

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH : HYDERABAD**

**OA/21/600/2016**

**Date of Order : 02.07.2018**

Between :

B. Saroja,  
(Widow of V. Bhoomaiah  
Who was removed from service),  
Age 46 years, Occ: Housewife,  
Resident of Door No.1-304, Vinayak Nagar,  
Ponakal Village, Jannaram Mandal,  
Adilabad District,  
Telangana District.

... Applicant

**And**

1. Post Master General,  
Hyderabad Region,  
Hyderabad – 500 001,  
Telangana State.
2. Superintendent, RMS 'Z'Division,  
Hyderabad – 500 001,  
Telangana State.
3. Union of India rep. by  
The Secretary,  
Ministry of Communications and  
Information Technology,  
Electronics Niketan,  
6, CGO Complex, Lodhi Road,  
New Delhi – 110 003.

... Respondents

Counsel for the Applicant ... Mr. P. Venkatesh  
Counsel for the Respondents ... Mr. D. Shobha Rani,  
Addl. CGSC

***CORAM:***

Hon'ble Mr.Justice R.Kantha Rao

... Judl. Member

***ORDER***

***{ As per Hon'ble Mr.Justice R.Kantha Rao, Judl. Member }***

The order dated 9.2.2016 passed by the 2<sup>nd</sup> Respondent rejecting the Applicant's representation for compassionate allowance is assailed in the present O.A. The Applicant sought to declare the action of the 2<sup>nd</sup> Respondent as illegal, arbitrary, unconstitutional and in clear violation of Rule 41 of CCS (Pension) Rules, 1972 read with Article 21 of the Constitution of India and to pass necessary orders which the Tribunal deems fit having regard to the facts and circumstances of the case.

2. The brief facts set out in the O.A. may be stated as follows:

The Applicant's husband Shri V. Bhoomaiah was appointed as Sorting Assistant on 2.11.1998 by the 2<sup>nd</sup> Respondent and was allotted to RMS 'Z' Division, Mancherial, Adilabad District. He worked continuously in the said Division till September, 2006. Due to some personal reasons and domestic issues with his parents and siblings he could not report to duty from October 2006 till February 2010. On his reporting to duty on 1.3.2010, the 2<sup>nd</sup> Respondent initiated disciplinary inquiry vide letter dated 3.3.2010 on the charge of unauthorized absence for about 3 1/2

years. After receiving the report from the Inquiry Officer, the 2<sup>nd</sup> Respondent who is the disciplinary authority, removed the Applicant's husband from service on 31.5.2010. In this connection, it is submitted by the Applicant that her husband made efforts to submit his defence but the 2<sup>nd</sup> Respondent rejected the same on the ground that it was not submitted in time. Aggrieved of the order of removal, the Applicant's husband submitted an appeal on 7.6.2010 but the same was kept pending without any order for a long time. He suffered from severe stress and ill-health and ultimately died on 8.11.2010 leaving behind the Applicant and two children. According to the Applicant she is unemployed and both her children are still studying. They have been suffering from acute deprivation and financial difficulties. They are facing extreme hardship to meet their daily needs. She submitted representations dated 14.12.2015, 9.1.2016 & 25.1.2016 to the 2<sup>nd</sup> Respondent with a request to sanction Compassionate Allowance under Rule 41 of CCS (Pension) Rules, 1972 to her late husband w.e.f. 1.6.2010 and subsequently upon his death on 8.11.2010 to herself. But the 2<sup>nd</sup> Respondent has rejected her representations stating that there is no such provision for Compassionate Allowance and communicated the same by order dated 9.2.2016. The present O.A. is filed stating that the order passed by the 2<sup>nd</sup> Respondent is contrary to Rule 41 of CCS (Pension) Rules, 1972 and also without taking

into consideration the condition in which the Applicant and her children are placed.

3. The Respondents contended in their reply that no Compassionate Allowance was granted to the Applicant's husband when he was removed from service as no application was found to be made by him for grant of Compassionate Allowance on his removal. Their contention is that grant of Compassionate Allowance is not mandatory under Rule 41 of CCS (Pension) Rules, 1972 and the same was not granted to the Applicant's husband as he was unauthorisedly absent at many intervals of time. Thus, the version of the Respondents seems to be that there is no provision under CCS (Pension) Rules 1972 for grant of Compassionate Allowance to a Government servant who was removed from service and expired thereafter without making any application for Compassionate Allowance.

4. I have heard Shri P. Venkatesh, learned counsel appearing for the Applicant and Smt. D. Shobha Rani, learned Additional Central Government Standing Counsel.

5. The question requires determination in the present O.A. is that having regard to the facts and circumstances set out in the O.A., whether the Applicant is entitled for Compassionate Allowance under Rule 41 of CCS (Pension) Rules, 1972.

6. Rule 41 of Central Civil Services (Pension) Rules 1972 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 per mensem.”

From the Rule 41, it is true that it is not obligatory on the part of the competent authority to grant Compassionate Allowance to the employee who was dismissed or removed from service. As per the said Rule, if the case is deserving of special consideration, the competent authority may sanction Compassionate Allowance. However, it has to be kept in mind that the considerations for dismissal or removal from service are altogether different from the considerations in respect of sanctioning Compassionate Allowance. Since the Compassionate Allowance is admissible to an employee who is dismissed or removed from service, the conditions which weighed for such removal or dismissal cannot be the same for considering the case of an employee for sanctioning Compassionate Allowance.

7. The legal position has been explained by the Hon'ble Supreme Court in (2014) 11 SCC 684. The Hon'ble Supreme Court held as follows:

“13. We are of the considered view that the adjudication by the courts below with reference to Rule 41 of the Pension Rules, 1972 is clearly misdirected. The Rule itself contemplates payment of compassionate allowance to an employee who has been dismissed or removed from service. Under the punishment rules, the above punishments are of the severest magnitude. These punishments can be inflicted only for an act of extreme wrongdoing. It is on account of such wrongdoing, that the employee concerned has already been subjected to the severest form of punishment. Sometimes even for being incorrigible. Despite that, the Rule contemplates sanction of a compassionate allowance of up to two-thirds of the pension of gratuity (or both), which would have been drawn by the punished employee if he had retired on compassionate pension. The entire consideration up to the present juncture, by the courts below, is directly or indirectly aimed at determining whether the delinquency committed by the appellant was sufficient and appropriate for the infliction of the punishment of dismissal from service. This determination is relevant for examining the veracity of the punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration. Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of CCS (Pension) Rules, 1972 is concerned, the same has to be by accepting that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the most severe punishments. As in the present case, unauthorized and wilful absence of the appellant for a period of 320 days has resulted in the passing of the order of dismissal from service. The punishment inflicted on the appellant has been found to be legitimate and genuine as also commensurate to the delinquency of the appellant. The issue now is the evaluation of claim of the punished employee under Rule 41 of the Pension Rules, 1972.”

8. The Hon'ble Supreme Court illustrated certain misconducts which may disqualify the employee who was dismissed or removed from service for getting Compassionate Allowance under Rule 41. They are :

- a) An act of moral turpitude
- b) An act of dishonesty, fraud or personal profiteering
- c) An act aimed at deliberately harming a third party interest
- d) and an act which otherwise unacceptable for the conferment of the benefits flowing out of Rule 41
- e) Illustratively according to the Hon'ble Supreme Court any action which is considered as depraved, perverted, wicked, treacherous or the like would disentitle an employee for compassionate consideration.

9. In view of the law laid down by the Hon'ble Supreme Court, I am of the considered opinion that the misconduct of unauthorized absence for a long time would not disentitle an employee for compassionate consideration. The Respondents however expressed the view that since the proven conduct of the Applicant's husband amounted to gross indiscipline and, therefore, the Applicant or her husband are not entitled for any Compassionate Allowance. The Respondents also contended that the Applicant did not make any application for Compassionate Allowance, his wife, for the first time, cannot claim such Allowance under Rule 41. I see

absolutely no force in the said contention. The Applicant challenged the removal order by preferring an appeal. The appeal could not be disposed of for a long time by the appellate authority and in the meanwhile, the Applicant became sick and died. There is nothing in Rule 41 to suggest that on the death of an employee, his wife cannot claim Compassionate Allowance.

10. A Division Bench of the Hon'ble High Court of Delhi in **Additional Deputy Commissioner of Police vs Anju 2011 Law Suit Delhi 892** held categorically that after the death of an employee who was dismissed or removed from service, his wife can apply for Compassionate Allowance. In the case before the Division Bench of the Delhi High Court it was contended that the ex-Constable who was dismissed from service on account of unauthorized absence for several years and not joined, widow and children are not entitled for Compassionate Allowance. The said contention was rejected by the Delhi High Court and the Delhi High Court took a view that since the ex-Constable was not terminated on account of his dishonest behaviour, his wife and children cannot be denied Compassionate Allowance on the mere ground that he was dismissed for unauthorized absence for a long period.

11. Turning to the facts of the present case, the stand taken by the 2<sup>nd</sup> Respondent in the order impugned dated 09.02.2016 is contrary to Rule 41 of CCS (Pension) Rules, 1972 and also to the above cited two judgements. The two grounds put forth by the Respondents namely that the Applicant's husband was found guilty of the misconduct of unauthorized absence for a long period and he did not make any application seeking Compassionate Allowance after his removal, are not acceptable since they are unsustainable under law. The impugned order does not show that the conditions of the family of the Applicant were taken into consideration while passing the said order. The Applicant mentioned in the O.A. that her husband was the sole bread winner of the family, her two children are still studying and they have been suffering from acute deprivation and financial difficulties. It is also mentioned that the Applicant and her children are facing much hardship to meet their daily needs. Having regard to the condition in which the family of the deceased employee was placed after his death, the 2<sup>nd</sup> Respondent ought not to have rejected the representations submitted by the Applicant seeking Compassionate Allowance. I am of the considered view that having regard to the Rule 41 of CCS (Pension) Rules 1972, the present one is a fit case for grant of Compassionate Allowance to the Applicant.

12. The impugned order dated 09.02.2016 passed by the 2<sup>nd</sup> Respondent is set aside. The 2<sup>nd</sup> Respondent is directed to consider the case of the Applicant for sanctioning Compassionate Allowance under Rule 41 of CCS (Pension) Rules, 1972 and pass appropriate order within a period of eight weeks from the date of receipt of a copy of the order.

13. In the result, the O.A. succeeds and is accordingly allowed. There shall be no order as to costs.

***(JUSTICE R. KANTHA RAO)***  
***JUDL. MEMBER***

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