

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1308 of 1997

New Delhi, this the 2nd day of February, 1998.

Hon'ble Mr. N. Sahu, Member(A)

Shish Pal
Ex.Const.Np.726/N.D.
S/o Sh. Mangat Ram
R/o Vill. & P.O.Akupur
Distt.Rohtak
Haryana

...Applicant.

(By Advocate : Sh.U.Srivastava)

Versus

1. Lt.Governor of Delhi
through its Chief Secretary
Delhi Administration, Delhi
2. Commissioner of Police Delhi
M.S.D. Building, I.P.Estate
New Delhi
3. Additional Commissioner of Police
New Delhi Range
M.S.D. Building, I.P.Estate
New Delhi
4. Additional Deputy
Commissioner of Police
New Delhi

...Respondents

(By Advocate : Dr.Surat Singh)

ORDER (ORAL)

By Sh. N. Sahu, Member(A)

Heard.

2. In this OA the applicant is aggrieved against the order NO.F-16/226/90/1007/HAP-ND dated 08.03.1996 (Annexure A/1). In this order the competent authority rejected the claim of the applicant for compassionate allowance it was asked to consider pursuant to the directions of this Tribunal passed on 01.12.1995. The competent authority examined the case and found that the applicant had

27

absented himself from duty on 13 occasions on the basis of which the punishment of dismissal was awarded to him by an order dated 08.04.1991. They have also recorded that there was a previous record of absenting from duty unauthorisedly and wilfully on 55 different occasions. In this view of the matter, they held that this was not a fit case for invoking the discretion conferred on proviso to Rule 41 of CCS Pension Rules 1972 in his favour.

3. Learned counsel for the applicant made two important submissions. He stated that the Tribunal in its order directed that this is a fit case for showing sympathy to the applicant. The order rejecting compassionate allowance does not show any such sympathetic consideration. He urged that Rule 41 of CCS Pension Rules 1972 regarding compassionate allowance is unrelated to the gravity of his misconduct. Such compassion should have been shown irrespective of the merits of his case. The second important point made by him is by a reference to an order of the Hon'ble Supreme in SLP 25491 of 1995 in the case of another Constable Virender Singh dated 12.02.1996. In this case, the Supreme Court was considering an order of dismissal for proven misconduct. Considering the number of years put in, the Supreme Court directed that the penalty of dismissal shall be substituted by the penalty of compulsory retirement. After that order, the Apex

Court further directed that the applicant would be entitled to pension and the other post-retirement benefits.

4. It is only the Apex Court which is competent to substitute an order of dismissal with an order of compulsory retirement or even lesser punishment. As already mentioned above, by an order dated 01.12.1995 the order of dismissal of the competent authority was confirmed by a Division Bench of this Tribunal in OA-665 of 1993. That being so, there is no scope for further adjudication in this OA.

5. Payment of compassionate allowance is a matter of discretion. Discretion has to be judicially exercised. Discretion can be exercised only after consulting the record of service, the conduct of the applicant and the financial constraints of the family of the applicant after dismissal. In this case, the respondents have considered the above record and found that the applicant was wilfully and unauthorisedly absent for 55 occasions before the initiation of disciplinary proceedings. The disciplinary proceedings themselves were initiated for absence from duty on 13 different occasions in addition to the 55 times earlier recorded. In this view of the attitude of contumacy on the part of the applicant, the competent authority felt that this was not a case in which the discretion for compassionate allowance should be exercised in favour of the applicant and his family.

6. After carefully considering the submissions of learned counsel, I am of the view that the discretion so exercised by the authority does not call for any interference. However, the applicant, on the basis of the Supreme Court order can take the matter to a higher forum and if he succeeds in getting the order of dismissal replaced with an order of compulsory retirement or an order of even lesser punishment, then the pensionary benefits will of course be given to him.

7. With these observations, OA is disposed of.
No costs.

N. Sahu

(N. Sahu)
Member (A)

/Kant/

One