

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3373/2016

Reserved on: 19.12.2017
Pronounced on: 26.04.2018

Hon'ble Mrs. Jasmine Ahmed, Member (J)

Sumlesh Devi
Aged about 49 years,
W/o Late Shri Mahesh Kumar
Constable in Delhi Police
PIS No.28850435
R/o H-196, East Jawahar Nagar,
Loni Road, Ghaziabad, UP

... Applicant

(Through Shri Anil Singal, Advocate)

Versus

Govt. of NCT of Delhi through

1. Commissioner of Police
PHQ, I.P. Estate,
New Delhi
 2. D.C.P. (7th Bn. DAP)
Through Commissioner of Police,
PHQ, I.P. Estate,
New Delhi
- ... Respondents

(Through Ms. Sangeeta Tomar, Advocate)

ORDER

This is second round of litigation. The applicant had earlier filed OA No.3019/2013, which was disposed of by the Tribunal on 19.09.2014 as follows:

- “2. The applicant is the wife of late Shri Mahesh Kumar, who was dismissed from service on 26.02.1993 while working as Constable in the Delhi Police and died on 16.01.2004, questioning the order dated 20.12.2012 of the respondents in rejecting to grant compassionate allowance to her, filed the OA.
3. When this matter is taken up for hearing, both the counsel agreed that the Hon’ble Apex Court in a recent judgment in **Mahinder Dutt Sharma v. Union of India & Others** (Civil Appeal No.2111/2009) decided on 11.04.2014, framed detailed guidelines in respect of consideration of cases for grant of compassionate allowance.
4. In the circumstances, the OA is disposed and the respondents are directed to re-consider the case of the applicant in terms of the judgment of the Hon’ble Apex Court in **Mahinder Dutt Sharma’s** case (supra) and to pass appropriate reasoned and speaking order within 60 days from the date of receipt of a copy of this order. In the event that the respondents consider the case of the applicant positively, she would be entitled for the arrears w.e.f. 12.09.2013, i.e., the date of filing of this O.A.”

2. The earlier rejection of the claim of the applicant was only on the ground that the applicant’s husband had rendered service for a short span that too coupled with the fact that during that short period also, his performance was poor.

3. In pursuance of the order of this Tribunal dated 19.09.2014, the matter was reconsidered by the respondents and the claim has been rejected vide impugned order dated 26.08.2015. Against this order, the applicant has approached this Tribunal seeking the following reliefs:

- “1. To call for records of the case and quash/set aside the impugned order dt. 26.8.2015 restoring the Order dt. 20.11.2014 and direct the respondents to grant Compassionate Allowance to applicant w.e.f. 12.9.2013 with 12% compound interest per annum till the date of payment.
2. To award cost in favour of the applicant and pay any other order or orders, which this Hon’ble Tribunal may deem just & equitable in the facts & circumstances of the case.”

4. The respondents have filed their counter affidavit and contested the case. They have reiterated in their counter the same very contention that the applicant’s husband not having rendered 10 years of service, she was not entitled to compassionate allowance.

5. The learned counsel for the applicant argued that the applicant’s case is fully covered by a judgment of the Hon’ble High Court in the case of **Ramesh Kumar Singh Vs. Union of India and Ors.**, WP (C) 5127/2012 decided on 23.08.2012, wherein it has been held that compassionate allowance having a link with compensation pension and that compensation pension not requiring a minimum period of service, the respondents are not correct /right in insisting that a minimum of 10 years service is required for grant of compassionate allowance.

6. Per contra, the argument on behalf of the respondents, as presented by the learned counsel for the respondents is that the benefit of Rules 41 and 54(2)(iii) of CCS (Pension) Rules is not available to the applicant and hence the OA is

liable to be dismissed. The respondents have tried to distinguish the case in hand with that of Ramesh Kumar Singh (supra), stating that the appellant before the Hon'ble High Court was having more than 10 years of service and the compassionate allowance was allowed on account of abolition of the post but here, in the case of the applicant, her husband was dismissed from service and was also not having requisite 10 years of service.

7. I have heard the counsel for the parties and perused the documents.

8. The argument advanced on behalf of respondents, relying upon the judgment of the Hon'ble High Court in Ramesh Kumar Singh (supra) and distinguishing the case in hand with that, was twofold;

- (a) That in the case before the Hon'ble High Court, the individual had put in more than 10 years of service; and
- (b) The appellant before the Hon'ble High Court was discharged from the service due to abolition of post.

9. Bare reading of paragraph 2 of the judgment of the Hon'ble High Court in Ramesh Kumar Singh (supra) manifestly proves the incorrectness in the respondents

version. Para 2 of the judgment of the Hon'ble High Court reads as under:-

“2. With respect to the disciplinary action against the petitioner which resulted in a finding of guilt being returned followed by the penalty of dismissal from service, challenge to the penalty vide W.P.(C) No.2731/1998 Ramesh Kumar Vs. UOI & Ors. failed when said writ petition was dismissed vide order dated July 12, 2011.”

Para 4 of the judgment in Ramesh Kumar Singh (supra) is also quoted below for ready reference:

“4. Challenge in the instant writ petition is to the order dated September 15, 2011 passed by the competent authority holding that since the petitioner has not rendered qualifying pensionable service; compassionate allowance cannot be sanctioned.”

Thus, the case dealt with by the Hon'ble High Court is identical in nature with that of the applicant herein.

10. Now, it is to be seen as to how the Hon'ble High Court has dealt with the requirement of qualifying service for pension for consideration for compassionate allowance. The relevant portion of the judgment is quoted as under:

“5. Only recently, i.e. on August 16, 2012, disposing of W.P.(C) No.1989/1999 Ex. Const. Ram Niwas Vs. UOI & Ors. In paragraphs 5 to 9 it was observed as under:-

“5. Learned counsel for the respondents states that the petitioner joined service in April 1988 and pensionable service being 20 years, the petitioner being dismissed from service on June 22, 1998, he would not be entitled to any compassionate allowance.

6. Now, Rule 41 of the CCS (Pension) Rules 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 hundred and seventy five.”

7. It is apparent that the compassionate allowance admissible under the Rule relates itself not to pension but *compensation pension*. As per the Rule a Compassionate Allowance not exceeding two-third of pension or gratuity admissible if the retirement was on Compensation Pension is admissible. Now, Rule 39 of the CCS (Pension) Rules reads as under:-

“39. Compensation pension

(1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option –

(a) of taking compensation pension to which he may be entitled for the service he had rendered, or

(b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension.

(2) (a) Notice of at least three months shall be given to Government servant in permanent employment before his services are dispensed with on the abolition of his permanent post.

(b) Where notice of at least three months is not given and the Government servant has not been provided with other employment on the date on which his services are dispensed with, the authority competent to dispense with his services may sanction the payment of a sum not exceeding the pay and allowances for the period by which the notice actually given to him falls short of three months.

(c) No compensation pension shall be payable for the period in respect of which he receives pay and allowance in lieu of notice.

(3) In case a Government servant is granted pay and allowances for the period by which the notice given to him falls short of three months and he is re-employed before the expiry of the period for which he has received pay and allowances, he shall refund the pay and allowances so received for the period following his re-employment.

(4) If a Government servant who is entitled to compensation pension accepts instead another appointment under the Government and subsequently becomes entitled to receive a pension of any class, the amount of such pension shall not be less than the compensation pension which he could have claimed if he had not accepted the appointment.”

8. Suffice would it be to state that compensation pension is not related to any length of service rendered. Compensation pension is to be paid if a government servant is discharged owing to a permanent post being abolished and the quantum is relatable to the years of service rendered.

9. Thus, declaring that the Compassionate Allowance is referable to Compensation Pension, which pension has no concern to a minimum number of years served but is payable with reference to the number of years of service rendered, we dispose of the writ petition directing the Competent Authority to pass an order with respect to Compensation Allowance and for which we may note that the same is not a matter of right but a matter of a considered decision and if it is shown that the case is deserving of special consideration, which obviously would have to be the financial condition of the government servant concerned; and thus requiring the petitioner to submit a proper application addressed to the Director General BSF. We guide the petitioner that in the application he should bring out such circumstances which he considers would make out a deserving case for Compensation Allowance to be paid to him. Upon the application being filed, and for which we grant petitioner 12 weeks time, the same shall be decided within further 12 weeks thereafter.”

6. Adopting the reasoning as aforesaid, we dispose of the instant writ petition quashing the impugned order dated September 15, 2011 and simultaneously direct the competent authority to treat the petitioner eligible for payment of compassionate allowance and, in view of the eligibility, pass necessary order within six weeks from today.

7. No costs.”

11. The judgment of the Hon’ble High Court in Ramesh Kumar Singh (supra) was challenged by the respondents before the Hon’ble Apex Court in SLP (C) No.22290/2013, **U.O.I. & ors. Vs. Ramesh Kumar Singh** and the said SLP was dismissed.

12. As per the above position, the minimum qualifying service for earning pension is not a sine qua non for considering the case for grant of compassionate allowance. It

is also an undisputed fact that in pursuance of the order of this Tribunal in OA 3019/2013 (supra), the respondents themselves have passed order dated 20.11.2014, which reads as under:

“In pursuance of decision dt. 19.09.2014 pronounced by Hon’ble CAT in OA No.3019/2013-Smt. Sumlesh Devi Vs. Commissioner of Police, Delhi & others sanction is, hereby, accorded for the payment of Rs.3500/- + RIP per month as compassionate allowance w.e.f. 12.09.2013 under rule-41 of CCS (Pension) Rules, 1972 to Smt. Sumlesh Devi W/o Ex./Late Constable Mahesh Kumar No.8821/DAP (PIS No.28850435) who was dismissed from Delhi Police vide order No.1321-1391/HAP & Trg./7th Bn. DAP dated 26.02.1993 and expired on 16.01.2004.”

13. It would appear from the order passed by the respondents dated 20.11.2014, quoted above, that a conscious decision was taken by the respondents taking into consideration the financial condition of the applicant, who lost her husband at an early age. In view of the rule position and the judgments cited above, I have no hesitation to hold that there is merit in the applicant’s claim.

14. The OA thus succeeds. The impugned order dated 26.08.2015 is quashed and set aside. The respondents are directed to restore their earlier order dated 20.11.2014. As already directed by the Tribunal vide its earlier order dated 19.09.2014 in OA 3019/2013 (supra), the respondents shall accord benefit of compassionate allowance to the applicant from the date of filing of first OA. The applicant shall also be entitled to interest @ 7% per annum till the date of actual

payment. These directions should be implemented within a period of three months from the date of receipt of a certified copy of this order. No costs.

(Jasmine Ahmed)
Member (J)

/dkm/