



**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

**OA No. 4447/2018**

Reserved on : 11.02.2020

Pronounced on : 03.03.2020

**Hon'ble Ms. Aradhana Johri, Member (A)**

Sh. Kusum Singh Chauhan,  
Aged about 71 years,  
W/o. Late Sh. O. S. Chauhan  
Ex.IAS (AGMU-67)  
R/o. & C/o. Ms. Shailly Singh,  
TU-67, Vaisakha Enclave, Pritampura,  
New Delhi – 110 088.

...Applicant

(By Advocate : Mr. Pratap Ch. Mishra)

Versus

Union of India  
Through

1. Secretary to Govt. of India,  
Ministry of Home Affairs,  
UTS, North Block,  
Central Secretariat,  
New Delhi – 110 001.

2. Chief Secretary  
Govt. of Mizoram, Aizawl  
Mizoram

...Respondents

(By Advocate : Mr. Rajinder Nischal for R-1 and Mr. Divyansh Tiwari with Mr. Siddhesh Kotwal for R-2)

**O R D E R**

The applicant is the widow of Late Sh. O. S. Chauhan who belong to the Indian Administrative Services (IAS). He was suspended on 05.03.1986 but subsequently reinstated on 24.08.1995. The Central



Bureau of Investigation (CBI) registered a case against him for amassing assets disproportionate to his known source of income. On the recommendations of the CBI and CVC, disciplinary proceedings for major penalty were initiated under Rule 8 of Indian Administrative Service (Discipline and Appeal) Rules, 1969 vide charge memo No.14033/42/85-UTS-I dated 09.06.1999 for the following misconducts/irregularities :-

*“(i) Claiming false Travel Allowance (TA) in respect of his wife in the year 1985;*

*(ii) His two children got admission in Green Fields School, Delhi on the basis of forged School Transfer Certificate in the year 1984;*

*(iii) Not submitted Annual Property Return for the year 1986-1987 and 1987-1988, and*

*(iv) While functioning in various capacities at various places in Delhi and Arunachal Pradesh, he failed to intimate the department regarding purchase of immovable properties, either in his own name or in the name of his dependents or in the benami, till September, 1985.”*

2. In the inquiry Sh. Chauhan did not submit his defence and the inquiry had to be completed ex parte. The inquiry officer held all the four charges as proved. Thereafter, following due process he was dismissed vide order dated 06.12.1996. He did not appeal against this order. He died several years later on 29.07.2015. However, before his death he had already been convicted by the CBI Court in 2012 and got no relief from the



Hon'ble High Court. The applicant submitted a representation for payment of compassionate allowance on 28.03.2018 which was rejected vide Ministry of Home Affairs order No. F. No. 14033/34/87,UTS-1 dated 13.09.2018.

3. It is the contention of the applicant that she is wife of the deceased Sh. O.S. Chauhan and since she had to forfeit his pension and gratuity due to dismissal, and did not get any relief from the criminal Courts she is facing financial hardship. She has two grown up daughters and a grown up son who do not live with her. It is her contention that such extenuating circumstances must be kept in mind and she should be sanctioned compassionate allowance under Rule 41 (Sub Rule 1) of the CCS (Pension) Rules, 1972. She has also stated that the disciplinary authority had earlier considered a lesser punishment but on the advice of UPSC the punishment was increased to that of dismissal.

4. Therefore, she has prayed that order No. F. No. 14033/34/87,UTS-1 dated 13.09.2018 of Ministry of Home Affairs be set aside and the respondents be directed to sanction compassionate allowance at the rate of 2/3<sup>rd</sup>



pension and 2/3<sup>rd</sup> of Gratuity with effect from 06.12.1996.

5. Respondent no.1 is the Ministry of Home Affairs, GOI and respondent no.2 is Govt. of Mizoram. Both the respondents have filed separate counters denying the claims of the applicant on more or less similar lines. They have stated that Late Sh. O. S. Chauhan had a blemished record and was found to be guilty of several misconducts ranging from claiming forged TA bills in respect of his wife, securing admission of his children in Green Field School on the basis of various forged documents and not intimating transactions regarding acquisition of immovable property as well as not submitting annual property return. He was also found guilty of purchasing benami properties in the name of his domestic servant and being in the possession of disproportionate assets. They have further stated that the applicant was placed under suspension on 05.03.1986 and reinstated on 24.08.1995 but subsequently dismissed from service on 06.12.1996. Therefore, as per rules, the effective period of service of Sh. Chauhan is only 10 to 11 years. They have further submitted that the applicable rules are All India Service (Death-cum-Retirement Benefits) Rules, 1958 (AIS DCRB



Rules). Respondents have also stated that since the applicant has committed several dishonest acts in the course of his career, he is not eligible for compassionate allowance.

6. Heard Mr. Pratap Ch. Mishra, learned counsel for applicant and Mr. Rajender Nischal for respondent no. 1 and Mr. Divyansh Tiwari with Mr. Siddhesh Kotwal for respondent no. 2.

7. The facts of the case, including misconduct, dismissal and conviction in the criminal case are all admitted. Therefore, the case needs to be examined in the narrow compass of whether it is one that needs special consideration. For the sake of clarify the rule 5 (1) of AIS DCRB Rules is reproduced below :-

*“5(1) No retirement benefits may be granted to a person who has been dismissed or removed from the Service or who has resigned from the service :*

*Provided that, if the circumstances of the case so warrant the State Government may grant to a person who has been dismissed or removed from the Service a compassionate allowance not exceeding two-thirds of the retirement benefits which would have been admissible to him if he had been invalidated and not dismissed or removed from the Service.”*

8. The provision is somewhat similar to CCS (Pension) Rules which reads as follows :-



#### **“41. Compassionate allowance**

(1) A Government 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 <sup>1</sup>[compensation pension].*

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of <sup>2</sup>[Rupees three hundred and seventy-five] per mensem.”

9. The CCS (Pension) Rules have been amplified by the Govt. of India G.I., F.D., Office Memo No. 3(2)-R-II/40, dated the 22<sup>nd</sup> April, 1940 to elucidate for the grant of certain compassionate allowance. These are as follows :-

**“(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 a compassionate allowance.”



10. It is clear from the rules and the guidelines that each case has to be considered on its merits and a conclusion is to be reached whether there are such extenuating features which would make it a fit case for compassionate allowance. It has also been stated that not just the act of actual misconduct but also the kind of service the employee has rendered, also needs to be considered.

11. Certain rulings have been cited by both sides. In O.A No. 1312/2014 **Ram Chander Vs. Commissioner of Police**, this Tribunal held that the applicant had 34 good entries including two commendation rolls, 4 commendation certificates and 28 commendation cards and the matter pertained to his unauthorised and wilful absence from service. It was further noted that he was acquitted in a criminal case and his family circumstances were tragic. In these circumstances, the Court directed the respondents to consider the compassionate allowance. Similarly, in the case of **Sardar Begum W/o. Late Syed...Vs. UOI** before Coordinate Bench of this Tribunal, the applicant sought compassionate allowance since her husband was dismissed from service for negligent driving but it was held that he had 30 years of unblemished service and his family should not be deprived of at least





the compassionate allowance specially when they were in distress. It was also held that since the deceased employee did not give any application in his life time, the respondents were required to treat the application as if it was filed by the applicant's husband during his lifetime before the disciplinary authority for grant of compassionate allowance/compassionate family pension.

12. In the case of **Manoj Kumar Vs. Commissioner of Police & Ors.** in W.P. (C) No. 8421/2010, the Hon'ble High Court of Delhi also viewed his period of unauthorised absence and his alcoholism/drug history but felt that since circumstances warranted special consideration, compassionate allowance should be paid.

13. O.A No. 3511/2012-**Kanta Singh Vs. Union of India & Ors.** has been filed to bring out that the legal heirs have the right to sue even though the particular matter related to penalty and not compassionate allowance.

14. In case of **Ex. ASI Shadi Ram Vs. Govt. of NCT of Delhi & Ors.** in WPC No. 5544/2007, the Hon'ble Delhi High Court observed that it needs to be seen whether the case merits special consideration and the kind of service the individual has rendered during his entire tenure





needs to be assessed. Keeping all these circumstances in mind the Hon'ble High Court directed the competent authority to reconsider the petitioner's application as per Rule 41 of CCS (Pension) Rules, guidelines dated 22.04.1940 and the observations of the Court and pass a speaking order on the same.

15. Very specific guiding principles were laid down vide order dated 11.11.2014 by the Hon'ble Apex Court in the case of **Mahinder Dutt Sharma Vs. Union of India and Ors.** in Civil Appeal No. 2111/2009 wherein the Hon'ble Apex Court laid down certain considerations for evaluation, illustratively, which are as follows :-

*“(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned persons duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honest and good morals. Any debauched, degenerate or evil behaviour would fall in this classification. “*

*(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.*

*(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the*



*employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.*

*(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.*

*(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration."*

16. Now, the present case has to be examined in the light of the aforementioned AIS (DCRB) Rules, guiding principles and the various Court rulings. The gist of all the rulings is that each case has to be seen on its own merits as to whether there are extenuating features which warrant special circumstances. Further, the entire service of the employee has to be seen along with the circumstances of his dismissal.

17. In the present case, the factors leading to the dismissal of the deceased employee was severe and covered several acts of misconduct including filing forged



documents, acquiring disproportionate assets etc. These are several misconducts of different kinds which are of serious nature. When viewed with the lens of the illustrative guidelines, mentioned by the Apex Court in the case of **Mahinder Dutt Sharma** (Supra), it is clear that it falls within the four corners of some of the examples which the Hon'ble Apex Court has held would not warrant grant of compassionate allowance. The infliction of punishment of dismissal resulted from the dishonesty of the employee towards his employer and from acts designed for personal gain. Also it was not a case of one misconduct but several misconducts over a period of time. This clearly distinguishes this case from the cases of Sardar Begum (supra), Ram Chander (Supra), Shadi Ram (supra), and Manoj Kumar (Supra).

18. It is also seen that the husband of the applicant was dismissed on 06.12.1996 but he did not file any application for compassionate allowance till his death on 29.07.2015. Even the applicant filed a representation in 2018 which was three years after the death of her husband and 22 years after his dismissal. She also has grown up children though she has stated that they do not live with her. In all, the circumstances reveal that she could not be on the verge of penury since she waited so



long to file a claim for compassionate allowance. Not that the circumstances of financial hardship would have justified grant of compassionate allowance in this case because of the nature and extent of the misconducts of the deceased employee.

19. In light of the aforesaid this O.A is devoid of merit and is dismissed. No order as to costs.

(Aradhana Johri)  
Member (A)

/Mbt/