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Writ Petition No.4844 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.02.2024

CORAM

**THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU**

**Writ Petition No.4844 of 2024
and W.M.P.No.5285 of 2024**

- 1.Union of India,
Represented by the Senior Divisional Personnel Officer/ MAS,
Southern Railway,
O/o.The Divisional Office, Personnel Branch,
Park Town, Chennai – 600 003.
 - 2.Divisional Personnel Officer/ MAS,
Southern Railway,
O/o.The Divisional Office, Personnel Branch,
Park Town, Chennai – 600 003.
 - 3.Assistant Mechanical Engineer (Wagon),
Southern Railway,
Tondiarpet, Chennai – 600 019.
- ... Petitioners

Vs

- 1.The Registrar,
Central Administrative Tribunal,
Madras Bench High Court Building,
Chennai – 104.
 - 2.Arputham
- ... Respondents



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PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the Tribunal in its impugned order dated 19.04.2023 on O.A.No.1210 of 2018 passed by the 1st respondent. Hon'ble Central Administrative Tribunal, Madras Bench and quash the same and pass such further order.

For Petitioners : Mr.M.Karthikeyan

For R2 : Mr.R.Malaichamy

ORDER

(Order of the Court was made by Mr.K.KUMARESH BABU.,J.)

Heard Mr.M.Karthikeyan, learned counsel for the petitioners, Mr.R.Malaichamy, learned counsel for the 2nd respondent.

2. Mr.M.Karthikeyan, learned counsel appearing on behalf of the petitioners would submit that the husband of the 2nd respondent was appointed as a CPC Welder in the Department of Railways in the year 1981 on a time scale of pay of Rs.260-400. Thereafter, he was absorbed as a Welder in the scale of pay of Rs.950-1500. Since, there was unauthorised absence from 14.03.1991 to 26.09.1991, he was removed from service and thereafter, he had also expired on 03.02.1996.



3. While imposing the order of punishment, the Disciplinary Authority had also sanctioned a compassionate allowance to the husband of the 2nd respondent to the extent of 2/3rd of the pension and gratuity which is admissible to him, if he had retired on compensation pension. Pursuant to the said order of punishment, the proceedings dated 28.02.1997 was also issued indicating that the said allowance will be paid to him from the date of his removal namely 07.09.1994. Since, the husband of the 2nd respondent had died, the 2nd respondent had made a request for grant of family pension to which she would be eligible. The claim of the 2nd respondent seeking family pension was considered by the Department, pursuant to the direction issued by the Tribunal in O.A.No.820 of 2018. It was found that the Railway Board had earlier held that since the husband of the 2nd respondent had not completed the qualifying service for pension, the order of the disciplinary authority granting compassionate allowance was bad and for the same reason, the 2nd respondent would also not be entitled for any family pension.

4. He would submit that the Rules 75 (2) (c) of the Railways Service



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(Pension) Rules, 1993 postulates that if a railway employee, after retirement from service dies, on the date of death was on receipt of pension or compassionate allowance referred to Chapter V other than the pension referred to Rule 53, then the family of the deceased shall be entitled to family pension. He would submit that since, the compassionate allowance that had been ordered by the disciplinary authority was not in order, the 2nd respondent would not be entitled to any family pension. This aspect has been clearly over-looked by the Tribunal and therefore, the order passed by the Tribunal would have to be interfered with.

5. Countering his arguments, Mr.R.Malaichamy, learned counsel for the 2nd respondent relied upon the judgment of the Division Bench of this Court in W.P.No.26528 of 2015 dated 14.03.2017 and would contend that having granted compassionate allowance, it would not be proper on the part of the Railway Administration to contend that the employee should have completed 10 years of service for grant of compassionate allowance and therefore, he would submit by applying the aforesaid judgment, there is no error in the order passed by the Tribunal necessitating any interference by



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this Court.

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6. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record before this Court.

7. It is an admitted case that the disciplinary authority while imposing the punishment had granted compassionate allowance to the husband of the 2nd respondent. In fact this had come to be implemented by the Railway Administration in the year 1997, that is after the death of the husband of the 2nd respondent. A perusal of Section 75 (2) (c) of the Railways Service (Pension) Rules, would indicate that a railway servant who had been entitled for a pension or compassionate allowance dies, then his family would be entitled to a family pension. The said Rule also indicates that such pension or compassionate allowance should be other than the pension referred to in Rule 53 of the Railway Servant Pension Rules. It postulates a situation, where the family of an employee who had been granted with compassionate allowance other than the regular pension would be entitled to a family pension. Even though, much arguments had



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been made by the learned counsel for the petitioner the grant of compassionate allowance by the disciplinary authority was erroneous, no action has been initiated by the authority to review the said proceedings, even if it is assumed to be erroneous, which in our view is not. The petitioners cannot seek to deny the family pension, which otherwise the 2nd respondent would be entitled to in view of the Rule 73 (2) (c) of the Railways Service (Pension) Rules, 1993.

8. Further Rule 65 which postulates compassionate allowance, that when a railway servant is dismissed or removed from service, he shall forfeit his pension and gratuity. A proviso had been appended to the said Rule empowering the disciplinary authority to grant compassionate allowance not exceeding 2/3rd pension or gratuity or both which would have been admissible to him, if he had retired on compensation pension. This Rule does not stipulate any qualifying service that should have been completed by the said employee for grant of compassionate allowance.

9. From the judgment of the Division Bench of this Court, stated



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supra, it would be seen that the Division Bench of this Court had held that once having granted compassionate allowance, the Railway Administration cannot impose any condition that the employee should have completed 10 years of qualifying service for grant of compassionate allowance. For better appreciation, the relevant paragraph is extracted hereunder:-

“7. The Competent Authority having found that the second respondent deserves grant of Compassionate Allowance passed an order to that effect. The order was passed on 7 July 2003. It was only on 10 December 2012, the Railways took an unreasonable stand that the second respondent is not entitled to Compassionate Allowance. When the Rule is very clear, it is not open to the Railway Administration to impose a condition of 10 years of service for grant of Compassionate Allowance. This aspect was rightly considered by the Tribunal. The Tribunal was therefore correct in allowing the Original Application. We do not find any reason to rake a different view in the matter.”

10. For the foregoing reasons, we do not find any merits in the Writ Petition and the same is liable to be dismissed.



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11. Accordingly, this Writ Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(R.S.K.,J.) (K.B., J.)
28.02.2024

Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
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R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

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To

The Registrar,
Central Administrative Tribunal,
Chennai Bench.

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