPONDENTS IN OA:**

1 UNION OF INDIA
REPRESENTED BY THE CHAIRMAN, RAILWAY BOARD, RAIL BHAVAN, NEW DELHI-110001.

2 GENERAL MANAGER,
SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI, 600003.

3 CHIEF PERSONNEL OFFICER,
SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI, PIN-600003.

4 SENIOR DIVISIONAL MEDICAL OFFICER,
SOUTHERN RAILWAY, THRISSUR, THRISSUR, PIN-680005.

5 CHIEF MEDICAL DIRECTOR,
SOUTHERN RAILWAY, HEADQUARTERS OFFICE, PARK TOWN P.O., CHENNAI, PIN-600003.

6 MEDICAL SUPERINTENDENT,
SOUTHERN RAILWAY, TRIVANDRUM DIVISION, THIRUVANANTHAPURAM PETTAH, THIRUVANANTHAPURAM, PIN-695024.

7 SENIOR DIVISIONAL PERSONNEL OFFICER,
SOUTHERN RAILWAY, DIVISIONAL OFFICE, THIRUVANANTHAPURAM, PIN-695014.

BY ADVS.
SRI.S.RADHAKRISHNAN,SENIOR PANEL,RAILWAYS
SREEJITH P. R

**RESPONDENT/APPLICANT IN OA:**

SHOBANA KUMARI,
W/O.LATE P.BABU, CHERATHALKKAL VEEDU, POTHENCODE P.O., TRIVANDRUM, PIN-695584.

**THIS OP (CAT) HAVING BEEN FINALLY HEARD ON 03.07.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

# JUDGMENT

Amit Rawal, J.

Present OP(CAT) is directed against the Order of the Central Administrative Tribunal dated 27.6.2018 rendered in OA No.180/00771/2016 whereby the claim of the respondent, widow of P.Babu for compassionate allowance has been allowed.

2. Succinctly, the facts in brief, are that Sri. Babu was in the employment of the Railway with effect from 20.7.1985 and vide order dated 2.11.2001 was removed from the service on account of unauthorized absence for a period of 8 years, 1 month and 13 days. In 2011, he is stated to have died. Request for compassionate allowance was rejected in July 2009. After that, again request was made but when not acceded, approached the Tribunal in OA 169 of 2015. The direction was given to the respondents before the CAT and the petitioners herein, to dispose of the same. It is in that background, Annexure A1 has been passed rejecting the request while relying upon Rule 65 of the Railway Services Pension Rules 1993.

3. Noticing the aforementioned facts, the learned Tribunal relied upon Rule 41 of the CCS Pension Rules and ordered for compassionate allowance. Learned counsel appearing on behalf of the petitioner Union of India submitted that once the service conditions of the employees of the Railway are governed by the Railway Rules 1993, the assistance of other Rules cannot be taken. No doubt, the assistance can be taken in case there is an ambiguity or absence of such provisions whereas on perusal of

the Provisions of Rule 65, the discretion for grant of compassionate allowance vests with the competent authority. Thus there is an abdication.

4. This appeal stands admitted since 2018 and notice had already been issued. Service has been effected but there is no appearance. We deem it appropriate to decide the petition on merits. For adjudication of the lis, it would be appropriate to extract the provisions of Rule 65 of the Railway Service (Pension) Rules 1993.

> 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, sacntion 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.*
> *(2) A compassionate allowance sanctioned under the proviso to sub rule (1) shall not be less than three thousand five hundred rupees per mensem. (Authority: Railway Board's letter No.2011/F (E) III/1(1) 9 dated 23.9.13)*

5. However, the Tribunal relied upon Ext.P2 judgment wherein there is a reference of Rule 41 of the CSS Pension Rules. The operative part of the judgment reads thus:

> 4. *The Apex Court has in a recent decision in Mahinder Dutt Sharma v. Union of India and Others (2014 (11) SCC 684) held, interpreting rule 41 of the Central Civil Services (Pension) Rules, 1972 which is pari materia with rule 65 of the Railway Services (Pension) Rules, 1993, that, where the delinquency of the employee does not fall within the type of cases enumerated in paragraph 13 of the judgment and the misdemeanour does not fall within the illustration set out therein, subject to availability of factors of compassionate consideration, the benefit of compassionate pension is available to the dismissed employee. The Apex Court held that as the appellant before it was dismissed from service for*

*unauthorised absence, the materials on record prove his entitlement for compassionate consideration. It was held that the appellant before the Apex Court is entitled to have his request for grant of compassionate allowance under rule 41 of the Central Civil Services (Pension) Rules, 1972 reconsidered in the light of the parameters laid down by the Apex Court. In the light of the binding decision of the Apex Court, we are of the opinion that on the facts placed before the Central Administrative Tribunal, the tribunal was perfectly right in coming to the conclusion that the applicant before it is eligible for family pension.*

*We accordingly hold that there is no merit in the instant original petition. It fails and is dismissed.*

6. Concededly, Babu, had remained unauthorizedly absent for a period of eight (8) years, one (1) month and thirteen (13) days by excluding the period had rendered the service less than 10 years. The authority while rejecting the case did not take into consideration the proviso owing to the unauthorized absence. The learned Tribunal has also failed to notice that the claim during the life time of Sri. Babu was rejected way back in July 2009. No explanation has come in making a fresh representation and to seek the intervention of the court in OA No.169 of 2015. All these factors if look in cumulative, leads to irresistible conclusion that the claim was stale and impermissible as per the Railway Pension Rules. The impugned order is set aside. For the reason aforementioned the present OP(CAT) is allowed.

Sd/-

AMIT RAWAL

JUDGE

Sd/-

sab EASWARAN S.

JUDGE

**APPENDIX OF OP (CAT) 230/2018**

**PETITIONER EXHIBITS**

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| **EXHIBIT P1** | **TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH IN OA 180/00169/2015 DATED 28TH SEPTEMBER 2015.** |
| **EXHIBIT P2** | **TRUE COPY OF THE JUDGMENT OF THE HONPOURABLE HIGH COURT OF KERALA IN OP (CAT) 93 OF 2016 DATED 17TH MARCH 2016.** |
| **EXHIBIT P3** | **TRUE COPY OF THE ORDER IN CP NO.180/00064/2016 IN OA 180/00169/2015.** |
| **EXHIBIT P4** | **TRUE COPY OF THE OA NO.180/00771/2016 FILED BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.** |
| **EXHIBIT P5** | **TRUE COPY OF THE REPLY STATEMENT FILED BY THE RESPONDENTS IN OA NO. 180/00771/2016 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUALM BENCH.** |
| **EXHIBIT P6** | **TRUE COPY OF THE REJOINDER FILED BY THE APPLICANT IN OA NO. 180/00771/2016 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUALM BENCH.** |
| **EXHIBIT P7** | **TRUE COPY OF THE ORDER OF THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKUALAM BENCH IN OA NO. 180/00771/2016 DATED 27TH JUNE 2018.** |