

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. No.2011 of 2018

This the 9th Day of July, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Sumlesh

[Age – 37 years, Desi-Widow of Ex Constable]
Widow of late Sh. Hari Prakash,
R/o Village Diggal, Dalian Panna,
District Diggal, Dalian Panna,
District Jhajjar, Haryana.

....Applicant

(By Advocate : Shri Ravi Kant Jain)

VERSUS

1. The Govt. of NCT of Delhi,
Through Commissioner of Police,
Police Headquarter,
I.P. Estate, New Delhi.
2. The Deputy Commissioner of Police,
North District,
Civil Line, New Delhi.

.....Respondents

(By Advocate : Shri Jagdish N.)

O R D E R (Oral)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

“”I. Quash and set aside the order dated 14.03.2018 and direct the respondents to grant the compassionate allowance to the applicant w.e.f. the date of dismissal of her husband from the service alongwith all consequential benefits along with the interest @ 18% from the date of entitlement till the date of payment.

II. cost of the proceedings may also be awarded to applicant;

III. any other relief which this Hon'ble Tribunal may also be passed in favour of the applicant."

2. Brief facts of the case are that applicant is the widow of Constable Hari Prakash. The applicant's deceased husband – Constable Hari Prakash after the departmental enquiry was removed from service by the respondents vide order dated 26.7.2011 on the ground of unauthorized and willful absence from 18.10.2007 till the date when the charges against the delinquent stands proved. On 25.8.2011, Constable Hari Prakash submitted his appeal against the aforesaid punishment order, which was rejected by the respondents vide order dated 25.9.2014. On 28.12.2016, Constable Hari Prakash expired due to illness. Thereafter, applicant submitted her representation dated 13.7.2017 requesting therein that she may be granted compassionate allowance, which was specifically for the employees, who has been dismissed or removed from the service under the provisions of Rule 41 of CCS (Pension) Rules, 1972. The said representation of the applicant was sent to PHQ for seeking opinion of the competent authority for grant of compassionate allowance. Aggrieved by inaction on the part of the respondents, applicant filed OA 838/2018 and this Tribunal vide order dated 21.2.2018 disposed of the said OA with direction to the respondents to examine the claim of the

applicant by passing a speaking and reasoned order. Thereafter the respondents passed the order dated 14.3.2018 rejecting the request of the applicant for grant of compassionate allowance. Being aggrieved by the said order, the applicant has filed this OA seeking the reliefs as quoted above.

3. When this matter was taken up for consideration, learned counsel for the applicant submitted that the impugned order is a non-speaking order as the respondents have not taken into consideration the facts and circumstances of the matter in true letter and spirit, as her husband was dismissed/removed from service and expired subsequently. He further submitted that applicant is having two school going children and does not have any source of livelihood for herself and her children and hence, the applicant is in need of compassionate allowance so that she may maintain herself and her children.

3.1 Counsel for the applicant further submitted that in terms of the Order of the Hon'ble Supreme Court in the case of ***Mahinder Dutt Sharma vs. Union of India and ors.*** (Civil Appeal No.2111/2009 decided on 11.4.2014, applicant's case has neither been considered nor had it been disposed of by a detailed and speaking order.

4. On the other hand, learned counsel for the respondents submitted that impugned order does not suffer from any

illegality. He further submitted that as per the opinion given by DoP&T and conveyed by MHA vide letter dated 1.12.2017, the applicant is not entitled to get the compassionate allowance under the provisions of Rule 41 of the CCS (Pension) Rules, 1972.

5. Heard learned counsel for the parties and perused the the impugned order dated 14.3.2018, contents of which read as under:-

“Your request regarding grant of compassionate allowance has been examined by this office but the same could not be acceded to in view of the advice tendered by the Consultant of Department of Pension and Pension’s Welfare in a similar case of Smt. Usha Rathi w/o late Ex-HC Prem Singh, No.100/NW that “Compassionate Allowance is sanctioned to the dismissed/removed Government employee only and on death of such an employee the family is sanctioned family pension. There is no concept of sanction of Compassionate Allowance to the family on death of such employee.

Therefore, your request regarding grant of compassionate allowance could not be acceded to in the light of above said advice of DOPT in a similar case.”

6. In the case of ***Mahinder Dutt Sharma vs U.O.I & Ors*** in Civil Appeal No.2111/2009 decided on 11.4.2014, the Hon’ble Supreme Court had occasion to deal with the issue of grant of compassionate allowance in which the Apex Court observed as under:-

“12.....Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of the 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 willful 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.

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 persons 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 employees 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 leveled 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.

15. We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated 17.5.1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorized and willful absence from service from 18.1.1995 to 4.12.1995 (i.e., for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices, that not taking stern action against the appellant, would create a bad impression, on the new entrants in the police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellants behaviour was incorrigible. Thus viewed, there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified. For determining the question of

compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in paragraph 13 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellants behaviour, was not one which can be expressed as an act designed for illegitimate personal gains, from his employer. The appellant, cannot also be stated to have indulged in an activity to harm a third party interest, based on the authority vested in him, nor was the behaviour of the appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in paragraph 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellants deservedness for an affirmative consideration.

16. We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed, that the appellant had rendered about 24 years of service, prior to his dismissal from service, vide order dated 17.5.1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even though the charge proved against the appellant pertains to his unauthorized and willful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial, that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brothers wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill-health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved

special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972.”

7. So far as the contention of the respondents as mentioned in the impugned order is concerned, the similar contentions were also raised before the the Division Bench of Madras High Court, in **M. Jayalakshmi v. Union of India and Ors.**, 2002 (3) ATJ 374, as the department did not grant compassionate allowance, she filed an OA before the C.A.T., Madras Bench with hefty delay and the Tribunal rejected condonation of delay application. Thereafter, the said writ petition was filed by the widow. The High Court set aside the order of the Tribunal and directed the Tribunal to proceed with the matter on merits. The learned Division Bench further observed that obvious difficulties faced by the lady owing to her illiteracy and poverty should have been viewed with a compassionate approach.

8. Having regard to the above facts and circumstances of this case, the impugned order dated 14.3.2018 passed on the issue of grant of compassionate allowance on the applicant's representation is liable to be set aside, being a very cryptic and a non-speaking order. Accordingly the impugned order is quashed and the respondents are directed to reconsider the representation of the applicant dated 13.7.2017 by passing a detailed reasoned and speaking order within a period of 90 days from the date of receipt of a certified copy of this Order.

They shall also keep in mind the aforesaid observations of the Hon'ble Supreme Court in the case of ***Mahinder Dutt Sharma.***

9. The present OA is disposed of in above terms. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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