

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.No.060/00142/2018

Orders pronounced on:28.11.2019
 (Orders reserved on: 25.11.2019)

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).

D.N. Khundia

son of Late Sh. Amar Singh,

resident of 293,

Badheri

(Sector 41-D),

Chandigarh.

Applicant

Versus

Post Graduate Institute of Medical Education & Research,

Sector 12,

Chandigarh

Through

Its

Director

...

Respondent

**PRESENT : MR. M.K.TIWARI, ADVOCATE FOR THE APPLICANT.
 MR. VIKRANT SHARMA, ADVOCATE,
 FOR RESPONDENTS.**

ORDER
(BY HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):

1. The applicant has invoked the jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985, seeking issuance of a direction to the respondents to grant him Compassionate allowance under rule 41 of Central Civil Services (Pension) Rules, 1972.

2. The facts are not largely in dispute. The applicant joined service as Junior Technician in 1965 and was promoted as Senior Technician in 1976. Vide letter dated 20.1.1978, the applicant applied, through proper channel, for a job in Government of People's Democratic Republic of Yemen, and he was selected and sent on deputation by the respondent PGIMER, for three years and was relieved on 31.8.1978. The period of deputation was extended from 1.9.1981 to 31.8.1983 and he was supposed to join back on 31.8.1983. He could not join back due to illness. He approached the respondents on 19.11.1985, to join back his duties. However, he was placed under suspension vide order dated 19.11.1985 under rule 10 of the CCS (CCA) Rules, 1965, w.e.f. 1.9.1983 retrospectively. After a lot of litigation, the applicant was ultimately removed from service vide order dated 16.8.2001. It is argued that as per rule 41 of CCS (Pension) Rules, 1972, 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 from service may, if the case is deserving special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or which would have been admissible to him if he had retired on compassionate pension. The applicant claims that the charge levelled against the applicant did not relate to moral

turpitude or dishonesty. His behaviour was not depraved, perverted, wicked or treacherous etc. Now he is old and infirm and not keeping good health and he has no source of income and he is suffering from hypertension and blockage in heart, so he should be granted Compassionate Allowance, in view of law laid down by Hon'ble apex court in the case of **MOHINDER DUTT SHARMA VS. UNION OF INDIA & OTHERS**, 2014 (11) SCC 684 and **PARAS RAM VS. UNION OF INDIA**, 2015 (1) AD (Delhi). The applicant submitted representation to the respondents on 4.4.2016 (Annexure A-2) but to no avail. Hence, the O.A.

3. The respondents have filed a reply. They submit that O.A. suffers from delay and laches and barred by law of limitation as it has been filed after 16 years of cause of action. The applicant claimed salary for the period from 1.9.1983 to 16.8.2001 in O.A. No. 277-CH-2009, which was dismissed on 18.10.2010 (Annexure R-1), which was upheld by Jurisdictional High court in CWP No. 3437 of 2014 (Annexure R-2), being barred by time. Moreover, the applicant has not even filed any application seeking condonation of delay. The applicant, after returning from Yemen after 5 years, left for USA without getting his leave sanctioned due to reasons best known him. His application for extension of leave with medical certificate never reached the PGIMER. During enquiry for wilfully absent from duty, it was proved that applicant in letter dated 15.8.1983, had requested for grant of leave of the kind due for one year to see his friends in UK/USA. After 3 weeks, he changed his mind and wrote another letter dated 8.9.1983 for 2 months leave without medical leave. He did not produce any medical report of his treatment which he took in New Work during a year. The medical certificate cannot be taken as authenticated since it is from a private

doctor and not from a Hospital. The applicant has not produced any evidence about his bad health and if he is so poor, PGIMER has Poor Patient Assistance Cell, from where he can take help. The removal order has not even been challenged by the applicant till date. His case does not fall under the term "deserving special consideration" in the absence of any evidence produced by the applicant. As per his ACRs, from 1965 till 1978, he has earned **mostly Average reports**. Whereas, in the case cited by applicant, the Court had found that petitioner in that case had 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 2 commendations certificates by Additional Commissioner of Police and 28 Commendations Card award by Deputy Commissioner of Police. Thus, the applicant was not allowed any allowance. Hence, they pray for dismissal of the O.A.

4. The learned counsel for the applicant stoutly argued that since the applicant had rendered substantial length of service and he is a poor person and in bad health requiring medical treatment, as such, the respondents are liable to be directed to grant the applicant compassionate allowance in terms of the law laid down by courts of law. This plea is resisted by the learned counsel for the respondents, on the ground that the service record of applicant is not such so as to make him entitled to grant of indicated allowance.

5. I have considered the submissions made by both sides minutely and gone through the record of the case, with their able assistance.

6. A perusal of the Rule 41 of CCS (Pension) Rules, 1972, makes it clear that 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 from service may, if

the case is deserving special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or which would have been admissible to him if he had retired on compassionate pension. Not only that, the Government of India has issued decision laying down guiding principles for grant of Compassionate Allowance, which is as under :-

**"(1) Guiding principles for the grant of
Compassionate Allowance. –**

It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its 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 interests of Government, unduly hard on the individual. In considering this question it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a compassionate allowance. Poverty is not an essential condition precedent to the grant of a compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance.

[G.I., F.D., Office Memo. No. 3(2)-R-II/40, dated the 22nd April, 1940.]”

7. A perusal of the aforesaid instruction would make it more than clear that it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of the officer, but also the nature of service one has rendered and if misconduct carries with it the legitimate inference that the employee's service has been dishonest, there can seldom be any good case for a compassionate allowance. It is clearly provided that poverty is not an essential condition precedent to the grant of a

compassionate allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance.

8. Even though in this case, the respondents have not passed any specific order rejecting the claim of the applicant but on this ground, court would not like to remand the case back to the respondents for re-consideration as their stand is clear from the written statement filed by them in this O.A. and reasons have been given in detail as to why the claim of the applicant cannot be accepted by them. As such, with a view to give quietus burial to the matter, court has considered the stand taken by the respondents taken in the reply to reject the case of the applicant.

9. The first objection taken by the respondents is qua delay and laches and limitation and in our view rightly so, as the cause of action, if any, arose to the applicant when he was removed from service, which was never challenged by him. He has not even filed any application seeking condonation of delay in filing the O.A. The removal took place a long time back and O.A. has been filed in 2018. One has to agree with the stand taken by the respondents that the claim of the applicant merits rejection on the ground of limitation, delay and laches. Similar view was taken by our own High Court in **SURINDER KUMAR SHARMA VS. STATE OF PUNJAB AND OTHERS**, 2018 (1) SLR 326 in which employee was removed from service for absence from duty. It was held that petitioner left his employer in lurch and went to foreign country and after 5 years, he claimed benefit which was rejected.

10. An identical question came to be decided by a three Judges Bench of Hon'ble Apex Court in the case of **BHOOP SINGH V. UNION OF INDIA ETC.**, (1992) 3 SCC 136, wherein it was ruled as under:-

"Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty-two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence."

11. Likewise, in the case of **UNION OF INDIA & OTHERS VS. M.K.SARKAR** 2009 AIR (SCW) 761, it was ruled that limitation has to be counted from the date of original cause of action and belated claims should not be entertained. Similar view was taken in the case of **D.C.S. NEGI VS. U.O.I. & OTHERS**, SLP (Civil) No. 7956 of 2011 CC No. 3709/2011 decided on 11.3.2011 observing that "Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3).

12. It is, thus, now well settled proposition of law that the condonation of delay is not a mere formality but such prayers have to be considered as contemplated in section 5 of the Limitation Act and not otherwise. Each day's delay has to be explained by the applicant, in a reasonable manner, which is totally lacking in the present case as the applicant has not filed any application seeking condonation of delay. Though, learned counsel for applicant tried to wriggle out of the objection on the ground that it is a recurring cause of action but it cannot be disputed that may be recurring cause of action is a ground to seek condonation, but in the absence of any application, the condonation cannot be made automatically by a court of law.

13. A Bench of this Tribunal considered the issue in the case of **S.C. SHARMA VS. UNION OF INDIA & OTHERS**, O.A. No. 060/00740/2014, which was decided on 9.10.2018 rejecting the claim of the applicant. In that case, employee had left for foreign country without obtaining no objection. He was dismissed from service on charge of leaving station without objection and absence from duty. He filed O.A. in this Tribunal for grant of compassionate allowance on the ground of being old and suffering from various ailments. His claim was declined by this Bench, which was challenged in C.W.P. No. 6582-2019 (O/M), which was also dismissed on 19.3.2019, upholding the view taken by this Tribunal. The relevant portion reads as under :-

"In this case, applicant-petitioner was dismissed from service for absenting himself from duty and leaving for foreign country without obtaining no objection certificate from competent authority. The claim of applicant-petitioner is that he had meritorious service which should have been considered. Applicant-petitioner has further stated that orders of Tribunal have not been complied with and same orders have been passed without giving sufficient reasons. Therefore, order dated 20.11.2015, passed by Tribunal, has not been complied with.

Perusal of impugned order dated 30.1.2017 shows that authorities considered the case of applicant-petitioner. The allegations against applicant-petitioner were absence from duty and leaving for foreign country without obtaining no objection certificate from competent

authority. His financial condition was also considered. The operative part of said order is reproduced as under :-

'The matter for grant of compassionate allowance to Shri S.C. Sharma is also re-examined and observed that it has been stipulated in Government of India's Decisions Para 1 Rule 41 of the CCS (Pension) Rules, 1972, "Where the course of misconduct carries with it the legitimate inference that the Officer's service has been dishonest, there can seldom be any good case for grant of compassionate allowance. Poverty is not essential condition precedent to grant of compassionate allowance". In the instant case, being a responsible officer and Head of the Institution while in service, Shri S.C. Sharma left the Vidyalaya and the Country without procuring the permission from the Authority of KVS. He did not bother to respond to any of the communication sent to him in this regard. The misconduct committed by Shri S.C. Sharma was of grave nature reflecting disloyalty to his duty and Organization and, therefore, unpardonable. Such an act on his part was tantamount to his dishonesty towards his duties, whereupon a major penalty of dismissal from service was imposed upon him. His appeal and revision petition were duly considered and rejected by the concerned Authorities for being devoid of merits. A such, Shri S.C. Sharma, Ex-Principal is not entitled for compassionate allowance in terms of the aforesaid provisions of GOI."

In this case, on account of dismissal from service, his past service is forfeited and he was not granted pensionary benefits. The authorities have taken the view that poverty is not essential condition precedent to the grant of compassionate allowance. The authorities have considered his mis-conduct. Applicant-petitioner was a Principal in the school. The authorities are also of the view that mis-conduct of applicant petitioner is of grave nature reflecting disloyalty to his duty and organization and, therefore, unpardonable. It also held that it tantamount to dishonesty towards his duties.

We are of the view that Tribunal or this Court cannot sit on the judgment of authorities. Compassionate allowance under Rule 41 (supra) cannot be claimed as a matter of right. It is for authorities to consider. The authorities have considered the same and decided not to grant compassionate allowance to him. Therefore, there is no illegality or infirmity in impugned order dated 9.10.2018 (Annexure-P-4), passed by Tribunal, declining to interfere in the same. Consequently, we do not find any merit in the present petition and same is accordingly dismissed."

14. The observations made above apply on all fours to the facts of this case as well, as in this case also the removal was on account of absence from duty and leaving for USA/U.K without any permission. The respondents have explained that during entire service, most of the times, the applicant has obtained grading of average only and competent authority passed the order of removal from service and that resulted in denial of pensionary benefits also to the applicant. They have explained that the plea raised by applicant of illness and penury is not convincing and in any case, he can take treatment from the

PGIMER, where there is a Poor Patients Welfare Fund. In view of all this, Court does not find any merit in the O.A.

15. Before parting, court would like to consider the case law cited by learned counsel for the applicant in the case of **MAHABIR PRASAD VS. UNION OF INDIA**, 2019 (8) SCT 130 by Delhi High court. In that case, the Court find that the respondents had failed to take into consideration the relevant factors relating to service of the petitioner. The plea of petitioner that he was in penurious conditional and financial hardship was not even disputed by the authorities. He was commendations, rewards and positive comments about his service in ACRS, which were not taken into consideration. Thus, his claim was allowed. That is not the case in hand. In this O.A., the service record of applicant has been seen and it was found that mostly, he has earned only average remarks. Similarly, decision in **KESAR SINGH VS. STATE OF HARYANA**, 2002 (60 SLR, 38, would also not help him at all, as that case relates to revision of compassionate allowance. In this case, it has not even been allowed to applicant, so question of revision does not arise at all.

16. In the wake of the above discussion, The O.A. is found to be devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

**PLACE: CHANDIGARH.
DATED: 28.11.2019**

HC*