

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

O.A. NO.4343 of 2017

Orders reserved on : 26.08.2019

Orders pronounced on : 30.08.2019

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

Hodil Singh  
Ex. Constable in Delhi Police  
PIS No.28861829  
Aged about 53 years  
s/o Late Sh. Lal Singh  
R/o Vill. Chandpur, PO : Deorou,  
PS : Chandosh, Dist Aligarh, UP

(By Advocate : Shri Anil Singal)

....Applicant

VERSUS

Govt. of NCT of Delhi through

1. Commissioner of Police,  
PHQ, I.P. Estate, New Delhi.
2. DCP (PCR)  
PHQ, I.P. Estate, New Delhi.

.....Respondents

(By Advocate : Shri Amit Anand)

**O R D E R**

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

- “1. To call for records of the case and quash/set aside the impugned order dt. 14.11.2017 and direct the respondents to grant Compassionate Allowance to applicant w.e.f. 19.7.2011 at the earliest.
2. To award cost in favour of the applicant and pass any other order or orders, which this Hon'ble

Tribunal may deem just & equitable in the facts and circumstances of the case.”

2. The applicant's grievance in this case against the order dated 14.11.2017 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 19.7.2011 due to his unauthorized/willful absence 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 2.2.2016 to the respondents but the same was rejected by the respondents by passing a non-speaking and cryptic order despite the fact that the applicant filed OA 12/12/2016, which was disposed of vide Order dated 6.10.2017 by this Tribunal by remitting the matter to the respondents with a direction to consider the aforesaid representation of the applicant and decide it. In compliance of the said Order, the respondents have passed the impugned order which is again non-speaking and cryptic order.

3.1 Counsel for the applicant in support of the claim of the applicant has placed reliance the decision of the Apex Court in the case of ***Mahinder Dutt Sharma vs. Union of India and others***, (2014) 11 SCC 684, as also of this Tribunal in OA No.3373/2016 (***Sumlesh Devi vs. GNCTD and others***) dated 26.4.2018.

4. On the other hand, counsel for the respondents submitted that applicant was appointed as Constable (Exe.) in Delhi Police on 1.6.1986. While posted in North-West Zone/PCR, he remained absent from duty willfully and unauthorisedly on the following occasions on regular intervals and without prior permission of the competent authority:-

Sl. No.	D.D. No. & dated of absent	D.D. No. & dated of arrival	Total absent period		
			Days	Hours	Minutes
1.	09 dt. 11.8.2009	22 dt. 09.10.2009	59	04	50
2.	06 dt. 17.10.2009	41 dt. 14.12.2009	57	11	--

4.1 Counsel further submitted that the applicant was detained for duty as Gunman from 8 P.M. to 8 A.M. on 16.03.2010 but he did not report for duty and he was marked absent vide DD No.29 dated 16.3.2010, NWZ/PCR and resumed his duty vide DD No.28 dated 16.6.2010 after absenting himself for a period of 91 days & 23 hours willfully and unauthorisedly, which was found utter violation of CCS (Leave) Rules, 1972 as well as Standing Order No.111 of Delhi Police. On the above allegations, a regular departmental

enquiry was ordered against the applicant vide order dated 31.5.2010.

4.2 Counsel further submitted that the aforesaid inquiry was entrusted to Insp. Ashok Kumar Tyagi to conduct the same on day-to-day basis. As the applicant did not cooperate with the Enquiry Officer despite issuance/service of summons, therefore, the said EO requested the disciplinary authority for grant of permission to conduct ex-parte proceedings against the applicant in the said departmental enquiry. Accordingly, ex-parte orders were issued vide order dated 20.5.2011. After completion of said enquiry, the said EO submitted his finding concluding therein that the charge framed against delinquent applicant stands proved. Tentatively agreeing with the findings of the EO, a copy of finding was served upon the applicant on 20.6.2011 vide UO dated 3.6.2011 against his proper receipt with a direction to the applicant to make his representation/submission in writing to the disciplinary authority within 15 days from the date of its receipt but the applicant neither submitted his representation in response to the findings of the EO nor sent any kind of intimation. Counsel also submitted that for the sake of natural justice, he was called in Orderly Room for personal appearance on 14.7.2011 along with his representation but he failed to appear in orderly room.

4.3 Counsel also submitted that absenteeism in discipline force is a serious matter as it cripples the entire administration of the Police Department. 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.

4.4 Counsel also submitted that applicant submitted his application dated 2.2.2016 which was rejected by the respondents vide order dated 2.3.2016. Feeling aggrieved the applicant filed OA 12/12/2016, which was disposed of by this Tribunal with a direction to the respondents to re-examine the applicant's representation in the light of Rule 41 of CCS (Pension) Rules. In compliance of the aforesaid directions of this Tribunal, the respondents have re-examined the case of the applicant passed the reasoned and speaking order dated 14.11.2017, which the applicant has impugned in this OA.

4.5 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.

4.6 Counsel also submitted that on 2.2.2016, i.e., after expiry of about 4½ years from the date of his dismissal on 19.7.2011, 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 re-considered by the respondents but the same was rejected by the reasoned and speaking order dated 14.11.2017.

4.7 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."

4.8 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. Inspite 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, 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 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 whereby he could support his wife, one minor son or himself and that the applicant has no movable/immovable property.

Counsel further submitted that applicant was suffering from mental illness 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 on perusal of the order dated 14.11.2017 makes it clear that the case of the applicant was re-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 14.11.2017 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:-

“He submitted his representation for grant of Compassionate Allowance under Rule-41 of CCS (Pension) Rules-1972 in the month of February-2016 while he was dismissed from the force on 19.07.2011 that is after a gap period of about 4½ years. If he had not sufficient means of livelihood, how would he and his family have survived for a considerable period of more than four years. Thus, the plea of poverty taken by Constable (Exe.) Hodil Singh, No.3025/PCR in his

representation, has no merit. Further, the judgment of Hon'ble Apex Court in Mahinder Dutt Sharma quoted by the Constable was rendered in the year 2014 whereas Const. Hodil Singh, No.3025/PCR was dismissed from service much earlier to that in the year 2011 itself. However, the Hon'ble Supreme Court of India, New Delhi's in its judgment dated 11.04.2014 pronounced in the case of Mohinder Dutt Sharma versus Union of India & Ors. in Civil Appeal No. 2111/2009 has maintained that a conduct which is contrary to community standards of justice, honestly and good morals and this acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employer would disentitle an employee for such compassionate consideration.

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., the extract concluding para of the judgment is reproduced 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.”**

After due application of mind and carefully gone through the facts and relevant records of file, the representation dated 02.02.2016 submitted by Constable (Exe.) Hodil Singh, No. 3025/PCR (PIS No.28861829) for grant of Compassionate Allowance/Pension under rule-41 of CCS (Pension) Rules-1972 could not be acceded to, as his case does not fall under the category of most exceptional

circumstances for which the request of the applicant could be considered.”

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 reliance placed by the applicant on the decision of this Tribunal in the case of ***Sumlesh Devi*** (supra) in support of applicant's claim, 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)**

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