

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-1652/2015**

**Reserved on : 27.04.2016.**

**Pronounced on : 03.05.2016.**

**Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Kirpal Singh, Ex Head Constable  
No. 229/DAP-1<sup>st</sup> BN  
S/o late Sh. Dal Chand Sharma,  
R/o K-3-3-50, Shastri Nagar,  
Meerut (UP).

..... Applicant

(through Sh. J.P. Mishra, Advocate)

Versus

Delhi Police  
(through its Commissioner)  
Police Headquarters,  
ITO, New Delhi.

..... Respondent

(through Sh. Anmol Pandita for Sh. Vijay Pandita, Advocate)

**ORDER**

The applicant was working as a Constable in Delhi Police. He was dismissed from service on 02.01.2009. He availed of his legal remedies challenging the order of his dismissal first before this Tribunal in OA-1103/2010, which was dismissed on 11.10.2011. Thereafter, he filed Writ Petition (C) No. 6819/2012 before the Hon'ble High Court of Delhi. This was also dismissed as withdrawn on 31.10.2012 with liberty granted to the applicant to move an application for compassionate allowance under Rule-41 of the CCS (Pension) Rules, 1972. Accordingly, the applicant moved an application on 14.10.2013. The said application was dismissed by the respondents vide their impugned order dated 22.11.2013. The applicant has now approached this Tribunal by filing this O.A. seeking the following relief:-

“(a) To allow the instant O.A. and quash and set aside the order no. 19384/Esst. (II) 1<sup>st</sup> Bn DAP dated 22.11.2013, which orders rejection of request for Compassionate Allowance under Rule 41 of CCS (Pension) Rules, 1972.

(b) declare that the said order dated 22.11.2013 is without any basis and illegal and therefore, liable to be set aside.

(c) pass such other and further orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. The contention of the applicant is that the impugned order of the respondents was bad in law, perverse and arbitrary. It has been issued without application of mind as the basis of rejection of his application was the same as the ground on which he was removed from service. This order is also non-speaking and cryptic. The respondents have not considered the economic condition of the applicant and his sons and family, who were dependent upon him for studies and sustenance.

3. In their reply, the respondents have taken a preliminary objection that the O.A. was not maintainable being time barred. Although the applicant has filed an application for condonation of delay of 312 days, this O.A. is hit by delay and laches. Thus, stale claim of the applicant need not be considered as per the law laid down by Hon'ble Supreme Court in the case of **UOI Vs. M.K. Sarkar**, (2010) 2 SCC 59. The same has been reiterated by the Apex Court in the case of **D.C.S. Negi Vs. UOI & Ors.**, (CC No. 3709/2011) on 07.03.2011.

3.1 On merits, the respondents have given details of the departmental enquiry conducted against the applicant by which he was dismissed from service. Further, they have stated that his request for compassionate allowance under Rule-41 of CCS (Pension) Rules, 1972 has been examined and on the basis of entire facts and circumstances of the case as well as material on record, it could not be acceded to.

4. I have heard learned counsel for the parties and have perused the material placed on record. The applicant has admitted that there has been a delay of 312 days in filing this O.A. He has attributed this delay to his own financial position and has prayed for condonation of the same in the interest of justice. While, I do not find much justification in the same, I am not inclined to reject this O.A. only on the ground of limitation. I have, therefore, proceeded to examine this O.A. on merits in order to render substantive justice.

4.1 I have examined Rule-41 of CCS (Pension) Rules, 1972 regarding the compassionate allowance. Government of India's decision on this provision issued by O.M. No. 3(2)-R-II/40 dated 22.04.1940 reads as follows:-

**“(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, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question, it has been 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 officers 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.”

4.2 I have also perused the official record of the respondents. I find that respondents have taken note of the fact that the applicant had during his service time remained absent on additional 24 different occasions in addition to remaining absent on different occasion between 2001-06 for which he was proceeded against in disciplinary proceedings and removed from service. His overall record shows that he was a habitual absentee. The respondents have

also taken note of the fact that poverty alone is not sufficient for grant of compassionate allowance but in exceptional circumstances special regard be paid to the fact that the officer has a wife and dependent children. Thus, considering all these aspects, the respondents have rejected applicant's case. In this rejection, I do not see violation of any rule to warrant interference by this Tribunal in judicial review as grant of compassionate allowance remains discretionary. Moreover, the main ground taken by the applicant that compassionate appointment has been rejected on the same ground on which he was removed from service is not borne out from the record which shows that he was unauthorizedly absent on additional 24 occasions.

5. Therefore, I find no merit in this O.A. and reject the same. No costs.

**(Shekhar Agarwal)**  
**Member (A)**

/Vinita/