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O.A. No. 520 of 2007

Order dated: 11.07.2008

**CORAM:**

Hon'ble Mr. Justice K. Thankappan, Member(J)  
Hon'ble Mr. C.R.Mohapatra, Member (A)

This is an application filed by the wife of one late Bijaya Chandra Nayak, who while working as Postal Assistant under the third Respondent committed misconduct of misappropriating public money of more than Rs. 5000/- on different occasions from different passbooks. A criminal case was also filed against the said employee. The Trial Court found him guilty. Against the Trial Court judgment, the said employee filed an appeal before the Appellate Court. The Appellate Court confirmed the same and, thereafter, the matter was taken before the High Court in revision. The Hon'ble High Court in the revisional order passed in Criminal Revision No. 73/1992, though confirmed the conviction, reduced the sentence as follows:

“ Taking all these factors into consideration, ends of justice would be met if instead of sentencing him to any imprisonment, I direct him to pay fine of Rs. 1500/- on each count in default to undergo rigorous imprisonment for a further period of three months on each count. I order accordingly.”

After the dismissal of the Criminal Revision Petition, the said employee, as averred in the O.A., filed a representation before the authorities for pensionary benefits and other retrial benefits, as there was some delay in disposing the said representation, an O.A. had been filed before this Tribunal as O.A.No. 45/05. This Tribunal had

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considered the matter in extenso and on considering the rival contentions raised before, this Tribunal had disposed of the O.A. by directing the Respondents to consider the representation within a specified period. Thereafter, the Respondents have passed Annexure-A/7 order stating that "there is no provision of Rules to substitute a punishment awarded to a Government Servant under CCS(CCA) Rules, 1965 for his established misconduct by another lesser punishment at this stage. Secondly, in so far as Rule 41 of CCS (Pension) Rules, 1972 is concerned, poverty is not the criteria to invoke its provisions when the alleged misconduct carries with it the legitimate inference that the Government servant's service was dishonest and immoral in nature which was proved beyond all reasonable doubts by the Hon'ble Appellate Court. This being the facts and circumstances of the case, there is no merit in the request of the applicant and hence rejected".

Rather aggrieved by the said order, the present application has been filed by the wife of the Govt. employee on the ground that the Govt. employee died on 1.11.2002. This O.A. has been admitted by this Tribunal and notice had been ordered. Today, this O.A. was listed for orders and this Tribunal has perused the record and heard Mr. B.K.Nayak, Ld. Counsel appearing for the applicant and Mr. P.R.J.Dash, Ld. Counsel for the Respondents.

The question now raised before this Tribunal is with regard to application of Rule 41 of CCS (Pension) Rules, which reads as follows:

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" 41(1) A Govt. servant who is dismissed or removed from service shall forfeit his pension and gratuity:

Provided that 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.

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three hundred and seventy-five per mensem.

Admittedly, the husband of the applicant has been found guilty of misappropriation of public money and the fact was already proved before the court of law and even confirmed by the Appellate Court as well as Revisional Court. Counsel appearing for the applicant now submits that as the husband of the applicant had returned the misappropriated money, the applicant is entitled for some benefits as provided under Rule 41 with regard to the retiral benefits.

We have gone thoroughly through the averments in the O.A. The prayer in the O.A. was for giving pensionary retiral benefits to the wife of the applicant but now the counsel for the applicant invites our attention to Rule 41 for compassionate allowance. Hence the prayer made in the O.A. and now the ground taken in the O.A. has some difference. Along with the prayer it is also prayed to quash Annexure-A/7. Now this Tribunal has already considered the factual position under which the applicant

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approached this Tribunal. State exchequer is not for providing all persons who are unable to support themselves on the ground of any relation with the public employment. In this case, the husband of the applicant, while working in the Postal Department, was found guilty of misconduct, very grievous in nature for which he was dismissed from service. A dismissed employee is not entitled to any pensionary benefit except the benefit he earned during his service such as the arrears salary that too depends on the finding by the department. We are now not addressed to consider that issue. Hence, that issue is left. The next question to be considered is whether Rule 41 can be invoked in the case of the applicant. As quoted above, the rule is now fortified with guiding principles by the Govt. of India. It is categorically held in the guiding principles that "each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there are any such extenuating feature 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 the light of the above, we have gone through the order at Annexure-A/7 order. The Department has found that the case of the applicant is not coming within the purview of said Rules or even guidelines. Therefore, the plea of the Ld. Counsel for the applicant is not accepted to protect or to provide persons who cheated the Government and the public as such, and the applicant's husband has already been found guilty of grave misconduct while he was in service.

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In the above circumstances, we are of the view that this O.A. has no merit which should be dismissed. We ordered accordingly.

The O.A. stands dismissed.

Shayut  
MEMBER (A)

Kappan  
MEMBER(J)