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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1198/86.

DATE OF DECISION: 31.7.1990.

Shri Hardas G. Madan Applicant.

Shri R.K. Kamal Counsel for the
Applicant.

v/s.

Union of India Respondent.

Mrs. Raj Kumari Chopra Counsel for the
Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

1. Whether Reporters of local papers may be allowed to see the judgement? Yes.
2. To be referred to the Reporter or not? Yes.
3. Whether their lordships wish to see the fair copy of the judgement? No.
4. To be circulated to all Benches of the Tribunal? No.

J.P. SHARMA

(J.P. SHARMA)
MEMBER (J)

(P.C. JAIN)

(P.C. JAIN)
MEMBER (A)

31.7.1990.

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(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who was employed in the office of Regional Settlement Commissioner, Jamnagar House, New Delhi, Department of Rehabilitation, Ministry of Works, Housing & Supply, and was dismissed from service with effect from 6.6.1962 (Annexure B-3), filed this application under Section 19 of the Administrative Tribunals Act, 1985. He challenged his suspension and subsequent dismissal and prayed that the same be quashed and also that he may be allowed pension as per law and the rules. When the application came up for admission, the learned counsel for the applicant filed a memo confining the relief only to the payment of compassionate allowance under Rule 41 of the Central Civil Services (Pension) Rules, 1972. The application was, therefore, admitted only on the above point.

2. Relevant facts, in brief, are that the applicant was appointed as a Clerk in Revenue Department, District Dadu, Sind (West Pakistan) on 16.1.1937. He was confirmed with effect from 1.4.1940 and promoted as Naib Tehsildar and Magistrate. He held the post of Head Accountant

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upto 24.8.1948 and proceeded on earned leave for two months. He was appointed, on a purely temporary basis, as an Assistant in the office of Custodian of Evacuee Property, New Delhi, and was granted quasi-permanent status with effect from 1.7.1951. He was placed under suspension with effect from 24.2.1961 (forenoon) vide order dated February 1961 (Annexure B-2) as a criminal offence was under investigation / trial. The charge was under Section 161 I.P.C. and Section 5(2) read with Section 5(1)(d) of Act of 1947. He was convicted by the Special Judge, Delhi on 6.6.62 and was dismissed with effect from 6.6.62 vide order dated 13.6.62. He filed an appeal in the High Court of Punjab, but the same was dismissed on 8.9.1965. Special Leave Petition under Article 136 of the Constitution filed in the Supreme Court was also dismissed on 16.12.1965. Civil suit filed for declaration against the order of suspension and of dismissal, in the court of Senior Sub-Judge on 14.7.67 is also said to have been dismissed.

3. We have carefully perused the documents on record and have also heard the learned counsel for the applicant. None was present on behalf of the respondent at the time of oral hearing of the case.

4. Rule 24 of the C.C.S. (Pension) Rules, 1972 provides that dismissal or removal of a Government servant from a service or post entails forfeiture of his past service. Before the above said Rules came into operation, there was a corresponding provision in the Central Civil Regulations. The applicant is, therefore, not entitled to pensionary benefits. He has accordingly prayed for sanction of compassionate allowance under Rule 41 of the C.C.S. (Pension) Rules, 1972.

5. The aforesaid Rule 41 provides that a Government servant who is dismissed or removed from service shall forfeit his pension and gratuity, but 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 compensation pension. The competent authority has not sanctioned to the applicant any compassionate allowance. The learned counsel for the applicant submitted that the counter-affidavit filed by the respondent does not disclose any ground for not doing so. It was also stated by the learned counsel for the applicant at the bar that the applicant has no one to look after him and he is now nearly 72 years of age and, therefore, he deserves sympathy. There is, however, nothing on the record before us that there is no one to look after him. However, even if it is presumed that it is so, we have to see whether there are any grounds for intervention by the Tribunal and that too at this late stage.

6. It was stated in Government of India, Finance Department Office Memo. No.3(2)-F- II/40, dated the 22nd April, 1940 that it is practically impossible to lay down categorically precise principles that can uniformly be applied to individual cases for grant of compassionate allowance. 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 unduly hard on the individual. It was further stated that 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

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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.

7. It is not in dispute that the applicant was prosecuted and convicted on a charge of corruption and his appeal to the High Court and a Special Leave Petition to the Supreme Court were both dismissed. Though copies of those judgements have not been filed before us, yet we presume that had there been any extenuating circumstances, the applicant might have got some relief from the High Court or the Supreme Court. Misconduct relating to corruption is covered by the guidelines issued in the Office Memorandum dated 22.4.40 (supra). The statement at the bar that there was no one to look after the applicant may also mean that he has no dependents to support. We, therefore, do not find any ground for intervention in the decision taken by the competent authority in not sanctioning pensionary benefits to the applicant, or to grant to the applicant his prayer for sanction of compassionate allowance.

8. In view of the above discussion, the application is devoid of any merit and is accordingly dismissed. Parties will, however, bear their own costs.

J. P. SHARMA
(J. P. SHARMA)
Member (J)

31.7.1990
(P. C. JAIN)
Member (A)

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