

Central Administrative Tribunal
Principal Bench

O.A.No.1713/2002

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Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 26th day of April, 2003

Shri Kapil Kumar Beri
s/o Shri K.L.Beri
r/o BA/88-B, Janak Puri
New Delhi. ... Applicant

(By Advocate: Sh. U. Srivastava)

Vs.

1. Union of India, through
The Secretary
Ministry of Defence
South Block
New Delhi.
2. The Chief Engineer
HQ, West Command, Engrs. Branch
Chandimandir.
3. The Chief Engineer
Delhi Zone, Delhi Cantt
New Delhi.
4. The Commander Works Eng.
HQ. Delhi Cantt.
New Delhi.
5. The Garrison Eng. (South)
Delhi Cantt.
New Delhi - 110 010. ... Respondents

(By Advocate: Sh. M.K.Bhardwaj, proxy of Sh. Arun
Bhardwaj)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant impugns respondents' order dated
18.4.2002 wherein his request for grant of
compassionate allowance under Rule 41 of the CCS
(Pension) Rules, 1972 has been rejected.

2. Applicant was enrolled as an Electrician
with the respondents on 1.2.1971 and lastly worked as
Senior Electrician, HS Gr.I. Being involved and
arrested by the Police on the allegations of his
committed rape with his own minor daughter of 12

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years. He was implicated in FIR No.25/96, PS, Delhi Cant, under Sections 376/506 IPC on 13.1.1996. After the trial was concluded, and on hearing on sentence, by an order dated 31.8.2000, as the allegations had not warranted any leniency, applicant was sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs.5000/-.

3. The aforesaid conviction was challenged in an appeal before the High Court of Delhi in a Cr. MA No.2239/2001 in Criminal Appeal No.704 of 2001 where by an order dated 26.11.2001 sentence of applicant was suspended and he was released on bail. The aforesaid appeal is yet to be disposed of by the High Court. In the interregnum, resorting^u to Section 19(1) of the CCS (CCA) Rules, 1965 on the basis of his conviction, on an immoral turpitude, applicant was removed from service by an order dated 21.11.2001 w.e.f. 31.8.2001.

4. Applicant preferred a representation dated 3.12.2001 for grant of compassionate allowance and in absence of any response by respondents, preferred OA 413/2002, and by an order dated 15.2.2002 respondents have been directed to dispose of the above representation and in the event, grievance still survives, liberty was given to applicant to approach this Court.

5. The respondents by an order dated 18.4.2002 as the case was not found fit and deserving compassionate allowance was denied to applicant, giving rise to the present OA.

6. Shri U.Srivastava, learned counsel appearing on behalf of applicant, contended that

applicant has already completed more than 30 years of satisfactory service and as the sentence has been suspended by the High Court, keeping in view the liability and family circumstances, the case of applicant was deserving, compassionate allowance and has been rejected by a bald mechanical and unreasoned order which is violative of Articles 14 and 16 of the Constitution of India.

7. Shri U.Srivastava relied on the decision of the High Court in Ex. CT. Daya Nand v. Union of India & Others, 2000(1) ATJ 137 to contend that in absence of any reasons recorded, as to how request for compassionate allowance is devoid of merit, order is liable to be set-aside.

8. On the other hand, respondents' counsel Shri Arun Bhardwaj, through Sh. M.K.Bhardwaj, contested the OA and denied the contentions and stated that as applicant was involved in a beastly act, which amounted to a moral turpitude. His case has not been found^l deserving for compassionate allowance. Accordingly, the same was rejected.

9. In so far as the pending appeal is concerned, it is stated that unless the conviction is set-aside, applicant cannot be reinstated in service and is entitled to any benefits. However, settlement of GPF Advance has already been forwarded to JCDA (Funds), Meerut for audit and on receipt of the same, the payment shall be disbursed to him.

10. I have carefully considered the rival contentions of the parties and perused the material on

record. Rule 41 of the CCS (Pension) Rules ibid provides in deserving case of special consideration, sanction of compassionate allowance not exceeding 2/3rd of his pension or gratuity or both in case where Government servant has dismissed or removed from service. However, guiding principles for grant of compassionate allowance are laid down in GIFD Advice Memo No.3(2)-RII/40 dated 22.4.1940 reproduced as under:

"(1) Guiding principles for the grant of Compassionate Allowance:-

It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of compassionate allowance. [G.I., F.D., Office Memo. No.3(2)-R-II/40, dated the 22nd April, 1940]."

11. I have also carefully gone through the order passed by respondents. According to which the case of applicant has not been found deserving for special consideration to sanction compassionate

allowance and from the reply of respondents it transpires that as applicant was found ^{guilty} and convicted of an offence of moral turpitude having raped ⁱⁿ his own daughter, the case of applicant does not come within the ambit of deserving case which requires special consideration for sanction of a compassionate allowance even after he has completed 30 years of service. ghastly and beastly act of the act ^{of} rape of his own daughter for which the charges stood established and the applicant has been convicted there is no question of any leniency in his case for accord of compassionate allowance.

12. In so far as the suspension of his sentence is concerned, unless the appeal of the applicant pending in High Court is allowed and the conviction is set-aside, thereafter, the law shall take its own course. Moreover, the decision of the High Court cited by the learned counsel for applicant is distinguishable and would not apply to the present case as therein, no reasons have been recorded by respondents and they have failed to explain the reasons in counter reply but as in the present case the reasons are assigned in the reply to the OA, the aforesaid decision would of no assistance to applicant.

13. In so far as the GPF is concerned, respondents have already taken steps to disburse the payment to the applicant, the same shall be disbursed to applicant as expeditiously as possible in accordance with rules.

14. In the result, I do not find any legal infirmity in the order passed by respondents, the OA is bereft of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

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