



while working as a constable in Delhi Police. The said rule 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 thousand five hundred per mensem."

2. Her first OA No.2527/2013 was disposed of by this Tribunal, vide its order dated 05.02.2015 (Annexure A-7), the last paragraph whereof reads as under:

"In view of the above submission, I dispose of this OA with the direction to the respondents to re-consider the case of the applicant for grant of compassionate allowance under Rule 41 CCS (Pension) Rules, 1972 based on the aforesaid judgment of the Hon'ble Apex Court. They shall take appropriate decision in the matter under intimation to the applicant, within a period of two months from the date of receipt of a copy of this order. There shall be no order as to costs."

3. The Hon'ble Supreme Court's judgment referred to in the above-quoted paragraph of the Tribunal's order is **Mahinder Dutt Sharma Vs. UOI & Ors.** [2014 (3) SLJ 278] (Annexure A-8). Paragraphs 13 and 14 of the said judgment are reproduced hereunder:

"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.

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 levelled 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."

4. In compliance with the aforesaid direction of this Tribunal, the respondents passed the following order dated 07.04.2015 (Annexure A-1):

"In pursuance of order dated 05.02.2015 passed by Hon'ble CAT, New Delhi in O.A.No.2527/2013- Smt. Kelo Devi W/o late Const. Exe. Mahabir Singh, No.1901/N/2875/PCR (PIS No.28800393) Vs GNCT, Delhi & others, the request of applicant Smt. Kelo Devi for the grant of Compassionate allowance has been re-considered within ambit of Rule-41 of CCS (Pension) Rules-1972, as well as service records of the deceased Constable.

The deceased Constable was enlisted in Delhi Police as Constable (Executive) on 06.06.1980. He was dealt with departmentally vide order No.4856-80/HAP (P-II)/PCR dated 07.04.1997 for his unauthorized and deliberate absence from duty for a period of more than 8 months which was culminated into dismissal of the deceased Constable from service vide order No.1634-1720/HAP (P-II)/PCR dated 27.01.1998. His grossly time bared appeal, filed after about 10 years from the date of award of punishment of dismissal, was also rejected by the appellate authority vide order No.445/P. Sec/Addl. C.P./Ops dated 08.08.2008. Thereafter he never pursued his case and unfortunately expired on 27.06.2012. As per his service record, he has a history of absence on 25 different occasions during his short span of service of 15 years along with a major penalty for his another misdemeanor. The undersigned has not seen any achievement of the deceased during his service career rather he has indifferent service record.

Keeping in view the overall facts of case and thorough deliberation, the undersigned has reached to the conclusion that this case does not fall under the category of most exceptional circumstances for which the request of the applicant could be considered for the grant of compassionate allowance. Hence, the request of Smt. Kelo Devi w/o late Const. Mahabir Singh No.2875/PCR for the grant of compassionate allowance under the provision of Rule-41 of the C.C.S. (Pension) Rules, 1972 is hereby rejected."

5. Through the instant OA, the applicant has challenged the aforesaid order dated 07.04.2015 (Annexure A-1).

6. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

7. I am of the view that the delinquency of the deceased husband of the applicant cannot be said to be of the kind which makes his case deserving of special consideration. I find that the impugned order (Annexure A-1) has been passed keeping in view the dicta laid down by the Hon'ble Supreme Court in its aforesaid judgment and, therefore, does not suffer from any legal infirmity.

8. The OA being devoid of merits, is dismissed. No order as to costs.

**(DR BRAHM AVTAR AGRAWAL)**  
**MEMBER (J)**

/JK/

