

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

OA No.1231/2015

this the 26th day of May, 2017

Hon'ble Mr. V. Ajay Kumar, Member (J)

Usha Rathi
Aged 53 years
W/o Late Ex. HC Shri Prem Singh
R/o Sector-7, Quarter No.957
R.K.Puram, New Delhi-22.
(By Advocate: Shri Anil Singal)

.... Applicant

VERSUS

1. Govt. of NCT of Delhi
Through its Chairman
Players Building
ITO, New Delhi.
2. Commissioner of Police
Police Head Quarter
I.P.Estate, New Delhi.
3. Deputy Commissioner of police
North-West District, Delhi.
4. The Pay & Accounts Officer
No.IV (DP-I)
Govt. of NCT of Delhi
Tis Hazari, Delhi.
(By Advocate: Shri Amit Anand)

.... Respondents.

ORDER (ORAL)

1. The applicant's husband was dismissed from service while working as Head Constable in the respondent-Delhi Police on 07.04.1994 and later he died on 19.07.2012. Thereafter, on the representation of the applicant, the respondents vide Annexure-A4 order dated 09.07.2013 sanctioned Rs.3500/- as compassionate Allowance under Rule 41 of CCS (Pension) Rule 1972 to the applicant. However, the respondent vide the impugned Annexure A1, dated 09.01.2015, withdrawn the said compassionate allowance on the ground that there is no concept of sanction of

compassionate allowance to the family on the death of an employee, who was dismissed from service when no compassionate allowance was granted at the time of his dismissal. Hence the OA.

2. Heard Shri Anil Singal, counsel for the applicant and Shri Amit Anand, counsel for the respondents and perused the pleadings on record.

3. Shri Anil Singal, learned counsel appearing for the applicant submits that under Rule 41, if a Government Servant is dismissed or removed from service, he is entitled for grant of compassionate allowance and in terms of the same, the respondents considering the circumstances and the entitlement of the applicant, granted compassionate allowance by an order dated 09.07.2013 and hence withdrawing the same is illegal, arbitrary and against to the spirit of Rule 41 of CCS (Pension) Rules, 1972.

4. On the other hand, Shri Amit Anand, learned counsel appearing for the respondent-Delhi Police submits that in pursuance of the directions of this Hon'ble Tribunal in O.A. No1478/2014 dated 06.11.2014 (Annexure A-9) filed by the applicant directing them to pass final order on the application of the applicant regarding sanction of the compassionate allowance, they have considered her case and passed orders sanctioning the compassionate allowance on 09.07.2013. The learned counsel further submits that however as per Rule 54 (2) of the CCS (Pension) Rules, 1972, family pension can be sanctioned to the wife of a deceased Government servant, who was in receipt of compassionate allowance as on the date of death of the said Government Servant. In the instant case, the applicant's husband was neither receiving pension nor compassionate allowance as on the date of his death. Hence, on his death, the applicant being his wife is not entitled for sanction of the compassionate allowance or family pension. There is no

concept of granting compassionate allowance to the wife of such an employee.

5. Both the counsels placed reliance on certain decisions of this Tribunal and of the Hon'ble High Court of Delhi.

6. In ***Mahinder Dutt Sharma Vs. Union of India and others*** (2014)

11 SCC 684, the Hon'ble Apex Court observed as under:

"14. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "...if the case is deserving of special consideration...". Where the delinquency leading to punishment, falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be momentous. It is not possible to effectively define the term "deserving special consideration" used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency leveled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorized in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.

15. We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated 17.5.1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorized and willful absence from service from 18.1.1995 to 4.12.1995 (i.e., for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices, that not taking stern action against the appellant, would create a bad impression, on the new entrants in the police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellant's behaviour was incorrigible. Thus viewed, there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified. For determining the question of compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in paragraph 13 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellant's behaviour, was not one which can

be expressed as an act designed for illegitimate personal gains, from his employer. The appellant, cannot also be stated to have indulged in an activity to harm a third party interest, based on the authority vested in him, nor was the behaviour of the appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in paragraph 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration."

7. It cannot be said that if compassionate allowance was not granted at the time of dismissal/removal of a government servant, the same cannot be granted on a subsequent date, even if his case is deserving of special consideration. It is not the case of the respondents that the deceased employee was not entitled for granting of compassionate allowance. Therefore, in the peculiar circumstances of the instant case, i.e., having granted the compassionate allowance after satisfying the entitlement on merits, the same cannot be withdrawn on technical reasons.

8. In these peculiar circumstances of the case, the O.A. is allowed and the impugned order is quashed with all consequential benefits, however, without any interest and costs.

(V. Ajay Kumar)
Member (J)

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