

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH

O.A.No.060/00740/2014

Orders pronounced on: 20.11.2015
 (Orders reserved on: 17.11.2015)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

S.C. Sharma

S/o Sh. S.D. Sharma,

Aged 67 years,

Ex-Principal, K.V. Ambikapur,

Chhattisgarh,

House No. 3429/Sector 49-D,

Sai Enclave,

Chandigarh.

Applicant

Versus

1. Kendriya Vidyalaya Sangathan and Secretary,

Union of India,

Ministry of HRD,

Shastri Bhavan, New Delhi-1.

2. Commissioner, KVS,

18-Institutional Area, Shaheed Jeet Singh Marg,

New Delhi-16.

3. Deputy Commissioner, KVS, RO, Sector 31, Chandigarh.

Respondents

Present: Applicant in person.
 Mr. R.K. Sharma, Counsel for the Respondents.

15

O R D E R (oral)
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The applicant has filed this Original Application seeking quashing of the order dated 12.3.2014 (A-1) vide which his claim for pension and compassionate allowance has been rejected on the premise that he had not completed 20 years continuous service and was dismissed from service for which his past service was forfeited in terms of General Principles and Conditions i.e. Para 6 (1) of Appendix 25 of the Accounts Code for Kendriya Vidyalayas and to direct the respondents to consider his case for grant of compassionate allowance under rule 41 of CCS (Pension) Rules, 1972 from due date.
2. The facts which led to filing of the instant Original Application are that the applicant joined service in Kendriya Vidyalaya Sangathan (for short "KVS") in November, 1986, at Yol Cantt, H.P. He remained posted at other places also. He was placed under suspension on 17.5.1997 and was ultimately dismissed from service on 5.5.1999 which was challenged in **O.A.No. 124-HR-2001** which was allowed on 27.11.2002 and the applicant was reinstated in service with full consequential benefits. The Writ Petition filed in the Hon'ble High Court and SLP in Hon'ble Apex Court resulted into dismissal. The applicant was, therefore, reinstated in service on 19.1.2005.
3. The applicant was issued a fresh charge sheet on 9.3.2005 on allegation of having left the station without obtaining station leave and NOC for visiting abroad and remained unauthorizedly absent from duties from 10.3.1997 to 19.5.1997 and committed breach of undertaking etc. This resulted into dismissal of applicant on

1

11.8.2006 which was challenged in **O.A.No. 500-CH-2006** but the applicant was unsuccessful as O.A. was dismissed on 14.10.2006. The CWP was also dismissed on 16.5.2011 and SLP filed there against was dismissed on 2.1.2013. Thus, dismissal of applicant attained finality.

4. The case set up by the applicant is that under rule 41 of the Central Civil Services (Pension) Rules, 1972, a person who has been dismissed or removed from service can be sanctioned compassionate allowance, not exceeding 2/3 of pension or gratuity or which would have been admissible to him or a compassionate allowance etc. The regulation further make it clear that each case has to be considered on its merit 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, unduly hard on the individual and in considering the question it has been the practice to take into account not only the actual misconduct but the kind of service he has rendered. The applicant claims that applicant is in his advanced age of 68 and is a chronic diabetic patient for 24 years and PGIMER has declared him as suffering from complicated serious disease. He is supporting his wife. He is under litigation for over 17 years and has not received any salary since 1997. He submits that there is provision for commutation of compassionate allowance. The denial of benefit to the applicant is not based on any sound reason, hence the O.A.
5. The respondents have filed a reply. They have reiterated the facts as mentioned by the applicant and support the disciplinary proceedings initialed against him and ultimately dismissal from service. Qua denial of compassionate allowance, it is submitted that the misconduct committed by the applicant was of grave

nature, revealing his dishonesty, whereupon he was dismissed from service and as such he is not entitled for compassionate allowance and his claim has rightly been rejected.

6. I have heard applicant in person and learned counsel for the respondents at length.
7. Rule 41 of the CCS (Pension) Rules, 1972 which deals with grant of compassionate allowance reads as under:-

"41. Compassionate allowance

(1) A Government 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".

8. The guiding principles for grant of compassionate allowance are laid down in Government of India's decision mentioned under Rule 41 of the CCS (Pension) Rules, 1972 which reads below:

(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, through 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."

It is, thus, apparent that rules and instructions specifically requires the authority competent to dismiss or remove from service to consider 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) and entire facts and circumstances including kind of service rendered by an employee is to be considered. Each request for compassionate allowance has to be decided based on the merits and circumstances of each case but the following would merit consideration in each case before arriving at a decision whether the case is one in which compassionate allowance should be sanctioned:

- (a) the actual misconduct for which the applicant was dismissed from service resulting in forfeiture of his pension and gratuity.
- (b) Whether there were/are any extenuating circumstances in the case of the applicant that would making the

punishment awarded, though it may have been necessary in the Government interest, unduly hard on the Government servant concerned.

- (c) Of course, the financial condition of the Government servant's family would also be a factor to be considered though not the deciding factor.

9. A perusal of the impugned order, Annexure A-1, leaves much to be desired as it does not take into consideration the various parameters required to be kept in mind while forming an opinion about grant of compassionate allowance to a dismissed employee and as such it cannot sustain in the eyes of law. Besides, the issue has also been considered by Hon'ble Delhi High Court in the case of **Additional Deputy Commissioner of Police Vs. Ms. Anju**, WP(C) No.20885/2005 decided on 6.4.2011, while carrying out judicial review of an order passed by learned Central Administrative Tribunal, Principal Bench, in an exhaustive manner. The observations made by Hon'ble High Court are reproduced as under :-

"10. This cannot be disputed that compassionate allowance not exceeding 2/3 of the pension or gratuity or both can be granted to a Government servant who has been dismissed or removed from the service. This is also not disputed that compassionate allowance shall be admissible to a Government servant who is dismissed or removed from the service in case of deserving person on account of special circumstances. By Office Memo No.3(2)-R-II/40, dated 22nd April, 1940 guiding principle for the grant of compassionate allowance have been laid down stipulating that each case has to be considered on its own merit and conclusion has to be reached on the question whether there are any such extenuating features in the case while taking into consideration the actual misconduct which

occasioned the dismissal or removal of the officer along with kind of service he had rendered. It has also been elaborated that whether the misconduct carries with it the legitimate inferences that officer's service has been dishonest or not also has to be taken into consideration and in case of misconduct on account of dishonesty of the employee, it would not be a good case for compassionate allowance. The said Office Memo also laid down that special regard is also to be paid to the fact that officer has a wife and children dependent upon him though this factor by itself may not be sufficient for grant of compassionate allowance.

11. Taking into consideration the facts disclosed by the respondent as widow of the dismissed Constable Nidhi Kumar, it is apparent that he was dismissed on account of unauthorized absence. This is also not disputed that he was ailing and ultimately died. In the circumstances, it is inevitable to infer that the service of the husband of the respondent was not terminated on account of his dishonest behaviour. This is also not disputed that the respondent widow of the dismissed Constable has three children and widowed mother of the deceased Constable. They have no source of income, nor has such education, as disclosed by her which can save them from the utter penury which the respondent and her family are facing.

12. In order to consider whether the compassionate allowance is to be granted or not, the petitioner ought to have considered some of these factors as enumerated hereinabove which are in terms of Office Memo dated 22nd April, 1940 and in accordance with Rule 41 regarding grant of compassionate allowance. The plea of the respondent for grant of compassionate allowance was first declined by a non-speaking order dated 24th February, 2004 and 12th March, 2004 which entailed filing an original application being OA No.2350 of 2004 which was disposed of by order dated 12th April, 2005 directing the petitioner to pass a speaking and reasoned order. Pursuant to that the impugned order dated 11th August, 2004 was passed

however, the relevant facts for grant of compassionate allowance have not been considered rather the circumstances in which the husband of the respondent was dismissed were reiterated. The facts leading to the dismissal from the service rather support the plea of the respondent that her husband had not mis-conducted based on dishonesty. The facts that before dismissal from the service on account of unauthorized absence on account of his illness, he had rendered 12 years of service was also not taken into consideration. The petitioner also did not take into consideration the relevant facts regarding the financial conditions of the family members of the deceased constable and utter penury in which they are living and that the deceased constable had rendered 12 years service. The order dated 11th August, 2004 declining the compassionate allowance was passed mechanically without application of mind. In the circumstances, the order of the Tribunal taking into consideration these facts and directing the petitioner to grant compassionate allowance to the respondent, widow of deceased Constable Nidhi Kumar cannot be termed to be illegal or not unsustainable.

13. The learned counsel for the petitioner, Mr. Tandon has contended that while dismissing the husband of the respondent, the authorities had not passed any order entitling him for compassionate allowance. However, this cannot be disputed that it was not held that the family of the deceased constable was held to be not entitled for compassionate allowance as contemplated under relevant rules. If at the time of dismissal it was not specifically held that the dismissed employee and his dependents would be entitled for compassionate allowance, later on plea of the compassionate allowance by the dependent of the deceased employee cannot be denied on this ground especially in the present facts and circumstances."

10. In the aforesaid case, though the employee had died and claim was lodged by his dependents but the factual and legal issues thrashed out by the Court would apply on all fours to the case in

22

hand as the facts including similarly of charge upon which the applicant was dismissed from service.

11. The issue came up for consideration at the level of Apex Dispensation in Civil Appeal No. 2111 of 2009 – **Mahinder Dutt Sharma Vs. Union of India & Others** decided on 11.4.2014 in which their Lordships have laid down the law as under :-

“13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:-

(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude, is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party; to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent, could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of

disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved, perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.

Xxxx

16. We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed, that the appellant had rendered about 24 years of service, prior to his dismissal from service, vide order dated 17.5.1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even though the charge proved against the appellant pertains to his unauthorized and willful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial, that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brother's wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill-health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972.

17. None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view, that the consideration of the appellant's claim, was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17.5.1996, was legitimate. The

basis, as well as, the manner of consideration, for a claim for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25.4.2005 (passed by the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28.2.2006, and the order passed by the High Court dated 13.11.2006, are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove."

12. In this case the applicant had made a specific request for grant of compassionate allowance consequent upon his dismissal from service in terms of Rule 41 of CCS (Pension) Rules, 1972 as reproduced and interpreted by the courts of law, as discussed above, but the claim of the applicant has been declined by mentioning that he was dismissed from service for which his past service was forfeited in terms of general principles and Conditions.
13. When the case came up for hearing on 27.5.2015, the applicant who had appeared in person had raised a fundamental question that while considering his claim for grant of compassionate allowance under rule 41 of CCS (Pension) Rules, 1972, the competent authority had not applied his mind and had approved the noting of a lower authority on the ground that applicant had been dismissed from service and had not considered his past meritorious service which was a pre-condition for grant of compassionate allowance to a dismissed employee. The counsel for respondents had produced departmental noting in this regard and on perusal of the Bench the court had found itself "in agreement with the applicant" upon which the counsel for the respondents sought "time to have instructions as to whether they want to modify/withdraw their order otherwise satisfy the court on this point". Learned counsel for the respondents was directed to produce the order, if

they had decided on the same lines or otherwise. Further time was sought on 24.7.2015 and then on 31.8.2015. Ultimately, learned counsel for the respondents produced a copy of communication dated 13.8.2015 addressed to him by the KVS, Chandigarh enclosing therewith copy of letter dated 10.8.2015 of KVS HQ, New Delhi, justifying the decision to reject the claim of the applicant based upon advice tendered by L.A, KVS. The relevant portion of the order dated 10.8.2014 is reproduced as under :-

"This is not a fit case for withdrawing / modifying the order of the Commissioner. From the note-sheet, it is quite clear that all the facts and rule position were put up before the Commissioner by the lower official for his consideration. The Commissioner, after applying his mind, has ordered that the case made out on the note sheet be communicated to Shri Sharma. Therefore, this is a case where proper application of mind of the Commissioner has taken place. Moreover, the facts involved in this case are so glaring that rule 24 of Pension Rules clearly applies. The applicant had approached Supreme Court also which was dismissed. In the facts and circumstances. I am of the view that when the Commissioner has approved / agreed with the notings put up before him, it means that there is a proper judicious application of mind on the file which amounts to the Commissioner taking a decision in the matter himself. If there was any doubt with regard to the decision taken by the Commissioner, then there should have been some indication to that effect. The decision taken by the Commissioner is unambiguous and clear and commensurate with the totality of facts and circumstances of the case and the same cannot be faulted nor is against law. I, therefore, advise KVS to advise / instruct the counsel to take note of these facts to submit to the court on the next date of hearing".

14. It appears that despite the observations made by this Tribunal, after perusal of noting, that there was no material on record to indicate application of mind by the authorities, an all out effort has been made to show obduracy instead of taking the observations in a good spirit and act upon the same. I may remind the respondents that Lord Denning M.R. in **Breen v. Amalgamated Engineering Union** (1971 (1) All E.R. 1148) has observed that the giving of reasons is one of the fundamentals of good administration.

In **Alexander Machinery (Dudley) Ltd. v. Crabtree** (1974 LCR

120) it was held that failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance.

15. Apparently, the respondents have not even considered the provisions of the rule 41 (supra) and have rejected his claim on whim and fancies which cannot be appreciated by a court of law. The respondents have not even mentioned about the entire service record of the applicant and as to whether the charges upon which he was dismissed from service cast a doubt on his integrity or there was any charge of corruption against the applicant or he was involved in any criminal activities. The entire thrust of the respondents to reject the claim of the applicant is based on dismissal of applicant from service which cannot be done in view of the aim and intention of rule 41 (supra). The charge upon which he was dismissed from service is leaving headquarter without obtaining station leave and absence from duty which the applicant claimed that he was on leave. The earlier charge-sheet of

financial irregularity had lost its value after case was allowed by this Tribunal in his favour and further proceedings were not initiated.

16. In view of the aforesaid discussion, I am of the considered opinion that the case of the applicant for grant of compassionate allowance is required to be re-considered keeping in view the spirit of the instructions and decision cited above. Thus, impugned order, Annexure A-1 dated 12.3.2014 is quashed and set aside. The respondents are directed to re-consider the case of the applicant and pass a speaking and reasoned order keeping in view the observations made above, within a period of two months from the date of receipt of a certified copy of this order.

17. The parties are left to bear their costs.

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh.

Dated: 20.11.2015

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