



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/1393/2016

Date of order : 31.1.2018

Present: Hon'ble Ms. Manjula Das, Judicial Member

GOPAL KANTI DAS

S/o Late S.B.Das,
Worked as Sorting Assistant
Under Saithia RMS,
R/o Flat No. 23, Block-2,
CTI Building, Christopher Road,
Kolkata - 700014.

...APPLICANT

VERSUS

1. Union of India, through
The Secretary,
Ministry of Communication,
Dak Bhawan,
New Delhi - 110001.
2. The Chief Post Master General,
West Bengal Circle,
Yogayog Bhawan,
Kolkata - 700012.
3. The Senior Superintendent,
Post RMS "H" Division,
Kolkata - 700004.

...RESPONDENTS

For the applicant: Mr. N. Roy, counsel

For the respondents: Mr. B.B. Chatterjee, counsel

O R D E R (ORAL)

Per Ms. Manjula Das, Judicial Member

Mr. N. Roy, Id. Counsel appeared for the applicant and Mr. B.B. Chatterjee,
Id. Counsel appeared for the respondents.

2. By making this OA the applicant has approached this Tribunal under
Section 19 of the Administrative Tribunals Act, 1985 seeking the following
reliefs :

- a) to issue direction upon the respondent to cancel/set aside the
impugned order, dated 10.8.2016 and 25.8.2016 forthwith;
- b) to issue further direction upon the respondent to grant
compassionate allowance not exceeding two-third pension or
gratuity which is admissible to the applicant under Rule 41 of CCS
(Pension) Rules forthwith;

- c) to issue further direction upon the respondent to consider the representation dated 6.5.2015 for compassionate allowance forthwith;
- d) to produce connected departmental record at the time of hearing;
- e) any other order or orders as the Ld. Tribunal deem fit and proper.

3. The order passed in terms of the speaking order dated 25.8.2015 reads hereunder :

"Government of India
Department of Posts
Office of the Superintendent
RMS 'H' Division
Kolkata - 700004.

No. K1-1/G.K.Das/565/2016 Dated at Kolkata - 700004, 25.8.16

This is regarding passing a reasoned speaking order by the disciplinary authority in consideration of the representation dated 6.5.2015 of Sri Gopal Kanti Das, ex-Sorting Assistant, RMS 'H' Dn towards granting of compassionate allowances in compliance of the order dated 2.5.2016 passed by the Hon'ble CAT, Calcutta Bench in OA No. 565 of 2016 in the matter of Sri Gopal Kanti Das -vs- UOI & Ors.

The undersigned working as Senior Superintendent, RMS 'WB' Dn being nominated and empowered to exercise the duty of the disciplinary authority of RMS 'H' Dn vide Chief PMG, W.B. Circle office letter No. LC-01/04/16/SA/unauthorised absence/Disc. Case/RMS 'H' Dn/Vig dated 25.7.2016 has examined the case and found as below -

Sri Gopal Kanti Das while working as SRO, Sainthia RMS under RMS 'H' Dn had remained absent unauthorisedly for about 18 months during the year 2002 to 2004 for which disciplinary proceedings under Rule 14 of CCS (CCA) Rules 1965 was initiated against him and he was awarded with the penalty of removal from service w.e.f. 15.6.2005 by the Sr. Superintendent, RMS 'H' Dn vide memo No. K1-1/G.K.Das/'H' Dn dtd 1.6.2005 after observing the prescribed procedure under the said CCS (CCA) Rules, 1965. The applicant said Sri G.K. Das preferred appeal to the Appellate Authority against the said order of the Disciplinary Authority but the Appellate Authority confirmed the order of the disciplinary authority vide appellate order dated 13.2.2006. Said Sri Das also preferred a review petition in the matter but the reviewing authority rejected the review petition.

Being aggrieved the applicant, said Sri G.K. Das filed OA NO. 77 of 2007 before the Hon'ble CAT, Calcutta Bench which was disposed of by the Hon'ble CAT vide its order dated 12.11.2010 with observation that "it is difficult to sustain the argument that because of diabetes and hypertension, the applicant could not attend office for a long time. He was given the opportunity for seeking medical opinion before CMOH, Birbhum, but he declined He was also given opportunity to defend himself in the inquiry where he did not appear for a couple of times. We do not find anything wrong in the inquiry report or in the orders of the disciplinary authority and the appellate authority. However, a case can be made out whether the applicant can possible make request for lesser punishment than termination of service. This is for the respondent to consider. However, before this is done we would direct that the applicant should appear before the Medical Board to be set up by the Postal Department. If his serious medical condition is certified by the said Board, viz. that his illness of such that his long absence from duty can be sustained medically then he can be considered for lesser punishment, such as compulsory retirement. Before the medical board the applicant will have to produce his entire medical history of his case as certified by

his medical practitioner including medicines prescribed with date, medical tests taken for the period of absence etc. In case, the applicant fails to appear before the medical board or cannot justify his case with medical information and data as mentioned by us, then his case will not be considered for lesser punishment." In compliance of the said order of the Hon'ble Tribunal dated 12.11.2010 and as per request of the Department a Medical Board was constituted by the NRS Medical College and Hospital which examined said Sri Das and the Board submitted their opinion dated 4.1.2011 that "his prolonged absence (9.12.2002 to 15.6.2005) due to illness like diabetes mellitus and hypertension cannot be substantiated. Keeping in view the said report of the Medical Board the Chief Postmaster General, WB Circle, issued a reasoned speaking order on 28.4.2011 in compliance of the Hon'ble Tribunal's order dated 12.11.2010 stating why a lesser punishment could not be given to the said applicant.

Being aggrieved the applicant moved before the Hon'ble CAT Calcutta Bench by filing OA NO. 638 of 2011 challenging the said order dated 28.4.2011 issued by the Chief Postmaster General, but the Hon'ble Tribunal was pleased to dismiss the said OA vide order dated 22.8.2011. Then the applicant moved before the Hon'ble High Court at Calcutta filing WPCT 327 of 2011 challenging the Hon'ble Tribunal's said order dated 22.8.2011, but the said WPCT failed and hence was dismissed by the Hon'ble High Court by order dated 22.12.2011.

The representation of the applicant for grant of compassionate allowance has been considered by the undersigned in compliance of the Hon'ble Tribunal's order dated 2.5.2016 keeping in view the facts and circumstances of the case as narrated above and also as per Rule 41 of CCS (Pension) Rules, 1972 with GID(1) below the said Rule and found as below:-

- (i) That, as per Rule 41(1) of the CCS (Pension) Rules 1972 the authority competent to dismiss or remove an official from service may, if the case is deserving the special consideration, sanction a compassionate allowance not exceeding two third of the pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. In the instant case in the order of the Disciplinary authority dated 1.6.2005 there is no such mention that he was retired on compensation pension. The applicant was awarded with the penalty of removal from service by the said order of the disciplinary authority. The case of the applicant thus does not deserve consideration of compassionate allowance as per the said Rule
- (ii) That, the GID(1) below Rule 41 of the CCS (Pension) Rules, 1972 speaks that each case is to be considered on its own merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interest of Government, unduly hard on the individual. The duty and service rendered by the applicant in the instant case is not considered to be a good case for grant of compassionate allowance. It may be that the applicant has a wife and children dependent upon him as mentioned by him in his representation dated 6.5.2015 but this factor itself is not considered to be sufficient for the grant of compassionate allowance in favour of the applicant.
- (iii) That, the representation of Sri Gopal Kanti Das, EX-SRO, Sainthia RMS regarding grant of compassionate allowance under Rule 41 of CCS (Pension) Rules, 1972 had been examined but found no merit by the competent authority, hence not considered vide the Circle Office Memo No. SFA/R-69/Staff Position/RMS/H Divn/Part dated 4.2.2016.



In view of the above discussion the undersigned being nominated as Disciplinary Authority of RMS 'H' Division for the instant case having duly considered the representation dated 6.5.2015 of Sri Gopal Kanti Das, Ex-SA RMS H Divn could not find sufficient grounds to grant compassionate allowance in favour of said Sri Das and as such the said representation dated 6.5.2015 of Sri Gopal Kanti Das has duly been considered but rejected. This is issued in compliance of the order dated 2.5.2016 passed by the Hon'ble CAT Calcutta Bench in OA No. 565 of 2016 in the matter of Gopal Kanti Das -vs- UOI & Ors.

Sd/-

(A.Pal)

SSRM RMS 'WB' Division

&

Nominated Disciplinary authority of RMS H Division."

4. The view taken by the Government while considering the matter is that as per Rule 41(1) of CCS (Pension) Rules, 1972 the authority competent to dismiss or remove an official from service may if the case is deserving the special consideration, sanction compassionate allowance not exceeding two third of the pension or gratuity or both which would have been admissible to him if he had retired on compensation pension. According to the authority in the instant case as the applicant was not retired on compensation pension, he is not entitled to compassionate allowance.

5. Rule 39 of CCS (Pension) Rules, 1972 reads as hereunder :

"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 of those of his own, have the option -

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| (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." |

Rule 41(1) of CCS (Pension) Rules, 1972 provided as hereunder :

"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]."

In the present case the applicant failed to establish his case as regards retirement on "compensation pension" either by way of pleadings or by refuting the statement made by the respondents in their reply.

Even the Id. Counsel for the applicant failed to place any material evidence so as to defend on the plea of applicant's retirement on compensation pension. More so there is no such denial in the averments made by the applicant to the reply of the respondents as regards the applicant's removal of service as a punishment after completion of disciplinary proceeding.

6. Hon'ble Apex Court in **Nasim Bano -vs- State of U.P. [1993 Suppl (4) SCC 46]** hold that:

"averments made by the petitioner not controverted tantamounts to admission of averments."

In the present case I noted that the applicant in his rejoinder or his pleadings, did not controvert the averments of the respondents towards the issue of removal from service on punishment.

7. After taking into consideration entire conspectus of the case, I am of the view that it is not a fit case to interfere with the speaking order dated 25.8.2015 passed by the respondent authorities in view of the provisions of Rule 39 & 41(1) of the CCS (Pension) Rules, 1972.

8. Accordingly the instant OA fails being devoid of merit. The OA stands dismissed. No order as to costs.

(MANJULA DAS)
JUDICIAL MEMBER

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