

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 515/2004

Thursday, this the 29th day of September, 2005.

CORAM:

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K.B.B.Nair
Krishna Vilas
Iringole P.O, Perumbavoor, Ernakulam
Headlight keeper (under order of dismissal)
Department of Light Houses & Light Ships
Deep Bhawan, Kadavanthara, Kochi : Applicant

(By Advocate M/s Santhosh & Rajan.)

Vs.

1. Union of India represented by the Secretary
Ministry of Shipping, New Delhi
2. The Director
Department of Light Houses & Light Ships
Deep Bhawan, Gandhi Nagar,
Kadavanthara, Kochi : Respondents


(By Advocate Mr. Thomas Mathew Nellimoottil)

The application having been heard on 29.09.2005, the Tribunal on the same day delivered the following:

ORDER (Oral)

HON'BLE Mr. K.V.SACHIDANANDAN, JUDICIAL MEMBER

The applicant entered service under the 2nd respondent as Assistant Light Keeper on 09.02.1966. He was promoted to the post of Head Light Keeper in 1978. He was trapped in a corruption case and on conviction by the Court of Special Judge (SPE-CBI-II) the applicant was dismissed from service with effect from 26.02.1997 as per Annexure A-1 order. An appeal was filed by the applicant against the conviction before the Hon'ble High Court of Kerala. The applicant averred that he had 28 years of service under the respondents at the time of his dismissal. The



applicant submitted Annexure A-2 representation for sanctioning compassionate allowance and it was rejected by Annexure A-3. Annexure A-4 has been issued modifying A-3 order stating that his request cannot be acceded to at this stage as his case is sub judice before the Hon'ble High Court. Challenging the said order, he has filed OA 159/2000 before this Tribunal which was disposed of directing the 2nd respondent to consider his representation in a fair and just manner as per provisions of Rule 41 of the CCS(Pension) Rules, 1972. By Annexure A-6 impugned order, the claim of the applicant has been rejected. Aggrieved, the applicant has filed this OA praying for the following main reliefs:-

- i. To call for the records leading to Annexure A-6 and set aside the same.
- ii. To declare that non sanctioning of compassionate allowance to the applicant as illegal.
- iii. To direct the 2nd respondent to sanction compassionate allowance to the applicant under Rule 41 of the CCS (Pension) Rules.


2. The respondents have filed a counsel statement before admission and also a detailed reply statement in which they have contended that Annexure A-6 is a speaking order passed keeping in mind the provisions of Rule 41 of CCS (Pension) Rules. The Special Judge (SPE/CBI) II Ernakulam in C.C.No.8/1995 sentenced the applicant to undergo rigorous imprisonment for one year and a fine of Rs.3000/- with a default sentence of 3 months simple imprisonment for the offense under Section 7 of Prevention of Corruption Act and also rigorous imprisonment for two years and a fine of Rs.4000/- with a default sentence of four months simple imprisonment for the offense punishable under Section 120 B IPC. He was dismissed from service with effect from 26.12.1997. Since the applicant has been convicted of a criminal charge under prevention of Corruption Act, the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest. High amount of moral turpitude is involved in the misconduct committed by the applicant and therefore it is not a fit case for sanctioning compassionate allowance. They further averred that as per Rule 41 of CCS (Pension) Rules, 1972 "poverty is not an essential condition precedent to the grant of compassionate allowance, but, special regard is also



regard is also occasionally paid to the fact that the officer has wife and children dependent upon him, that this factor itself is not sufficient for grant of compassionate allowance. except perhaps in the most exceptional circumstances, sufficient for the grant of compassionate allowance." The applicant's two daughters and son were married. It is further submitted that as per Rule 41 of CCS (Pension) Rules, 1972 "in each case the sanction of compassionate allowance has 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 interest of Government, unduly hard on the individual." The applicant averred that his wife and himself are in great difficulty to meet both ends. Poverty is not an essential condition precedent to the grant of compassionate allowance, but, special regard is also occasionally paid to the fact that the officer has wife and children dependent upon him. There was no such exceptional circumstances observed for granting compassionate allowance to the applicant.

3. The applicant has filed a rejoinder reiterating his contention in the OA and further submitting that the contention of the respondents that the applicant has been convicted of a criminal charge under prevention of Corruption Act and the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest is not correct. The reason denying the allowance to the applicant is not justified. Analysing 28 years of service of the applicant as dishonest based on a single instance is unjust and illegal. The respondents have also filed an additional reply statement reiterating the contentions in the reply statement.


4. M/s Santhosh & Rajan appeared for the applicant and Mr. Thomas Mathew Nellimoottil appeared for the respondents. The learned counsel for applicant submitted that as per provisions of Rule 41 of CCS (Pension) Rules, 1972 and considering the fact that the applicant has put in more than 28 years unblemished service as also he was under orders of promotion as A.E (Electrical) at the time of dismissal from service, he deserves special consideration for sanction of compassionate allowance. These matters have not been given due weightage by the authority who passed the impugned order. The learned counsel for respondents on the other



hand persuasively argued that applicant deserves no sympathy as he has committed a dishonest act

5. I have given due consideration to the arguments, material and evidence placed on record. The issue in this case is whether Annexure A-6 issued by the competent authority under Rule 41 of CCS (Pension) Rules, 1972 is in conformity with the rules and Government orders and if a discretion is exercised then the question arises whether that has been done judiciously. It is a fact that the applicant has come before this Tribunal in OA 159/04 wherein this Court directed the respondents "to consider and dispose of Annexure A-2 representation in a fair and just manner keeping in mind the provisions of the proviso to Rule 41 of CCS (Pension) Rules, 1972 and pass appropriate speaking orders thereon with a copy to the applicant."

6. The applicant has made representation Annexure A-2 dated 01.01.2004 in which he has categorically stated that "I have one son and two daughters. The daughters were married while I was under suspension, by selling major portion of my property. My son is married and he is now living separately with his wife and child. I am now living with my wife. My wife is suffering from various diseases, such as rheumatism, ulcer asthma etc. I am also suffering various diseases such as diabetic, asthma, chronic headache, rheumatism etc. I have to spend about Rs. 1000/- per month for our treatment. I could not earn anything during my service. Due to the dismissal from service, I had to quit the service with bare hands. I am now living in extreme poverty. The meager income from my property is not sufficient to meet both ends. The majority of the income from the property is being spent for the medical treatment of my wife and myself." He further submitted that "I have got 28 years, one month and 14 days qualifying service. It was an unblemished service and I was also under orders of promotion as A.E (Electrical) before suspending me from service." Had I been not suspended from service, I would have got pension and other pensionary benefits. The pendency of the conviction order is not a bar for compassionate allowance.



7. When the matter came up for hearing, the learned counsel for respondents brought to my notice the decision of the Hon'ble High Court in Criminal Appeal No.64/1998 dated 29.03.2005 whereby the applicant's sentence has been reduced to one year. The operative portion of the said order is reproduced as under :-

“ The sentences imposed on the 2nd accused for the offences under Sections 7 and 13 (2) read with Section 13 (1) (d) are upheld. However, considering that this person worked as a tool of the first accused, because of his weak mind and disposition. I am of the view that the sentence of rigorous imprisonment of two years, under the Indian Penal Code could be modified and reduced to one year. The fine as well as the default sentence imposed therein by the trial court are sustained. The sentences are directed to run concurrently in respect of the 2nd accused also. Both the accused are entitled for set off as per law.”

8. Now the question arises for consideration is whether Annexure A-6 impugned order has been issued with due application of mind and a fair and just manner as directed by this Tribunal. The administrative authorities who exercise the administrative powers should exercise it judiciously. On going through the order, I find that except reproduction of Rule and Government of India orders no independent mind has been applied by the authority who passed the order. The question is whether the applicant can be granted compassionate allowance or not? The 2nd respondent should have applied his mind while issuing Annexure A-6 impugned order in which it is stated that the applicant is dishonest and requires no sympathy. It is an admitted fact that charges have been proved and he has been convicted. The fact that he being dishonest could not be a reason for denying the compassionate allowance. A single act of omission or error of judgment would ordinarily not constitute misconduct though if such error or omission results in serious consequences as reported in AIR 1979 SC 1022 ; Union of India & Ors vs.J.Ahmed. The applicant has 28 years of unblemished service which is not disputed by the respondents. The materials placed on record also reveal that he has unblemished service except otherwise the one for which he has been punished. Apart from that, while considering for compassionate

allowance, one of the grounds that the respondents should have considered is his family, who is dependent on him. Admittedly, even daughters and son were married, his wife is still with him and considerable expenses has to be incurred for her medical treatment. This should have been considered as an important aspect by the respondents while passing Annexure A-6 order. It is quite obvious from the facts of the case and the representation made by him that he is now solely dependent on the mercy of the respondents in regard to compassionate allowance as he has no other earning for meeting the minimum needs of his family. The learned counsel for applicant urged that with a single instance, he may not be treated as ineligible for this concession/benefit. The learned counsel for applicant further submitted that the conviction has been reduced to one year which necessarily the applicant has to undergo and his family should not be put to hardship. He reiterated that the applicant is entitled for the compassionate allowance as stipulated in Rule 41 of the CCS(Pension) Rules, 1972.

9. In the conspectus of facts and circumstances, I am of the view that the respondents did not consider the hardship being faced by the family which in my opinion is an important factor to be looked into in this case as discussed above and therefore, it requires re-consideration in the matter.

10. Accordingly, I set aside and quash the impugned order Annexure A-6. Since granting compassionate allowance to an employee is the discretion of the respondents I direct the 2nd respondent to consider the matter afresh keeping in mind the rules on the subject and also the discussion made above and pass appropriate order within a time frame of two months from the date of receipt of a copy of this order. The decision taken shall be communicated to the applicant.

11. The OA is disposed of as above with no order as to costs.

Dated, the 29th September, 2005.



K.V.SACHIDANANDAN
JUDICIAL MEMBER