

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-2350/2004

New Delhi this the 12<sup>th</sup> day of April, 2005.

Hon'ble Shri Shanker Raju, Member(J)

Anju W/o late Const. Nidhi Kumar,  
PIS No. 28892325,  
R/o V & PO: Khajoori,  
P.S. Parikshit Garh,  
Distt. Meerut, UP.

..... Applicant

(through Sh. Anil Singal, Advocate)

Versus

1. Union India through  
Commissioner of Police,  
Police Headquarters,  
I.P. Estate, New Delhi.
2. Addl. Dy. Commissioner of Police,  
HQ; Security, Police Headquarter,  
I.P. Estate, New Delhi.

..... Respondents

(through Sh. M.K. Bhardwaj, proxy for Sh. Om Prakash, Advocate)

Order (Oral)

Heard the learned counsel for the parties.

2. In this OA, a challenge has been made to order dated 11.08.2004 passed by the Addl. Dy. Commissioner of Police rejecting the request of the applicant for compassionate allowance.
3. Applicant is a legal heir of Constable Nidhi Kumar, who died in harness and prior to that he was dismissed from service on account of willful and unauthorized absence for a year.

X

4. On approach to this Tribunal in OA-985/2004, directions have been issued to dispose of the representation.

5. On consideration, the impugned order rejected the request on the ground of wilful and unauthorized absence. Furthermore, as the deceased had not cooperated in the D.E. proceedings, therefore, such an indisciplined act effected the moral of the Force adversely and, as such, no leniency could be taken. Rule 41 of the CCS (Pension) Rules, 1972 provides that in case of dismissal of a government servant, special consideration, in deserving cases, to allow Compassionate Allowance has been laid down. Guiding principles have been laid down vide GI Office Memo dated 22.4.1940, which are 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 a compassionate allowance.

[G.I., F.D., Office Memo No.3(2)-R-II/40, dated the 22<sup>nd</sup> April, 1940]"

6. Learned counsel has also relied upon a decision of Hon'ble High Court of Delhi in *Ex. Ct. Daya nand Vs. UOI* (2000(1)ATJ 137) in which claim for Compassionate Allowance has been denied on the ground of remaining absent

from duty. It was made clear in that if there is non-application of mind in special consideration, one is entitled to Compassionate Allowance.

7. In the reply, respondents have vehemently opposed the contentions and stated that the claim of the deceased employee was rejected on the ground that he abandoned his duties.

8. I have carefully considered the rival contentions of the parties and perused the material placed on record.

9. I am of the considered view that Rule 41 is an exception to Rule 24 of the Rules ibid where on dismissal, entire past service is forfeited. Rule 41 allows a special consideration in deserving cases. In the guiding principles it has been laid that the officer who is dishonest, this principle has not to be followed. In the present case, the allegation is that the applicant remained absent from duty whereas he had served the department for almost 13 years. In that event treating the ground of absence as an impediment for compassionate allowance coupled with the fact that no reasons have been recorded except absence of the applicant there has been a non-application of mind.

10. In the result, as the applicant past service record has not established him as an incorrigible on account of absence, I am of the considered view that the respondents' denial to compassionate allowance is not well founded.

11. As welfare provision, this legislation stand to support and hold those who are dismissed yet their conduct is neither untrustworthy nor any corrupt motive is attributed. In such an event treating the misconduct whereas the facts are that on account of mental illness applicant has not joined his duties, this order cannot be sustained in law. I am also fortified with the view of the decision of the High Court in Daya Nand's case (supra). Remaining absent from duty is not the gravest act of misconduct, impeaching morality etc.

12. In the result, OA is allowed. Impugned order is set aside. Respondents are directed to accord compassionate allowance to LR of the deceased with all consequential benefits within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju

(Shanker Raju)  
Member(J)

/vv/