

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00479/2017

Wednesday, this the 12th day of September, 2018.

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

A. Muraleedharan Nair, S/o. P. Appukuttan Nair,
Aged 62 years, Gourisankaram, (Mazhekacherry),
Nemom PO, Thiruvananthapuram – 692 050,
working as Telecom Mechanic retired). **Applicant**

(By Advocate – Mr. V.V. Suresh)

V e r s u s

- 1 The Secretary, Department of Telecom, Government of India,
 20, Sanchar Bhavan, Asoka Road, New Delhi – 110 001.
2. The Chief General Manager, BSNL, O/o. The CGMT,
 Thiruvananthapuram – 695 033.
3. The Controller of Communication Accounts, Government of India,
 Door Sanchar Bhavan, Thiruvananthapuram-
 695 033. **Respondents**

**(By Advocates – Mr. N. Anilkumar, Sr. PCGC ® &
Mr. Thomas Mathew Nellimoottil)**

This Original Application having been heard and reserved for orders on
06.09.2018, the Tribunal on 12.9.2018 delivered the following:

ORDER

Per: Ashish Kalia, Judicial Member:

In this O.A. the applicant seeks the following reliefs:

“(i) To quash Annexure A6 communication of the 1st respondent without application of mind and without considering the observations of this court.

(ii) To direct the 1st respondent to grant compassionate allowance with effect from 1.5.1999 as per Rule 41(1) of CCS (Pension) Rules, 1972 on the basis of Annexure A10 report & Annexure A11 recommendation of the competent authority.

(iii) To direct the respondents to pay arrears of compassionate allowance granted with effect from 1.5.1999 with interest without further delay.

(iv) To grant such other reliefs as may be prayed for and the Tribunal may deem fit to grant;

And

(v) To grant costs of this Original Application.”

2. The brief facts of the case are that the applicant is an ex-employee of the Department of Telecom. He was awarded a punishment of removal from service following a conviction by the CBI Court, Ernakulam on some corruption charges. Though the applicant was eligible for statutory pension as per CCS (Pension) Rules, 1972 as he had been completed 19 years of qualifying service, it was denied to him due to the punishment of removal from service. In such cases, the ex-employee is eligible for 2/3rd of pension as compassionate allowance for the existence of the ex-employee and his family on certain conditions with regard to previous service records till the time of the punishment and financial conditions of the family as per Rule 41 of CCS (Pension) Rules, 1972. Rule 41(1) of CCS (Pension) Rules, 1972 stipulated that the decision of granting compassionate allowances has to be taken at the time of dismissal/removal from service by the disciplinary/competent authority. But this procedure was not followed by the respondents in the applicant's case. The competent authority did not sanction or reject the claim for compassionate allowance as per Rule 41 of CCS (Pension) Rules, 1972. The applicant represented to the higher authorities for sanctioning compassionate allowance. The information gathered by him through RTI revealed that his case was considered in the various sections of

the Department of Telecom. But there was no decision even after 16 years of removal from service. His financial condition was very pathetic. Aggrieved, he had filed OA No. 180/72/2017 before this Tribunal.

3. The OA was disposed of vide order dated 25.1.2017 directing the Secretary, Department of Telecom to decide the applicant's request for compassionate allowance as per Rule 41 of CCS (Pension) Rules, 1972 within one month. Accordingly, the 1st respondent informed the applicant that the disciplinary authority had already rejected the request for compassionate allowance with the observation that his case cannot be categorized as deserving for special consideration.

4. The applicant contend that the decision of the 1st respondent is mechanical and contrary to the facts revealed through RTI Act. The disciplinary authority in this case was the Divisional Engineer (Phones) External, Trivandrum. He had not considered or rejected his request for compassionate allowance as per Rule 41 of CCS (Pension) Rules, 1972. The process of considering the compassionate allowance has started only after getting his representation to the higher authorities.

5. The CPIO, BSNL, Kerala Circle informed the applicant under RTI Act that his case was inquired thoroughly and found that the applicant was deserving special consideration for granting compassionate allowance as per Rule 41 of CCS (Pension) Rules, 1972. It was also revealed that the request for compassionate allowance was approved by the respondent No. 2 and

recommended to be granted as per Rule 41 of CCS (Pension) Rules, 1972. Seeking the aforequoted reliefs the applicant has filed the present Original Application.

6. Notices were issued and respondents put appearance through Mr. N. Anilkumar, Sr. PCGC ® for respondents Nos. 1 & 3 and Mr. Thomas Mathew Nellimoottil for respondent No. 2. Respondents Nos. 1 & 3 filed a reply statement stating as under:

“3. The applicant who was a Telephone Mechanic working under Kerala Circle of Department of Telecommunications (DOT) was arrested by the CBI, under the Prevention of Corruption Act, 1988, for allegedly taking a bribe of Rs. 400/- from a customer, who was waiting for a new telephone connection. He was placed under suspension with effect from 22.10.1997 and subsistence allowance as per rule was paid to him during his period of suspension.

4. The applicant was subsequently convicted by Special Judge (CBI-II), Ernakulam under Section 7 and Section 13(1)(d) r/2 13(2) of PC Act, 1988 and was sentenced to 1 year rigorous imprisonment and a fine of Rs. 2,000/-. Departmental proceedings were initiated against him on account of his conviction in the above criminal case and he was removed from service by the Disciplinary Authority, vide order dated 24.4.1999. The appeal filed by the applicant against the removal order dated 24.4.1999 was considered by the Competent Authority who proceeded to uphold his removal, vide Order dated 28.7.1999. The punishment imposed by the CBI Court under the Prevention of Corruption Act, 1988 was also sustained by the Kerala High Court, with some modification in the quantum of punishment, vide judgment dated 9.2.2005.

8. Thus, the case of the applicant for grant of Compassionate Allowance along with the complete case history together with his economic condition, Rule 41 of CCS (Pension) Rules, 1972 including guiding principles for grant of Compassionate Allowance appended under Rule 41 *ibid*, recommendations of PGM, BSNL, Kerala Telecom Circle, CMD, BSNL HQ and views of the Vigilance Branch on the issue were placed before the Disciplinary Authority in the DoT. The Disciplinary Authority considered the case of the applicant for grant of Compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 and rejected the same observing that the applicant was inflicted the punishment of removal from service due to his act of dishonesty towards his employer, i.e. Government of India. Such an action of dishonesty would emerge from a behavior which is un-trust worthy, deceitful and insincere, resulting in prejudice to the interest of Government. Such an act is aimed at personal gains and therefore the applicant's case cannot

be categorized as deserving of special consideration in view of the above facts. The above decision of the Disciplinary Authority was communicated to the applicant vide letter dated 6.3.2017 which is produced by the applicant as Annexure A6 of the OA. This order was issued in compliance of the order dated 25.1.2017 of the Hon'ble CAT, Ernakulam Bench in OA No. 180/72/2017.”

On the above submissions the respondents prayed for dismissal of the OA.

7. Heard Shri V.V. Suresh, learned counsel appearing for the applicant and learned Senior Central Government Standing Counsel (Retainer) appearing for respondents 1 & 2 and learned Senior Central Government Standing Counsel appearing for respondent No. 3. Perused the records.

8. In short the applicant was convicted for taking bribe as he was trapped in a corruption case and the CBI Court, Ernakulam, awarded him a punishment of rigorous imprisonment for one year with fine of Rs. 2,000/-. The applicant had undergone the imprisonment and deposited the fine amount also. Due to this the applicant was removed from service with effect from 24.4.1999 by the Divisional Engineer (Phones). Emphasis laid by the counsel for the applicant that he was eligible for statutory pension under Rule 41 of CCS (Pension) Rules, 1972 since he had more than 19 years of service. The same was denied to him due to the punishment of removal from service. According to him the applicant was the sole breadwinner of the family and the entire income of his family was stopped and the family had no other means of livelihood. Therefore, the applicant had applied for compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972. Rule 41 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 ¹[compensation pension].

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of ²[Rupees three hundred and seventy-five] per mensem.

Footnote : 1. Substituted by G.I., M.F., Notification No. Q-18011/2/75-E. V (A), dated the 10th April, 1975.

2. Substituted by G.I., Dept. of P. & P.W., Notification No. 2/18/87-P. & P.W. (PIC), dated the 20th July, 1988. Published as S.O. No. 2388 in the Gazette of India, dated the 6th August, 1988. Takes effect from 1st January, 1986.”

9. Pursuance to the application for compassionate allowance the Department i.e. the Assistant General Manager, HR vide Annexure A10/2 communicated that the fact finding spot inquiry which was conducted by a very senior officer of the respondents found the financial/economic condition of the applicant as under:

“An on the spot enquiry by one of the senior officers has revealed that the financial condition of the removed official and his family are very pathetic. His family consists of wife and younger (elder daughter is married off) daughter. No movable/immovable property is owned by the entire family except in the name of the removed official who owns 5 cents of land with a house by availing house loan from the Department. He owes a liability of Rs. 2 lakhs towards this house. His wife is a severe asthmatic patient and is unemployed. The younger daughter aged 27, is yet to be married and is pursuing their studies. He has no other sources of income, except the one, which the exofficial earns by doing some labour works and this will come around Rs. 150/- per day.”

The Department recommended for sanction of compassionate allowance to the applicant. However, respondent No. 1 had rejected the claim of the applicant vide impugned order at Annexure A6 annexed with the Original Application only on the ground that the applicant was convicted under

Prevention of Corruption Act, 1988 by the Court of Special Judge, CBI-II, Ernakulam and he was sentenced for one year and fine of Rs. 2,000.

10. The Rule 41 of CCS (Pension) Rules, 1972 states that the employee who is either dismissed or removed from service, if the case is so deserving of special consideration sanction of compassionate allowance is admissible. The respondent No. 1 had rejected the case of the applicant after not accepting the report/recommendation of Assistant General Manager for grant of compassionate allowance to the applicant. Ignoring the indigent circumstance of the applicant despite having report recommending the same in a mechanical way this Tribunal is of the view that ours being a social welfare State, the welfare of the citizen/employee is the priority. This Tribunal is not justifying the act committed by the applicant but being a welfare state where the citizen happens to be its ex-employee convicted in a criminal case, the family is suffering. The respondents ought to have considered that there is a marriageable age of daughter and wife of the applicant is suffering from a chronic disease and they are not having any source of income except the casual labour wages of Rs. 150/- earned by the applicant.

11. Let see whether Rule 41 of CCS (Pension) rules, 1972 is applicable to the applicant's case or not. The rule says if case of the dismissed or removed employee is so deserving of special circumstance then only compassionate allowance can be given. The applicant falls in the same category and his single act has made the family so miserable. Despite being removed from

service his case could have been considered under Rule 41 of CCS (Pension) Rules, 1972. That more particularly higher rank of officer has already recommended after having spot inquiry. In our view applicant's family which is in duress needs help. It is true that a single criminal act is enough to ruin the family and such rule is invoked in rare of rarest case. The applicant's case falls in that category.

12. We are of the considered view that in such situation the benefit of the provisions of Rule 41 of CCS (Pension) Rules, 1972 can be invoked by the authorities concerned after giving a special consideration. Accordingly, we hold that the case of the applicant falls within the ambit of Rule 41 of CCS (Pension) Rules, 1972.

13. Be that as it may, since the applicant had worked with the respondents for 19 years and keeping in view the pathetic and indigent circumstances, we hold that the applicant is entitled for compassionate allowance as envisaged under Rule 41 of CCS (Pension) Rules, 1972 from the date when he has made representation under the rules. Accordingly, the OA succeeds. The respondents are directed to comply with the above order immediately or within six months from the date of receipt of a copy of this order.

14. The Original Application is allowed as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER
“SA”

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

Original Application No.180/00479/2017

List of Annexures of the Applicant

- Annexure A-1-** True copy of the removal order of the applicant by the Divisional Engineer, Phones, External (North-Est) (Disciplinary Authority) vide memo No. X-2/AM/97-98/38 dated 24.4.1999.
- Annexure A-2-** True copy of the relevant pages of CCS (Pension) Rules containing details of Rule 41 of CCS (Pension) Rules, 1972.
- Annexure A-3-** True copy of the representation by the applicant dated 17.10.2006.
- Annexure A-4-** True copy of the representation by the applicant before the Director, Pension (T) Section, and Department of Telecom, New Delhi, dated nil
- Annexure A-5-** True copy of the judgment in OA 180/00072/2017 before the Hon'ble Central Administrative Tribunal, Ernakulam Bench dated 25.1.2017.
- Annexure A-6-** True copy of the letter No.40-28/2011 dated 6.3.2017 from the 1st respondent disposing the representation dated 17.02.2017 requesting for grant of compassionate allowance.
- Annexure A-7-** True copy of the letter by the Principal General Manager, BSNL Thiruvananthapuram informed the applicant vide Memo No. DGM(O&A) CP10/RTI/2011/Col.II/101 dated 18.5.2011.
- Annexure A-8-** True copy of the memo by the under Secretary to the Government of India informed the applicant vide memo No. 47-36/2011-Pen(T) dated 3.3.2012.
- Annexure A-9-** True copy of the memo No. 40-28/11-pen(T) dated 1.8.2011 by the 1st respondent.
- Annexure A-10-** True copy of the office memo by the General Manager (HR/Admn) SCP 10 dated 20.4.2017 along with certified copy of inquiry report dated 2.2.2012.
- Annexure A-11-** True copy of the letter No. HR-1/55-3/10(Pt)/98 dated 28.3.2012 to the corporate office (supplied as per RTI Act) by the Chief General Manager, BSNL, Kerala circle.

List of Annexures of the Respondents

Nil
