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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1602/2004

New Delhi this the 22nd day of February, 2005.

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Shri Jaibir Singh,
Ex-Constable No.377,
D.A.P. IV Bn. Delhi
S/o Shri Anoop Singh,
Village Gitorni House No.72, P.S. Mehrauli,
South Delhi,
New Delhi-30.

-Applicant

(By Advocate Shri U. Srivastava)

-Versus-

Govt. of N.C.T. of Delhi through:

1. The Chief Secretary,
Govt. of NCT Delhi, 5 Sham Nath Marg,
New Delhi.
2. The Commissioner of Police,
Police Headquarters,
I.P. Estate,
New Delhi.
3. Deputy Commissioner of Police,
II Bn. D.A.P. Delhi.

-Respondents

(By Departmental Representative Constable Shekhar)

O R D E R (ORAL)

Applicant impugns respondents' order dated 14.5.2004, rejecting his request for compassionate allowance under Rule 41 of the CCS (Pension) Rules, 1972.

2. Applicant on account of habitual absenteeism was terminated under Rule 5 (1) of the CCS (Temporary Service) Rules, 1965, on 14.1.85.

3. OA-920/1988 was filed before this Tribunal assailing the termination, wherein the claim was rejected being time barred, which has been affirmed by the Apex Court, which is not disputed by either side.

4. Applicant filed OA-3168/2003 for consideration of grant of compassionate allowance, which was disposed of on 15.1.2004, at the admission stage itself, without issuing notice to respondents, to consider the OA as a representation and to dispose it of by a reasoned and speaking order.

5. In pursuance thereof vide impugned order request of applicant has been turned down with the following observations:

"The main pleas raised by the petitioner in his representation are that the applicant has been serving to the entire satisfaction, is false. The claim of the applicant can be considered by the Respondent for the grant of Compassionate Allowance in accordance with Rule 41 of CCS (Pension) Rules. Rule 41 of CCS (Pension) Rules is not attracted in the case of the petitioner as no compassionate allowance is given to the terminated Govt. Servant. However the usual benefits i.e., the amount of leave salary of 78 days which was on his credit has been given to him vide order No.3436/CR-II Bn. DAP, dated 12.9.85 and the amount of insurance has also been given to him vide order No.1941-46/Acctt./II Bn. DAP, dated 26.7.85. Keeping in view all the service record, he is completely unfit for service.

There is no merit in the representation, I therefore hereby reject the representation of Ex. Const. (Jaibir Singh, No.1377/DAP which is in the public interest also. Let the petitioner be informed accordingly."

6. Learned counsel for applicant impugns this order on the ground that applicant has no source of income and the respondents while considering the compassionate allowance rather went into the misconduct and have acted contrary to G.I.F.D. Office Memorandum No.3(2)R-II/40 dated 22.4.1940 whereby it is decided that only if the misconduct carries legitimate inference that officer's service has been dishonest compassionate allowance is to be given on the analogy that dismissed or removed officer has wife or children dependent on him. Learned counsel

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for applicant further states that High Court Delhi in CWP No.886/2003 vide order dated 22.1.2004 in a case where 15 years' service has been rendered before dismissal on the ground of bigamy no element of punishment on which dismissal has taken place is to be taken into consideration. It is stated that this decision has been affirmed by the Apex Court in SLP No.5366/2004 by an order dated 16.7.2004.

7. On the other hand, respondents' counsel have vehemently opposed the contentions and stated that as per the conduct of applicant being a habitual absentee he was considered to be unsuitable for police service. Accordingly, his claim was rejected. It is also contended that Rule 41 would have no application to a terminated government servant.

8. In the rejoinder applicant has re-iterated the pleas taken in the OA.

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

10. Rule 41 of the Rules *ibid* as a condition precedent for its applicability prescribes that government servant seeking compassionate allowance should either be dismissed or removed from service. Nothing in this rule applies to a terminated government servant who has been terminated under Rule 5 (1) of the CCS (TS) Rules, 1965.

11. The earlier decision of the Tribunal has directed consideration of the representation and this cannot be *de hors* the rules. The decision of the High Court of Delhi would not apply to the facts and circumstances because therein Rule 41 of the Rules *ibid* was applicable, as petitioner therein was dismissed from service on the ground of bigamy.

12. In this view of the matter, I am of the considered view that in case of a police official who is terminated under CCS (TS) Rules, 1965 resort



cannot be made to Rule 41 of the Rules ibid for grant of compassionate allowance.

13. Respondents' decision that the aforesaid rule is not attracted in the case of applicant is legally justifiable.

14. In the result, finding OA bereft of merit, it is dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

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