

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA No. 4577/2013

New Delhi this the 01st day of August, 2016

Hon'ble Mr. Justice, M. S. Sullar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

Smt. Sumitra Devi
W/o. Late Sh. Azad Singh,
Ex. Constable (Driver),
R/o. Village & P.O.-Kharahar,
Distt-Jhajhar, Haryana.

....Applicant

(Argued by: Mr. Sachin Chauhan, Advocate)

Versus

1. Govt. of N.C.T.D.,
Through its Secretary,
New Sachivalaya, I. P. Estate,
New Delhi.
2. Joint Commissioner of Police,
Armed Police through
The Commissioner of Police (AP),
Police Headquarter,
MSO Building,
New Delhi.
3. Dy. Commissioner of Police,
3rd Bn., DAP,
Vikas Puri, New Delhi.

....Respondents

(By Advocate : Ms. Harvinder Oberoi)

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

The sum and substance of the facts and material, expositied from the record, relevant for disposal of the instant Original Application (OA), are that, Late Shri Azad Singh H/o Applicant Smt. Sumitra Devi, was working as a Constable. He worked as such with effect from 23.12.1995 to 17.03.2005 with

Delhi Police. In the wake of Departmental Enquiry (DE), he was dismissed from service. Appeal filed by him against the punishment order, was also dismissed on 09.05.2005 by the Appellate Authority (AA).

2. Thereafter, **OA** bearing **No.1490/2005** was filed by applicant was dismissed vide order dated 09.11.2006 by this Tribunal. The **Civil Writ Petition** bearing **No.1819/2008** was also dismissed by order dated 13.02.2009 by Hon'ble High Court of Delhi. In this manner, the orders of dismissal have already attained finality.

3. According to the applicant, unfortunately her husband died on 08.07.2010. He was sole bread earner of the family and was survived by applicant and two sons. The younger son of the applicant has also died in road accident in the year 2011. She being the wife of Azad Singh, made a representation (Annexure A-1) to the authority to consider the case of her husband fairly for grant of compassionate allowance & compensation pension under Rule 41 of Central Civil Services (Pension) Rules, 1972 [hereinafter to be referred as "CCS(Pension) Rules"]. It was incumbent upon the authority to consider the socio economic condition of the applicant and to allow compassionate allowance under Rule 41 of CC(Pension) Rules, but in vain.

4. The applicant has challenged the impugned action of the respondents, invoking the provisions of Section 19 of the Administrative Tribunals Act, 1985 on the following grounds:-

“5.1 That the inaction on the part of the respondent of not considering the case for grant of compassionate allowance under Rule 41 of CCS Pension Rules, 1972 and compassionate pension thus causing great prejudice to the applicant.

5.2 That the act of the respondent of sitting over the representation of the applicant raising the grievance related to grant of compassionate allowance under Rule 41 of CCS Pension Rules 1972 & compassionate pension is further causing great prejudice to the applicant.

5.3 That the authority is under an obligation to consider the case of husband of the applicant fairly for grant of the compassionate allowance in terms of Rule 41 of CCS Pension Rules as the compassionate allowance cannot be denied even if the dismissal was inflicted upon deceased husband of applicant for grave and serious misconduct and if the same is denied then the purpose and object of Rule 41 of the CCS (Pension) Rules would get defeated.

5.4 That the applicant is placing its reliance on the judgment of Hon'ble Tribunal Judgment dated 18.8.10 in OA No. 2702/10 whereby the Ld. Tribunal gave direction to Department of Delhi Police to consider the representation of applicant (in O.A No. 2702/10) for grant of compassionate allowance within a period of three months. Here it is pertinent to mention that applicant in O.A No. 2702/10 was also dismissed from department of Delhi Police on the grave allegation and applying the same principle it is incumbent upon the authority to consider the case of applicant fairly for grant of compassionate allowance under Rule 41 of CCS (Pension) Rules.

5.5 That the applicant by virtue of present O.A is bringing it to the knowledge of authority the judgment dated 3.08.2009 in OA No. 349/2006 of Hon'ble Tribunal (Hyderabad Bench) in case of Smt. Meerabai Vs. GM Railway whereby Tribunal gave direction to respondent to consider the representation of applicant for grant of compassionate pension and if it is found that applicant is really in distress and unable to maintain herself, the respondents shall fix the compassionate pension and pay the same w.e.f. the death of husband of applicant. The case of applicant is squarely covered with aforesaid judgment.

5.6 That the applicant life as on today is in shambles and it is difficult to make even both ends meet and the compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 is only ray of (sic) hope in life of applicant. The applicant has not inherited any property from which there can be any source of income and further young son of applicant has died in road accident in the year 2011.

5.7 That the applicant is in distress due to death of her husband and unable to maintain herself and it is incumbent upon the authority needs to considered the present socio economic condition of the applicant while deciding the case of husband of applicant for compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 & compensation pension.

5.8 That it is incumbent upon the authority to ignore the gravity of allegation on which basis extreme punishment imposed upon deceased husband of applicant and the gravity of allegation cannot be criteria to deny the husband of applicant the compassionate allowance as per Rule 41 of CCS (Pension) (sic) Rules & compassionate pension.

5.9 That it is pertinent to mention that husband of the applicant has rendered a clean service record except the present one.

5.10 That the applicant is placing its reliance on the judgment of Hon'ble Delhi High Court in the case of Ex. Const. Daya Nand Vs. Union of India & Others (copy annexed). The applicant is further placing its reliance on the judgment of Hon'ble High Court in Shadi Ram (Ex. ASI) Vs.

Govt. of NCTD & Others as the case of the applicant is purely covered by aforesaid judgments.

5.11 That the applicant is further placing its reliance on Rule 41 of CCS (Pension) Rules, 1972 and the same is reproduced below :-

“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 pensions or gratuity or both which would have been admissible to him if he had retired on compensation pension.”

5.12 That the applicant is further placing its reliance on GI, FD Office Memo No. 3(2)-R-II/40. That the competent authority is under an obligation to record its finding on the request of the applicant for the grant of compensation allowance by applying its mind on Rule 14 of CCS Pension Rules and GI, FD Office Memo No. 3(2)-R-II/40.”

5. The impugned action of the respondents was termed to be arbitrary and illegal. On the strength of the aforesaid grounds, the applicant sought quashing of the impugned action and prayed for compassionate allowance in the manner, indicated hereinabove.

6. The respondents refuted the claim of the applicant and filed the reply, wherein it was pleaded that, no representation was received from the applicant for grant of compassionate allowance under the provisions of Rule 41 of CCS(Pension) Rules. Thus the question of non-considering the matter by the competent authority does not arise. It was alleged that applicant is not entitled, as poverty is not an essential condition precedent, to grant of 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, itself is not entitled for grant of compassionate allowance, but perhaps can be granted in the most exceptional

circumstances. Hence, the applicant is not stated to be entitled to claim the compassionate allowance.

7. Virtually acknowledging the factual matrix and reiterating the validity of the impugned action, the respondents stoutly denied all other allegations contained in the main OA and prayed for its dismissal.

8. Controverting the allegations contained in the reply of the respondents and reiterating the grounds taken in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

9. At the very outset, it will not be out of place to mention here that the applicant has challenged the impugned action of the respondents on various indicated grounds, but during the course of arguments, learned counsel for applicant has confined his arguments only to the limited extent of non-deciding the representation (Annexure A-1), filed by the applicant.

10. Learned counsel for the applicant in this regard has contended with some amount of vehemence that, although the applicant is entitled to the compassionate allowance & compensation pension under Rule 41 of the CCS(Pension) Rules, but her request/representation (Annexure A-1) was not at all considered by the respondents.

11. On the contrary, although learned counsel for respondents has denied the receipt of the representation, but

still she vehemently urged that applicant is not entitled to any relief under Rule 41 of the CCS(Pension) Rules.

12. What cannot possibly be disputed here is that Rule 41 of the CCS(CCA) Rules, postulates that 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 2/3rd (two-thirds) of pension or gratuity or both, which would have been admissible to him, if he had retired on compensation pension.

13. Sequel, the Hon'ble Apex Court in case **Civil Appeal No.2111/2009** titled as **Mahinder Dutt Sharma VS. UOI & Others** decided on 11.04.2014, had laid down detailed guidelines regarding consideration of the claim for compassionate allowance & compensation pension in terms of Rule 41 of CCS(Pension) Rules.

14. Meaning thereby, as to whether (i) all the essential ingredients of Rule 41 of CCS(Pension) Rules and terms and conditions tabulated by Hon'ble Apex Court in **Mahinder Dutt Sharma's case** (supra), are complete and (ii) applicant is entitled to the indicated benefit or not, would be the moot issues for deciding the claim of compassionate allowance & compensation pension of the applicant. Then to decide the representation (Annexure A-1) filed by the applicant by the

competent authority at the first instance. Although the applicant claimed that, she has made representation (Annexure A-1), whereas respondents have denied its receipt.

15. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, the main OA is disposed of with the direction to the applicant to file a copy of the representation (Annexure A-1) within a period of 2 weeks from the date of receipt of certified copy of this order. Thereafter, the competent authority is directed to decide the representation/entitlement of the applicant for compassionate allowance & compensation pension in terms of Rule 41 of CCS(Pension) Rules, ratio of law laid down in ***Mahinder Dutt Sharma's case*** (supra) and in accordance with law, by passing a speaking order, within a period of 2 months positively. However, the parties are left to bear their own costs.

Needless to mention, if the applicant remains aggrieved by the order passed by the competent authority, she would be at liberty to challenge the same by filing independent OA subject to all just exceptions and in accordance with law.

(V.N. GAUR)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)
01.08.2016

Rakesh