

Central Administrative Tribunal
Principal Bench
OA 138/2003

New Delhi this the 18th day of February, 2003

Hon'ble Shri Shanker Raju, M(J)

Ram Chand, S/o Late Shri Kewal Ram
R/o H.No. 5, Vill. Molarbhand,
PO: Badarpur, New Delhi.

... Applicant
(By Shri U. Srivastava, Advocate)

Versus

The Council of Scientific and Industrial Research
through,

1. The Director General
Council of Scientific and Industrial Research
Rafi Marg
New Delhi
2. The Director
Central Road Research Institute
Delhi Mathura Road, Okhla
New Delhi.

... Respondents.

ORDER(Oral)

By Shri Shanker Raju, M(J)

Applicant impugns respondents' order dated 23.10.2001 as well as 18.12.2001 wherein the request of the applicant for compassionate appointment of his son has been rejected and he has been paid on review a sum of Rs. 40986/- as lumpsum gratuity under Rule 41 of the CCS (Pension) Rules, 1972.

2. Applicant has sought quashment of these orders with further consideration for grant of compassionate allowance and also grant of subsistence allowance for the period December, 1999 to 23.5.2000.

3. Applicant lastly worked as Head clerk/ Cashier and was arrested under FIR No.403/97 under Section 302/341 IPC and was placed under suspension.

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4. Applicant by an order dated 16.12.1999 was convicted of the offence to undergo rigorous imprisonment for life which he appealed before the High Court of Delhi in CA 46/2000.

5. Applicant was issued a show cause notice proposing dismissal from service under rule 19(1) of the CCS(CCA) Rules, 1965 on gravity of criminal charge. On reply, by an order dated 23.5.2000 applicant was dismissed from service.

6. Applicant filed OA No. 1360/2001 for grant of compassionate allowance which was disposed of on 20.7.2001 with a direction to the respondents to consider the representation of the applicant under Rule 41 ibid.

7. Accordingly in compliance thereof respondents by an order dated 23.10.2001 instead of granting compassionate allowance allowed a lumpsum gratuity of Rs.61347/- to the applicant. The aforesaid order due to some error in factual calculation in gratuity has been reviewed by an order dated 18.12.2001. Accordingly, on consideration a sum of Rs.40986/- was sanctioned as one time lumpsum gratuity to the applicant.

8. Learned counsel for the applicant Shri U. Srivastava stated that despite directions of this court compassionate allowance has not been granted to him and whereas keeping in view of 35 years long service he is entitled for 2/3rd pension or gratuity as per rule 41 of the pension rule ibid. According to him he was not accorded subsistence allowance for the period he remained under suspension and no proposal to this effect has been made in the impugned order. The compassionate allowance was not accorded which is arbitrary and violative of rule 41 ibid.

9. I have carefully considered the contentions and perused the material on record. On conviction for a criminal charge the suspension resorted to on account of involvement in criminal case is treated as not spent on duty as such applicant has not been given the subsistence allowance from December, 1999 to September, 2000. Moreover, request for compassionate allowance under rule 41 *ibid* is concerned rule 41 of the CCS pension Rules 1972 is reproduced as under:-

(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 1[Rupees three hundred and seventy five] (Rupees one thousand two hundred and seventy five from 1.1.1996 see GID below Rule 49) per mensum.

10. If one has regard to the aforesaid rule on dismissal of government servant benefit of pension and gratuity is forfeited and in a deserving case on special consideration a compassionate allowance not exceeding 2/3rd of pension or gratuity or both is to be allowed as per OM No.GIFDOM 3(2)-R.II/40 dt. 22.4.1940 where poverty is not an essential condition precedent to grant of compassionate allowance. Accordingly the respondents keeping in view 35 years of service of applicant earlier accorded one time lumpsum gratuity. But due to an ^{error} ~~error~~ in calculation the same has been sanctioned as Rs.40986/- keeping in view of the total amount of gratuity normally

payable to the applicant was Rs.81972/-. In my considered view the exterior limit of accord of gratuity is 2/3rd and this is the discretion of the authority competent to sanction the amount even less than 2/3rd of the gratuity. Having regard to the fact that the applicant was dismissed on account of his conviction of an offence of murder and wrongful confinement keeping in view the gravity of the charge accord of Rs. 40986/-, in my considered view does not suffer from any legal infirmity. Moreover, merely because of the competent authority's observations allowing one time lumpsum gratuity but not compassionate allowance would not change the character of the order and keeping in mind the fact that on dismissal pensionary benefits including gratuity are forfeited sanction of Rs.40986/- was in accordance with rule 41 ibid having made after thorough consideration of the circumstances.

11. In so far as the other benefits are concerned as the appeal against conviction is pending before the High Court, the law shall take its own course.

12. In the result I do not find any legal infirmity in orders passed by the respondents. OA is dismissed at the admission stage. No costs.

S. Raym

(Shanker Raju)
Member (J)

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