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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.959/2001

New Delhi, this 25th day of September, 2001

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri M.P. Singh, Member(A)

Jarnail Singh
1000, Sector 12, R.K. Puram
New Delhi

.. Applicant

(By Shri Amrit Bhalla, Advocate)

versus

Union of India, through

1. Secretary
Ministry of Home Affairs
North Block, New Delhi
2. Secretary
Deptt. of Personnel & Training
New Delhi

.. Respondents


(By Shri K.C.D. Gangwani, Sr. Advocate)

ORDER(oral)

By Shri M.P. Singh

Applicant in this OA has challenged the order dated 8.2.2001 whereby his request for grant of Compassionate Allowance (CA, for short) under Rule 41 of CCS (Pension) Rules, 1972 has been rejected.


2. Applicant at the relevant time was working as Under Secretary in Freedom Fighters Division in the Ministry of Home Affairs during 29.6.1981 to 2.7.1982. He was placed under suspension on 31.7.1982 on the ground of some alleged irregularities in authorising pension to persons purported to be Freedom Fighters causing a loss of Rs.1,73,550/- to the exchequer. The suspension order was revoked on 17.2.1984. He was again placed under suspension from 29.4.1985 in connection with the very same charge-sheet of 26.8.1983, as revised vide



Memorandum dated 14.5.1984. Pending enquiry, applicant retired from service on superannuation on 31.3.1986. Aforesaid enquiry, which had been initiated under Rule 14 of CCS(CCA) Rules, 1965, was converted into an enquiry under Rule 9 of CCS(Pension) Rules, 1972 and by an order dated 26.5.1988, a penalty of withholding of pension and gratuity permanently was imposed upon him.

3. Applicant had earlier filed OA 866/1999 for the grant of CA, which was disposed by this Tribunal by an order dated 23.10.2000 authorising the applicant to submit his representation for claiming CA. He submitted his representation on 8.11.2000. Respondents have considered his representation and rejected the same by order dated 8.2.2001 on the ground that inter alia provision of Rule 41 of CCS(Pension) Rules which authorises grant of CA is made applicable only to government servants who have been dismissed or removed from service and not to those who have neither been dismissed nor removed from service but have been merely punished with withholding of pension and gratuity permanently. Aggrieved by this, applicant has filed this OA claiming reliefs by praying for directions to the respondents to quash and set aside the order dated 8.2.2001 and to grant him CA from the date he retired from service.

4. Respondents in their reply have stated that the representation of the applicant had been examined in detail. The penalty of withholding gratuity and pension on a permanent basis was imposed on the applicant under Rule 9 of CCS(Pension) Rules after considering facts and



circumstances of the case. The President had come to the conclusion that the grave misconduct on the part of the applicant established in the enquiry, warranted award of of the above mentioned penalty. It was concluded that Rule 41 of CCS(Pension) Rules relating to grant of CA does not apply in applicant's case. The penalty imposed on the applicant was also upheld by this Tribunal and the Supreme Court. Accordingly, replies explaining the position were sent to the applicant vide DoPT's letter dated 14.7.1997, 13.2.1998, 30.7.1998 and 22.9.1998. Since the applicant was neither dismissed nor removed from service, Rule 41 is not applicable to him and hence he was replied to accordingly on 8.2.2001.

5. Heard the learned counsel for the rival contesting parties and perused the records.

6. During the course of the arguments, learned counsel for the applicant submitted that although Rule 41 of CCS(Pension) Rules, CA is applicable to those who have been dismissed or removed from service, Rule 88 of the said Rules provides that "Where any Ministry or Department of the Government is satisfied that the operation of any of these rules causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exception and conditions as it may consider necessary for dealing with the case in a just and equitable manner, provided that no such order shall be made except with the concurrence of the Department of Personnel & Administrative Reforms.



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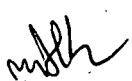
7. In this case, respondents have withheld the whole amount of gratuity and pension. Applicant's counsel submitted that the case of the applicant deserves sympathetic consideration under Rule 88. On the other hand, learned counsel for the respondents stated that since the applicant was neither dismissed nor removed from service, there is no question of giving any relaxation under Rule 88. The relaxation under Rule 88 in respect of the applicant would amount to introduction of a third category of persons and also to re-writing of Rule 41. According to him, the punishment of removal or dismissal has much wider consequences as it not only forfeits the retiral benefits of a person but also debars him from future employment in the Government, whereas in the present case only the Gratuity and Pension of the applicant have been forfeited. It is precisely for this reason that Rule 41 is applicable only to those persons who are removed or dismissed from service.

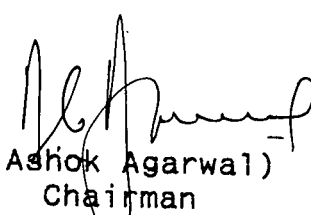
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8. We have carefully gone through the record placed before us. It is true that Rule 41 of CCS (Pension) Rules covers only the category of persons who are removed or dismissed from service but Rule 88 of the said Rules empowers the Government to dispense with or relax the requirement of any rule to such extent and subject to such exception and condition as it may consider necessary for dealing with a case in a just and equitable manner. This provision of relaxation is not with reference to any particular rule but is a general provision. We are therefore of the considered view that the competent authority can consider the claim of the applicant for the

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grant of CA under Rule 41 by relaxing the provisions of this Rule as provided in Rule 88 of CCS(Pension) Rules, 1972. We feel that ends of justice would be met by directing the respondents to refer the matter to the competent authority to consider the representation of the applicant for grant of CA under the provisions of Rule 41 by invoking the provisions of Rule 88 of the CCS(Pension) Rules and to take a decision thereon within a period of four months from the date of receipt of a copy of this order. We do so accordingly. The OA is disposed of with the above direction. No costs.


(M.P. Singh)
Member(A)


(Ashok Agarwal)
Chairman

/gtv/