

Abdhash Kumar Vs. Union of India Through Its General Manager

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Court : Central Administrative Tribunal CAT Mumbai

Decided On : Jan-28-2014

Judge : The Honourable Mrs. Chameli Majumdar, Member (J)

Appeal No. : Original Application No. 2068 of 2012

Appellant : Abdhash Kumar

Respondent : Union of India Through Its General Manager

Advocate for Def. : Shri. N.P. Lambat

Advocate for Pet/Ap. : Shri. C. L. Deharia

Judgement :

(BOMBAY BENCH, MUMBAI. CAMP: NAGPUR)

Chameli Majumdar, Member (J).

1. The applicant is the ex-railway employee, who has filed this O.A. for the following relief : (8)1.1 to release the Compassionate Allowances along with permissible allowances from date of dismissal (12.07.1992) of the applicant from service in the light of Railway Board's order No.F(E)III/2003/PN1/5 dated 04.11.2008. 1.2 18% interest on payable sum from date of dismissal from service. 1.3 Costs 1.4 Any other relief which the Hon'ble CAT deems fit to pass in form of pecuniary benefit.

2. The facts of the case, as made out in the O.A., are as follows :

"The applicant, while working as Khalasi Helper, was removed from service for remaining unauthorizedly absent without following the principles of natural justice by the Disciplinary Authority. The said order of removal was served on the applicant on 12.07.1992. The applicant challenged the removal order before the Appellate Authority but the said authority also held against the applicant and confirmed the order of removal."

3. From the representation of the applicant it appears that the applicant was charge sheeted for unauthorized absence. He was served with a major penalty charge sheet. The Inquiry Officer conducted an ex-parte enquiry since the applicant did not receive the copy of the charge sheet. The Disciplinary Authority accepted the report of the Inquiry Officer and the applicant was served with a removal notice without forwarding the copy of the enquiry report. The applicant has mentioned in the representation that he fell sick due to Kalazar and he underwent treatment from a Government doctor in his native place in Bihar, as such, he was unable to resume duty on due date. However, on being fit, he came to join duty on 28.08.1988. He submitted an appeal, which was turned down. Thereafter, the applicant preferred a mercy appeal to ADRM on 08.10.1990, which is still awaiting consideration. However, the applicant completed 20 years of service before removal, as such, he applied for compassionate allowance, which was not considered at the time of issuing the removal order.

4. The applicant moved an Original Application before this Tribunal, being O.A. No. 2238/2010, for grant of compassionate allowance, which was disposed of on 20.01.2011 by directing the respondents to consider the representation of the applicant. The applicant's representation was considered and rejected vide order dated 29.04.2011. The said order dated 29.04.2011 has been challenged in this O.A. In the impugned order, the respondents resorted to the ground that due to non-availability of Disciplinary and Appeal file the Railway was unable to examine the case of the applicant as to whether the applicant has made out a new case or placed a material which can change the nature of the case. It is further mentioned in the impugned order that the applicant's case is a time barred case, being more

than 20 years old case, as such, no further action would be taken.

5. I have heard Shri C. L. Deharia, Learned Counsel for the applicant and Shri N.P. Lambat, learned counsel for the respondents. The pleadings along with the documents annexed have also been perused.

6. In the Railway Board's letter dated 04.11.2008, in para 2, it is held that para 1 of Board's letter of even number dated 9.5.2005 stipulates that past cases, where the competent authority in exercise of its discretionary powers has not sanctioned compassionate allowance at the time of passing orders of removal/dismissal or immediately thereafter, cannot be reopened for review on the basis of representations received from the removed/dismissed employees and members of their family at a later date. In para 3 of the said letter dated 04.11.2008 it is mentioned that in partial modification of Board's letter dated 09.05.2005, it has also been decided by the Board that out of the past cases in which the disciplinary authority has not passed any specific orders for or against grant of compassionate allowance, if any case appears to be deserving for consideration being given, may be reviewed by the disciplinary authority concerned on receipt of representations of dismissed/removed employees or the family member of the deceased employees keeping in view certain conditions. Those conditions are, in short, that only those past cases are to be reviewed where records pertaining to D and A proceedings and service records are available on the ground that the D.A. proceedings are essential to take a fair decision duly considering the gravity of the offence and other aspects involved therein and to confirm that the question of sanction or otherwise of compassionate allowance was not considered by the competent authority at any stage. Service records would be required to determine the net qualifying service for working out the quantum of compassionate allowance. Sub-para 2 says that each case has to be considered on its own merit and conclusion reach on the question where there were any extenuating factors associated with the case, which would show that the punishment of dismissal/removal was unduly hard on the individual. Third is the kind of service rendered by the railway servant. Fourth is 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. In sub-para 5 it is mentioned that

poverty is not an essential condition. Due consideration can be made of the individual's spouse and children dependent upon him.

7. This Railway Board's letter came into existence from 04.11.2008. The applicant has prayed for only release of compassionate allowance. The applicant's contention is that all the parameters for grant of such compassionate allowance applies in his case, therefore, the applicant cannot be denied the compassionate allowance.

8. The respondents have argued that grant of compassionate allowance is a discretionary power of the disciplinary authority. The applicant was removed from railway service w.e.f. 12.07.1992. After 20 years the question of preservation of the records does not arise. As such, the service records and the D and A files were not available in the office for reviewing the case. The O.A. does not have any merit for consideration and, therefore, liable to be dismissed.

9. The only ground which is taken by the respondents in the reply as well as at the time of argument is that the case being 20 years old, case records are not available. Therefore, the applicant's case cannot be considered on that count only under the Railway Board letter dated 04.11.2008.

10. The respondents have admitted in their reply that the applicant was dismissed from service for unauthorized absence. Therefore, it is evident that the applicant was not removed from service on the charge of dishonesty. The respondents themselves, by issuing letter dated 04.11.2008, have conferred a right on the dismissed/removed railway employee for fresh consideration and/or review of the past cases for the purpose of grant of compassionate allowance.

11. In my considered view, since there is no cut off date mentioned in the said letter dated 04.11.2008, it is not open to the authorities to shut out the claim of a removed and/or dismissed employee on the ground that disciplinary and appeal proceeding records were not available. The applicant has annexed his appeal dated 06.09.2088 wherein he has clearly mentioned that he made several efforts, including sending a telegram, to the Loco-Foreman informing that he was suffering from Kalazar. He further submitted that although he was issued with a charge

sheet, but his condition was critical and he could not reply to the charge sheet or participate in the enquiry.

12. The respondents in their reply admitted that standard form no. 5 was served on him for remaining unauthorizedly absent. The respondents' only plea is that 2008 Railway Board letter will not apply in the instant case because the service records and D and A file were not available.

13. It is surprising to note that the respondents on oath contend that "after conducting the Discipline and Appeal enquiry by giving reasonable opportunities to the applicant to defend the case himself and on going through the inquiry report the Disciplinary Authority has imposed punishment of removal from service with effect from 12.07.1992 with full application of mind". It is, thus, surprising that in absence of record relating to disciplinary enquiry how the Railway Officer on oath made such statement after 20 years and these paragraph has been affirmed as the contents of the reply are true and correct as per the information derived from the Deponent from official records.

14. Under such circumstances, this O.A. is allowed with a direction to the respondents to review the case of the applicant on the basis of available records in terms of Railway Board's letter dated 04.11.2008 and pass a reasoned and speaking order within a period of 12 weeks from the date of receipt of a copy of this order. No order as to costs.

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