

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

O.A. NO.2719 of 2018

Orders reserved on : 24.09.2019

Orders pronounced on : 27.09.2019

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

Jagdish Prasad Meena, aged 53 years
S/o Sh. Shrawan Ram Meena,
Ex. Head Constable, No. 73/PCR (PIS No. 2888448)
Delhi Police
r/o Village Patan Ka Was, Post Patan,
Rajgarh, Distt. Alwar (Raj.).

....Applicant

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Govt. of NCT of Delhi through
The Chief Secretary,
Delhi Secretariate, Near ITO New Delhi
2. The Commissioner of Police,
Delhi Police, Delhi Police Head Quarters,
I.P. Estate, New Delhi
3. The Addl. Dy. Commissioner of Police (GA)
Police Control Room, Delhi,
Police Head Quarters, IP Estate, New Delhi

.....Respondents

(By Advocate : Shri Sameer Sharma)

ORDER

By filing this OA, the applicant is seeking the following
reliefs:-

- “(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 17.5.2018 (A/1), declaring to the effect that the whole action of the respondents not granting the compassionate

allowance to the applicant under rule 41 of the CCS (Pension) Rules, 1972 is illegal, arbitrary and against the rules and consequently pass an order directing the respondents to grant the compassionate allowance to the applicant from the date of his dismissal from service with all consequential benefits with arrears.

- (ii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicants."

2. The applicant's grievance in this case is against the order dated 17.5.2018 vide which his request for grant of compassionate allowance as provided in Rule 41 of CCS (Pension) Rules has been rejected by the respondents.

3. During the course of hearing, counsel for the applicant submitted that though the applicant was dismissed from service vide order dated 17.10.2013 due to his unauthorized absence for 238 days 15 hours and 35 minutes but his case was not considered for grant of compassionate allowance as provided under Rule 41 of the Rules *ibid* while passing the said order of dismissal. The applicant submitted his representation dated 27.3.2018 to the respondents but when the same was not decided by the respondents, the applicant filed OA 1987/2018 before this Tribunal and this Tribunal disposed of the same vide Order dated 21.5.2018 with a direction to the respondents to decide the said representation of the applicant dated 27.3.2018 by way of passing a speaking and reasoned order and thereafter on 28.5.2018, the applicant received a copy of impugned order dated

17.5.2018, which was dispatched on 22.5.2018 and received by him on 28.5.2018 vide which the request of the applicant for grant of compassionate allowance was rejected without even considering the guidelines issued by the Hon'ble Supreme Court in the case of ***Mahinder Dutt Sharma vs. Union of India and others***, (2014) 11 SCC 684.

3.1 Counsel for the applicant in support of the claim of the applicant also placed reliance on the following decisions:-

- (i) ***Ex. Naik Harish Chander v. Union of India and others*** in Writ Petition No.1730/1999 decided on 27.9.2002 by the Hon'ble Delhi High Court;
- (ii) ***Sukha Singh vs. Union of India*** in CWP No.13352/2004 decided on 17.11.2004 by the Hon'ble Delhi High Court;
- (iii) ***Anna Deoram Londhe vs. State of Maharashtra***, reported in 1998(5) SLR 480, decided by the Hon'ble A.P. High Court;
- (iv) ***Ex. ASI Shadi Ram vs. Govt. of N.C.T. of Delhi*** in Writ Petition (Civil) No.5544/2007 decided by the Hon'ble Delhi High Court;
- (v) ***Mahavir Prasad vs. Union of India*** in Writ Petition No.2556/2010 decided on 26.08.2010 by the Hon'ble Delhi High Court; and

(vi) ***Manoj Kumar vs. Commissioner of Police*** in Writ Petition (Civil) No.8421/2010 decided on 16.01.2013 by the Hon'ble Delhi High Court.

4. On the other hand, counsel for the respondents submitted that a DE was initiated against the applicant vide order dated 24.4.2012 on the allegation that while posted at New Delhi Zone/PCR and East Zone/PCR, he absented himself from duty on the following occasions on regular intervals willfully and unauthorisedly:-

| Sl. No | D.D. No. & dated of absent | D.D. No. & dated of arrival | Period of absence | | |
|--------|----------------------------|-----------------------------|-------------------|-------|---------|
| | | | Days | Hours | Minutes |
| 1. | 22 dt. 14.03.2011 | 43 dt. 30.03.2011 | 16 | 40 | - |
| 2. | 32 dt. 06.04.2011 | 22 dt. 06.06.2011 | 55 | 23 | 50 |
| 3. | 14 dt. 10.07.2011 | 23 dt. 17.07.2011 | 07 | 02 | 15 |
| 4. | 64 dt. 14.09.2011 | 39 dt. 03.12.2011 | 79 | 20 | - |
| 5. | 15 dt. 15.12.2011 | 19 dt. 15.12.2011 | - | 04 | - |
| 6. | 13 dt. 21.12.2011 | 43 dt. 23.12.2011 | 02 | 08 | - |
| 7. | 15 dt. 02.01.2012 | 54 dt. 16.03.2012 | 75 | 13 | 30 |
| Total | | | 238 | 15 | 35 |

4.1 Counsel further submitted that for the above mentioned at Sl. No.8, three absentee notices dated 10.1.2012, 31.1.2012 and 22.2.2012 were sent to the applicant at his residential address with the direction to resume his duty at once failing which disciplinary action will be taken against him. The applicant was further directed through absentee notices dated 31.1.2012 and 22.2.2012 that in case of illness, he should report to the Medical Superintendent, Civil Hospital Distt. Alwar (Raj.) for second medical opinion. He received the

absentee notices dated 31.1.2012 and 15.2.2012 and absentee notice dated 22.2.2012 on dated nil respectively against his signature but he neither resumed his duty nor reported to the Medical Superintendent. He was a habitual absentee as reported by his supervisory officers. He remained absent for total period of 238 days 15 hours and 35 minutes on the abovementioned seven different occasions willfully and unauthorisedly and resumed his duty at his own sweet will and pleasure, which is utter violation of CCS (Leave) Rules, as well as SO No.111 of Delhi Police.

4.2 Counsel further submitted that the aforesaid inquiry was entrusted to Inspr. Sameerjeet Singh, No.D-2957, EO/PCR Delhi to conduct the same on day-to-day basis and submit his findings expeditiously. The enquiry officer completed the same after observing all usual formalities and submitted his findings concluding that the charge levelled against the applicant stands proved. Tentatively agreeing with the findings of the EO, a copy of finding was served upon the applicant on 13.9.2013 seeking his reply/representation against the findings of the E.O. within 15 days from the date of its receipt as well as to show cause as to why his absent period of 238 days 15 hours and 35 minutes should not be treated as period "not spent on duty" for all intents and purpose vide UO dated 9.9.2013 but the applicant failed to submit his representation within stipulated period.

4.3 Counsel also submitted that for the sake of natural justice, he was called in Orderly Room for personal appearance but he neither submitted his representation nor appeared in OR.

4.4 Counsel also submitted that absenteeism in a disciplined force like Delhi Police amounts to a serious misconduct as availability of such type of personnel always remains doubtful. As per material evidence available on record, it is crystal clear that the applicant did not mend his attitude despite being given ample opportunities, which indicate that he is a habitual absentee, incorrigible type of person and unbecoming of a police officer in discipline force. As such the act of the applicant is blatant violation of CCS (Leave) Rules 1972 as well as Standing Order No.111 on the subject. Hence, he was dismissed from the force vide order dated 17.10.2013.

4.5 Counsel also submitted that applicant submitted that the representation of the applicant dated 27.3.2018 was received on 4.4.2018 through PHQ and the matter was examined under the provisions of Rule 41 of the CCS (Pension) Rules, 1972 and rejected by the competent authority by passing a reasoned and speaking order dated 17.5.2018, a copy of which was delivered to the applicant at his permanent address on 26.5.2018 under his proper receipt through Spl. Messenger.

4.6 Counsel for the respondents submitted that by rejecting the aforesaid representation of the applicant, the respondents have placed reliance on the decision of the Division Bench of the Hon'ble Delhi High Court in WP(C) No.3608/2017 (***Kelo Devi vs. Govt. of NCT of Delhi and others***) dated 2.5.2017.

4.7 Counsel also submitted that on 27.3.2018, i.e., after expiry of more than about 4½ years from the date of his dismissal on 17.10.2013, the applicant moved his representation for consideration of his case for grant of compassionate allowance in terms of provisions of Rule 41 of the Rules *ibid*, which was considered by the respondents but the same was rejected by the reasoned and speaking order dated 17.5.2018.

4.8 Counsel for the respondents placed reliance on the decisions of the Hon'ble Delhi High Court in the cases of ***Keto Devi vs. Govt. of NCT of Delhi and others*** in WP(C) No.3608/2017 decided on 2.5.2017 and ***Jai Bhagwan vs. Govt. of NCT of Delhi and others*** in WP(C) No.13619/2018 decided on 17.12.2018 and further submitted that aforesaid decision of the Hon'ble Supreme Court in the case of ***Mohinder Dutt Sharma*** (supra) has been interpreted by the Hon'ble Delhi High Court in the said cases. The relevant portion of the decision of the Hon'ble Delhi High Court in ***Kelo Devi*** (supra) reads as under:-

“3. We have heard learned counsel for the petitioner and perused the impugned order as well as the order passed by the respondents denying compassionate allowance to the petitioner in respect of her late husband. ‘Compassionate allowance’ as the words themselves suggest is granted by the employer out of compassion. It is for the respondents to determine as to whether a particular case is deserving of compassion keeping in view the guidelines laid down inter alia in Mahinder Dutt Sharma’s case (supra). There is no vested right either in ex-employee or his heirs to claim compassionate allowance irrespective of the circumstances in which the ex-employee may have been removed from service. If the said course of action was to be adopted, it would lead to sending a very wrong signal to the serving employees that they may eventually secure compassionate allowance which could be as high as 2/3rd of the pension despite being incorrigible in their conduct while in service and despite their being removed from service after enquiry. In the present case, the petitioner’s late husband displayed incorrigible conduct of remaining absent on 25 different occasions in a short span of 15 years. He was subjected to another major penalty for his another misdemeanour

4. In these circumstances, we do not find any illegality either in the order of the respondents denying allowance in respect of late husband of the petitioner or the impugned order passed by the Tribunal calling for interference.”

4.9 Counsel further placed reliance on the following observations of the Hon’ble Delhi High Court’s decision in **Jai Bhagwan** (supra), which reads as under:-

“4. Learned counsel for the petitioner strenuously contended that the petitioner having rendered more than 14 years of service, it would be unjust to deny him the pensionary benefit by way of compassionate allowance as provided for under Rule 41 of the said Rules. In his submissions, it was not a case of any moral turpitude but only of absentism and in view thereof, the petitioner but for the acts of absentism having rendered unblemished service for more than 14 years out of a total period of 24 years or so, at the time when he came to be dismissed, at least deserves the pensionary benefits, as contemplated under Rule 41 of

the said Rules. In support of his such submissions, he placed reliance upon *Mahinder Dutt Sharma vs. Union of India & Ors.*, (2014) 11 SCC 684.

5. We have bestowed our thoughtful consideration to the subject matter. Though, the dismissal order has come to be passed on account of acts of absentism, such misconduct cannot be read in isolation of the attending circumstances, which attracted it. After a few rounds of litigation, the competent authority taking note of the misconduct resulting into the dismissal order, has not found the petitioner fit for the grant of compassionate allowance under the said Rules by a detailed order dated 12/14-12-2015. CAT has dealt with the facts and the circumstances of the case in detail and we do not consider it necessary to narrate the same once again. Perusal of the order of the competent authority dated 12/14-12-2015 and the impugned order of CAT, we consider, shall suffice.

6. It is an undisputed fact that the petitioner started unauthorized absence from duty from the time he was Constable (Executive) and his such misconduct persisted even after he came to be promoted as Head Constable. In spite of the fact that he was repeatedly served with the show cause notices, suspended and imposed penalties since April, 2000 onwards. He invited dismissal order on account of his unexplained and unauthorized absentism, while being a member of a disciplinary force. Of course, it is least expected of a member of a service, which has to be much disciplined.

7. Compassionate allowance under Rule 41 of the said Rules, which the petitioner seeks, is provided by the competent authority, when the case deserves special consideration. On being queried, the learned counsel for the petitioner was at pains to point so but for contending that the petitioner had put in more than 14 years of service and that was unblemished. To us, it is not the purport of Rule 41. Rule 41 by its very opening words and the sentence reads otherwise. It is only the proviso attached to it that provides for the discretion to the competent authority to sanction a compassionate allowance in a case which attracts special consideration.

8. *Mahinder Dutt's* case (supra) is of no avail to the petitioner inasmuch as it was a case, where the petitioner absented in all for a period of 320 days, 10 hours and 30 minutes and during the service of about 24 years, granted 34 good entries, including 02

commendation rolls awarded by the Commissioner of Police, 04 commendation certificates awarded by the Addl. Commissioner of Police and 28 commendation cards awarded by the Dy. Commissioner of Police. Petitioner is not shown to be even close to such facts and circumstances in which Mahinder Dutt of the same force came to be considered and extended the benefit under the proviso to Rule 41 of the said rules.

9. In view of the foregoing, the petition is dismissed. No order as to costs.”

5. Having heard learned counsel for the parties and perused the pleadings available on record, this Tribunal raised a query to the learned counsel for the applicant to substantiate as to how the case of the applicant is similar to the case of **Mohinder Dutt Sharma** (supra) when in the said case the Apex Court having taken into consideration the fact that the petitioner therein absented in all for a period of 320 days, 10 hours and 30 minutes and during the service of about 24 years, was previously granted 34 good entries, including 02 commendation rolls awarded by the Commissioner of Police, 04 commendation certificates awarded by the Addl. Commissioner of Police and 28 commendation cards awarded by the Dy. Commissioner of Police whereas the case in hand does not contain the facts even close to such facts of exemplary service by the applicant of the OA and circumstances in which **Mahinder Dutt** of the same force came to be considered and extended the benefit under the proviso to Rule 41 of the said rules. Counsel for the applicant only submitted that applicant is having no source of

income and has a very big family liability. Counsel further submitted that applicant was suffering from illness and serious ailment during the alleged period of absence and as such his case should be considered for grant of compassionate allowance in terms of the provisions of Rule 41 of the CCS (Pension) Rules, 1972.

6. On the other hand, learned counsel for the respondents submitted that the perusal of the order dated 17.5.2018 makes it clear that the case of the applicant was considered in terms of the guiding parameters as laid down by the Apex Court in ***Mohinder Dutt Sharma's*** case (supra) but the competent authority did not find his case deserves special consideration keeping in view the latest decision of the Hon'ble Delhi High Court in the case of ***Kelo Devi*** (supra) and accordingly rejected his request for grant of compassionate ground.

7. This Tribunal also perused the impugned order dated 17.5.2018 in which the respondents have considered the guiding parameters as laid down by the Apex Court in ***Mohinder Dutt Sharma's*** case (supra) and observed as under:-

“....The Double bench of Hon'ble High Court of Delhi has recently pronounced a judgment dated 02.05.2017 in W.P. (C) 3608/2017 – Kelo Devi vs. Govt. NCT, Delhi Ors. Extract concluding para of the judgment is re-produced below:

“Compassionate allowance’ as the words themselves suggest is granted by the employer out of compassion. It is for the respondents to determine as to whether a particular case is deserving of compassion keeping in view the guidelines laid down inter alia in Mahinder Dutt Sharma’s case (supra). There is no vested right either in ex-employee or his heirs to claim compassionate allowance irrespective of the circumstances in which the ex-employee may have been removed from service. **If the said course of action was to be adopted, it would lead to sending a very wrong signal to the serving employees that they may eventually secure compassionate allowance which could be as high as 2/3rd of the pension despite being incorrigible in their conduct while in service and despite their being removed from service after enquiry.”**

Keeping in view the overall facts and circumstances of the case brought on record I do not find any reason & weight to grant compassionate allowance to Ex. Head Const. Jagdish Prasad, No.73/PCR under Rule 41 of C.C.S. (Pension) Rules-1972.”

8. From the above portion of the impugned order, it is quite clear that the same cannot be said to be a non-speaking and unreasoned. Rather the same can be said to be a reasoned and speaking order as they have rightly found that the case of the applicant did not fall under the category of most exceptional circumstances which warrants consideration for grant of compassionate allowance and in compliance of the directions of the Apex Court in **Mohinder Dutt Sharma’s** case (supra) as was interpreted by the Hon’ble Delhi High Court in the aforesaid cases, the relevant portion of the said judgments have already been quoted above.

9. It is to be noted that against the order of this Tribunal in the case of (**Sumlesh Devi vs. GNCTD and others**) dated 26.4.2018 in OA No.3373/2016, the respondents have challenged the same by filing a Writ Petition (Civil) No.9020/2018 in which while issuing notice to the said Sumlesh Devi, the Delhi High Court vide Order dated 6.12.2018 observed as under:-

“2. On the last date, it was submitted by Ms. Ahlawat, Standing Counsel for the petitioners, that the Tribunal had wrongly placed reliance on Ramesh Kumar Singh vs. Union of India and Ors., WP(C) 5127/2012 decided on 23.08.2012 since, in the facts of that case, the petitioner had rendered more than ten years of service, which is not the position in the present case. On consideration of the said decision in Ramesh Kumar Singh (supra), in the light of Rule 41 of the CCS (Pension) Rules (in short ‘Rules’), prima facie, it appears to this Court that the decision in Ramesh Kumar Singh (supra) itself requires reconsideration. Rule 41(1) of the Rules states that a Government servant, who is dismissed or removed from service, shall forfeit his pension and gratuity. Prima facie, it appears that the said Rule itself postulates that the Government servant, in respect of whom the said Rule for grant of compassionate allowance is formulated, is one, who, otherwise, would be entitled to pension and gratuity, but, for his dismissal or removal.

3. A Government servant, who under the Rules, would not be entitled to pension and/or gratuity on account of his/her service at the time of his dismissal or removal from service, prima facie, is not sought to be covered under Rule 41 of the Rules. To illustrate the same, we may take an example of a Government servant, who has rendered, let us say, one year of regular service or less, and is dismissed or removed from service on account of misconduct. If the interpretation advanced in Ramesh Kumar Singh (supra) were to be accepted, it would mean that such a Government servant may also be granted compassionate allowance, which is Rs.3,500/- per month in the minimum, for the rest of his life even though the Government servant may have served the

Government for a few days or months in a regular appointment.

4. It appears to us that the reference to compassionate pension in the proviso to Rule 41(1) – which is dealt with in Rule 39 of the Rules, is only to indicate the quantum of compassionate allowance that may be sanctioned by the Government in a deserving case i.e. in a case where the Government servant would be entitled to pension and gratuity but for his removal or dismissal from service. In the aforesaid circumstances, we are inclined to issue notice.

5. Issue notice.

6. Mr. Singal, Advocate accepts notice on behalf of the respondent.”

The said Writ Petition is pending adjudication before the Hon’ble Delhi High Court.

10. Since the facts of the present case do not come even close to the facts of the said ***Mohinder Dutt Sharma’s*** case (supra) as interpreted by the Hon’ble Delhi High Court in the aforesaid two cases viz. ***Keto Devi vs. Govt. of NCT of Delhi and others*** in WP(C) No.3608/2017 decided on 2.5.2017 and ***Jai Bhagwan vs. Govt. of NCT of Delhi and others*** in WP(C) No.13619/2018 decided on 17.12.2018, relied upon by the respondents, this Tribunal does not find any illegality in the order passed by the respondents on his request for grant of compassionate allowance and hence, the present OA is dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/