

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P(C) No. 5544/2007

% Date of Decision : 22nd February, 2008

Ex. ASI Shadi Ram Petitioner
Through : Mr. Shyam Babu, Advocate

VERSUS

Government of NCT of Delhi & Ors. Respondents
Through : Mr. Rohit Madan and
Mr.J.K.Chaudhry, Advocates

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SARIN
HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in the Digest ? Yes

SUDERSHAN KUMAR MISRA, J:

1. The main question that arises for determination in this petition under Article 226 of the Constitution of India is whether the officer, to whom the power was delegated in this behalf by the Commissioner of Police, has applied himself properly while deciding the petitioner's application for grant of Compassionate Allowance on 24th of February 2006. It has arisen in the following circumstances.

2. The petitioner, Shadi Ram, was employed with the Delhi Police. On 17/9/1987, one Kundan Singh complained that while investigating a suicide bid by his brother, Davinder Singh, the petitioner, along with Constable Main Pal Singh, tried to extort three thousand rupees from him by threatening to falsely implicate him, and then arrest him, in the matter. It was alleged that in this way, the petitioner ultimately managed to extort a thousand rupees from the complainant. After an inquiry, the petitioner was dismissed from service on 19th of August 1988. Consequently, in terms of Rule 41 of the CCS (Pension) Rules, 1972, his pension and gratuity were also forfeited. At that time, he was working as an Assistant Sub Inspector of Police.

3. Nearly 17 years later, on the 16th of February 2005, the petitioner applied to the second respondent, i.e., the Commissioner of Police, Delhi, for grant of Compassionate Allowance in terms of the proviso to Rule 41 of the CCS (Pension) Rules, 1972. He prayed that this allowance be given to him with effect from the date of his dismissal, along with arrears. Rule 41 is as follows;

“(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)

4. This request was first refused by the Deputy Commissioner of Police on 25th of April, 2005. The petitioner challenged this refusal before the Central Administrative Tribunal (hereinafter referred to as “the Tribunal”) by OA 1353/2005, inter alia, on the ground that the respondent had passed a non-speaking order. Agreeing with the petitioner’s contention, the Tribunal quashed the order of the Deputy Commissioner of Police dated 25th of April 2005, and directed the respondents to pass a speaking order on the petitioner’s aforesaid application. Ultimately, on 24th of February 2006, pursuant to this direction of the Tribunal, the Additional Deputy Commissioner of Police, who is the third respondent before this Court, passed another order. By this order also, the authorities have chosen to reject the petitioner’s application for Compassionate Allowance.

5. Consequent upon this rejection, the petitioner filed a second OA bearing No.1005/2006 before the Tribunal. This time, after hearing the petitioner, the learned Tribunal has dismissed the same. Aggrieved by this dismissal, the petitioner has approached this court under Article 226 of the Constitution of India. He prays that the order dated 24th of May 2007, passed by the learned Tribunal, by which his second petition has been dismissed, be quashed, and that the reliefs sought by him before the Tribunal, be granted by this court. He also prays that such other or further orders, as may be deemed proper on the facts and circumstances

of his case, be also granted.

6. The petitioner's case in his representation seeking grant of Compassionate Allowance is that till he came to be dismissed from service on 19th August, 1988, he had put in more than 26 years of unblemished service, and that he had been awarded Commendation Certificates in the years 1970 and 1979, as well as Commendation Cards in 1981 and 1982. In addition, he was also given cash awards a number of times, and it was due to his hard work and devotion to his duty that after being enlisted in the Delhi Police as a Constable on 15th December, 1962, he ultimately attained the rank of Assistant Sub-Inspector on 17th July, 1984. He states that he came to be implicated in a false case due to "ill-luck", which led to his dismissal from service. He claims that his run of bad luck continued, and his OA No.2438/1988, impugning his dismissal, also came to be dismissed by the Tribunal on 18th August, 1993, because his case could not be pleaded properly, since his counsel did not appear before the Tribunal. He says that his representation to the President of India on 26th March 2003, for reinstatement in service, was also of no avail. The petitioner claims that before this incident, not even a warning was ever issued to him. He states that, having been deprived of his pension and gratuity due to his dismissal in 1988 as aforesaid, he has now reached the stage of starvation and that he is struggling hard to meet day-to-day expenses. He further states that from 1993 onwards, he has begun to suffer from neurosis, loss of memory,

anxiety and depression. He says that since he does not have any source of income, he has become totally dependent on the mercy of his children, relatives and friends for the treatment of all these ailments. He prayed that considering his physical and mental condition, he be granted Compassionate Allowance as envisaged under the proviso to Rule 41 of the CCS (Pension) Rules, 1972. In support of his plea, he has also stated that his wife and son are wholly dependent on him, and that since he is now more than 60 years old, and without any source of income or livelihood, he has thrown himself at the mercy of the authorities to grant him some money to fulfill at least his basic daily needs so as to enable him to spend his remaining days peacefully. At this juncture, I need only add one fact which was omitted by the petitioner in his representation, which was, that after the Tribunal rejected his petition challenging his dismissal from service, the petitioner also approached this court under Article 226 of the Constitution of India. This also came to be decided against him. He does not seem to have carried the matter any further, and his case against his dismissal from service on 19th of August 1988, appears to have rested there.

7. As stated above, this representation by the petitioner first came to be rejected on 25th April, 2005. This was set aside by the Tribunal in OA No.1353/2005, with a direction to the respondents to reconsider the matter, and to pass a speaking order on the petitioner's application for Compassionate Allowance. Pursuant

thereto, another order was passed by the Additional Deputy Commissioner of Police on 24th February, 2006. By this order also, the petitioner's application for Compassionate Allowance was rejected. Since the aforesaid order of 24th February, 2006, passed by the third respondent, rejecting the petitioner's application for Compassionate Allowance, is impugned before this Court, and the reasons stated therein are relevant, I therefore consider it appropriate to set them down verbatim. They are as follows;

“... the ex-ASI Shadi Ram has been found indulging in malpractices, involving moral turpitude which has been proved during the department proceedings, as a result of which he was dismissed from service vide this office order number 10401 -- 86/SD (P) dated 19.8.88. He has committed serious misconduct, which is not only reprehensible, but also tarnish the image of the force in the eye of the public. As such the case for grant of compassionate allowance is not a fit case for sanction and does not fall within the ambit of pension rules. Therefore the benefit of allowance to ex-ASI Shadi Ram cannot be extended at this stage.”

8. This order gave rise to the second round of litigation in the form of OA No. 1005/2006 before the Tribunal. There, one of the main points of the petitioner's case was that despite the matter having been remanded to the respondents for reconsidering the petitioner's application for Compassionate Allowance and to pass a speaking order thereon, the respondents had once again rejected the petitioner's claim without the required application of mind to the facts and circumstances set down by him in his application which, according to him, were relevant and germane to the issue at hand and ought to have been duly considered. He

states that in the order rejecting his application for Compassionate Allowance, respondent No. 3 has based his decision solely on the original misconduct, for which he was already punished by removal from service, and that all other vital considerations that ought to have weighed with the deciding authority, while deciding whether to grant Compassionate Allowance under Rule 41 of the CCS (Pension) Rules, 1972, have been ignored. He stated that while passing the impugned order, respondent No. 3 failed to appreciate the underlying rationale of Rule 41, which was to consider grant of Compassionate Allowance, inter alia, in cases such as that of the petitioner, where the penalty of dismissal and consequent forfeiture of pension and gratuity have already been inflicted on an officer. He pointed out that it is only in serious and grave cases that such a severe penalty is inflicted. He urges that whenever such a severe penalty is found to have been inflicted, that it was imposed for grave and serious misconduct, is axiomatic. For the authorities to thereafter refuse to grant Compassionate Allowance on the ground that his dismissal was for grave and serious misconduct and, therefore, for that reason alone, the same cannot be granted, is to nullify the very purpose and object of Rule 41 of the CCS (Pension) Rules. The petitioner urges that, under the circumstances, the impugned order of 24.2.2006, suffers from non-application of mind to the relevant considerations. He states that for deciding his application, respondent No.3 ought to have applied himself to the

petitioner's past service record, his other pressing needs and the circumstances in which he finds himself today, as narrated by him in his application.

9. In support of his case before the Tribunal, the petitioner also relied upon the, "Guiding Principles for Grant of Compassionate Allowance", formulated by the the Govt. of India in OM dated 22nd April 1940 for applying the aforesaid Rule 41 CCS (Pension) Rules, under which all applications for Compassionate Allowance are to be considered. This OM (which is hereinafter referred to as the "Guidelines") is reproduced below for convenience: -

"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 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.]”

10. The petitioner submitted that, had the Competent Authority applied the aforesaid guidelines according to their true scope and intent while deciding his application under Rule 41, his prayer for Compassionate Allowance would not have been summarily rejected by it merely on the basis of a single incident of misconduct for which he had already been punished by being dismissed from service.

11. As stated above, ultimately, the petitioner’s challenge to the order of respondent No.3, passed on 24.2.2006, rejecting his application for Compassionate Allowance, came to be dismissed by the impugned judgment dated 24.5.2007 in OA No.1005/2006. In its decision, the Tribunal has held that the Guidelines debar the grant of Compassionate Allowance to anyone who was dismissed from service as a result of an incident involving dishonesty. This, along with some other, equally significant, conclusions it has reached, has persuaded the Tribunal to decline relief to the petitioner.

12. Since I do not agree with the conclusions of the learned Tribunal on many aspects of this case, and feel that its decision to dismiss the petitioner’s OA needs to be set aside, I am proceeding to examine these conclusions in the following paragraphs.

13. In its judgment, particularly in paragraph 15 thereof, the learned Tribunal has agreed with the respondents’ contention to

the effect that the main ground emphasized by the Guidelines against grant of Compassionate Allowance under Rule 41, is dishonesty, and the main reason for the petitioner's dismissal was also dishonesty, therefore, the petitioner's case cannot be said to be one that deserves special consideration. To put it differently, the Tribunal has concluded that the Guidelines peremptorily disentitle officers whose dismissal happens to be occasioned by misconduct involving dishonesty, to Compassionate Allowance. To my mind, this is clearly misconceived. The relevant portion of Rule 41 provides that the Competent Authority may, "if the case is deserving of special consideration, sanction a compassionate allowance..." (emphasis added). Nothing more is specified under the Rule. It is thus evident that the sole criterion is that the, "case", must be, "deserving of special consideration". The word, "case" here has clearly been used to denote, the 'state of affairs', or "the circumstances involved", [refer to the Concise Oxford Dictionary of current English, 8th edition], while the words, "deserving of" are defined as, "showing qualities worthy of...help etc"; and, "consideration," is defined as, "a fact or circumstance to be taken into account" (the Shorter Oxford English Dictionary, 3rd Edition). Therefore, in the context, the phrase, "if the case is deserving of special consideration", can only mean that if the state of affairs or the circumstances involved bring out qualities that are worthy of help or assistance, the applicant should be granted Compassionate Allowance. For arriving at this conclusion,

the field is left wide open for the Competent Authority. All that is required for the Competent Authority to entertain the matter, and to apply its mind thereto, is that the applicant must have been dismissed from service and his pension and gratuity forfeited. In particular, there is nothing whatsoever in Rule 41 to suggest that the application of any officer who has been dismissed for misconduct involving dishonesty, is to be rejected peremptorily.

14. In addition to Rule 41, on 22.4.1940, the Government of India has issued the aforesaid Guidelines which have been reproduced by me in paragraph 9 above. They are titled, "Guiding Principles for the Grant of Compassionate Allowance". They have obviously been issued with a view to ensuring uniformity in application and decision-making under Rule 41. At their very outset, the Guidelines make it clear that while each case has to be considered on its own merits, the question which is to be decided by the Competent Authority in every case is, whether the case has any such extenuating features that would make the punishment awarded unduly hard on the dismissed officer. They also seek to facilitate the task of decision-making entrusted to the Competent Authority under the said Rule by laying down certain principles for their application. Every aspect that is referred to in the Guidelines is aimed at determining the same question, i.e., whether the punishment awarded has been unduly hard on the dismissed officer. This approach is in consonance with the

mandate of the Rule 41 that has been analysed by me above, which authorizes the Competent Authority to sanction Compassionate Allowance if the case is deserving of special consideration. It is in this context that the Guidelines have stated the following :

“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.”

Immediately after this, and in the same context, that is, to examine and to see whether the punishment awarded has been unduly hard on the dismissed officer, a caution is added by the Guidelines qua those cases where the officer’s dismissal was occasioned by a, “course of misconduct”. This states as follows:

“Where the course of misconduct carries with it legitimate inference that the officer’s service has been dishonest, there can seldom be any good case for a compassionate allowance.”

Unfortunately, the Tribunal appears to have taken this caution to mean that if the dismissal was the result of an incident that had an element of dishonesty, the Competent Authority is obliged to refuse the application peremptorily.

To my mind, the word, “service”, has been used in both the portions of the Guidelines extracted above, to denote, “a state or period of employment to work for an individual or organization”, (refer the Concise Oxford Dictionary of current English, 8th edition). At the same time, the phrase, “kind of service”, denotes

that it is the nature of the service rendered by the officer during his entire tenure that needs to be assessed, and is not confined to the incident that led to his dismissal. It follows therefore that the Guidelines enjoin the authority to look at the officer's entire service record and then decide whether the punishment awarded has been unduly hard on the officer, and this requirement for the officer's service to be looked at from the point of view whether the punishment awarded has been unduly hard on him, cannot be peremptorily dispensed with on the ground that his dismissal was based on an incident of misconduct which had an element of dishonesty. Unfortunately, both the Competent Authority, as well as the learned Tribunal, appear to have overlooked this aspect.

15. In this connection, it becomes necessary to note two more expressions that have been employed in the aforesaid portions of the Guidelines extracted in paragraph 14 above. They are the, "misconduct", and the "course of misconduct", either of which may have resulted in dismissal of the officer. Although the kind of service rendered by the officer is required to be taken into account in both cases, however, in the latter case, i.e., where dismissal was occasioned by a, "course of misconduct", the Guidelines have inserted the aforesaid caution to the effect that, if, on examination, the said, "course of misconduct", that led to his dismissal, "carries with it the legitimate inference", that his service has been dishonest, there can seldom be any good case for granting Compassionate Allowance. Nothing like this is

mentioned in cases where the solitary incident that led to his dismissal also had in it elements of dishonesty. This shows that although the circumstances of the officer's dismissal must always be taken into account by the Competent Authority; and in every case, the kind of service rendered by the officer has also to be kept in mind; however, where the dismissal is, "for a course of misconduct," of such a nature, which justifiably leads one to infer that his service has been dishonest; the chances of there being a good case for grant of Compassionate Allowance in spite of this, are rare. It bears repetition that even in that case, the Competent Authority has to examine the type of service rendered, albeit only for ascertaining that the case at hand is not one of those of a rare kind. It follows, therefore, that rejection of a dismissed officer's application for Compassionate Allowance under Rule 41, which is based solely on the fact of the said officer's dismissal for a solitary incident involving dishonesty, without anything more, as is the case before this Court, is bad in law, and must therefore be struck down.

16. A perusal of the impugned judgment shows that the learned Tribunal was impressed by the argument that in case the authorities return an adverse finding in the disciplinary proceedings instituted against a delinquent officer and dismiss him, and thereafter a challenge to his dismissal is rejected by the Tribunal, as well as the High Court in writ proceedings, it means

that the dishonesty which formed the basis of the penalty imposed on the petitioner, stands, “affirmed”. And that this alone is sufficient to decline a request for Compassionate Allowance. It appears that this conclusion that the petitioner’s dishonesty stands, “affirmed” by the courts, has formed the basis of yet another conclusion, which is, that since the Guidelines envisage grant of Compassionate Allowance on the ground of, “financial difficulties or dependant wife and child advanced by the applicant”, only in the most exceptional circumstances, therefore, in view of the affirmation of the applicant’s dishonesty, by the courts, no case for granting Compassionate Allowance on the ground of poverty and the existence of dependants as an exception, can be said to have been made out. On an examination of the Guidelines, I feel that the learned Tribunal has unfortunately failed to draw the correct logical inferences from the said Guidelines, and has proceeded to reach a number of incorrect conclusions in this regard.

17. The learned Tribunal was impressed by the fact that all the courts have rejected the petitioner’s challenge to his dismissal. It appears to have felt that in this way, the order of dismissal of the petitioner has been confirmed, and that this somehow disqualifies the petitioner for the grant of Compassionate Allowance. This is apparent from its acceptance of the respondent's submissions noted in paragraph 10 of its judgment to the effect that, “the dismissal of the applicant has attained finality”, as well as its

observations in para 13 of its judgment where it has sought to distinguish the decision of the High Court of Delhi in the case of ***Ex. CT. Daya Nand v Union of India & Ors. [2000 (1) ATJ 136]*** on the ground that in that case, there was no court order confirming the petitioner's dismissal. Similarly, a reading of paragraph 15 shows that the learned Tribunal has unwittingly evolved a new ground for dismissing an application for grant of Compassionate Allowance, which is affirmation of the applicant's incident of misconduct by the Tribunal as well as by the High Court. Besides the fact that it was not within the province of the Tribunal to substitute its own conclusions on the merits of the petitioner's application for that of the Competent Authority; I feel that such a consideration is not even germane to the issue for the reason that no such factor is provided under Rule 41 of the CCS (Pension) Rules read with the aforesaid Guidelines.

18. I might also add that it can never be said that a person who seeks to challenge his dismissal before the courts is putting himself at a disadvantage when it comes to the question of granting him Compassionate Allowance under the Rules after the failure of his challenge, as compared to someone who never approached the courts at all, on the reasoning that the dismissal of the former's challenge would be taken to amount to an affirmation of the misconduct for which he was dismissed in the first place. Such reasoning is specious for a number of reasons. In addition to what I have already stated on the subject, the

dismissal of the petitioner from service is a decision which is complete in itself. There is no requirement under the law, and the rules applicable here, for any affirmation or confirmation by the courts, of the penalty imposed by the department upon an officer. Even otherwise, there is nothing to warrant the conclusion that the penalty imposed has attained any “finality” by the rejection of the petitioner’s challenges to the penalty imposed by the courts. “Finality” of a decision is a concept of civil law. There, a decree is said to be, “preliminary”, when further proceedings have to be taken before the suit can be completely disposed of, and it becomes “final”, when the adjudication in suit completely disposes of the suit. It may also be partly preliminary and partly final [see Order 2 Rule 2 Code of Civil Procedure 1908]. Similarly, the expression, “final order”, also means an order that finally disposes of the rights of the parties in relation to the whole suit or criminal proceeding. At the most, the application of these expressions to service law is limited to aspects of *res judicata*, the bar of limitation, and the like. By adjudicating upon the petitioner’s earlier challenge to his dismissal from service, the courts could not possibly be taken to have pronounced on the merits of the petitioner’s application for grant of Compassionate Allowance under Rule 41, which has now been moved by him after many years. Since this application or the relief sought therein was never there, therefore, there can be no question of either the Tribunal, or the High Court, having pronounced upon, or

decided this question, thus enabling the Tribunal to conclude that it is no longer open for the petitioner to raise this challenge in these proceedings on the ground of “finality” of the type brought about by the principles of *res judicata*. In service law, there is also occasional reference to the “finality doctrine”, which is the rule that a court will not judicially review an administrative agency’s action until it is final [see Black’s Law Dictionary, 8th edition]. Violation of this doctrine leads to the plea that the exercise of the court’s jurisdiction of judicial review in such a case is premature. No such pleas arise for consideration here and this doctrine is not even remotely applicable to this case. It follows, therefore, that the learned Tribunal’s conclusions to the effect that the petitioner does not deserve Compassionate Allowance because his dismissal has attained, “finality”, with the rejection of his challenge to that dismissal by the courts, is not correct. I have felt the necessity to expatiate on these aspects because expressions such as, a decision having attained, “finality”, or having been, “affirmed”, have definite legal connotations when employed in judicial decisions.

19. For all these reasons therefore, the penalty imposed on an officer does not in any way become stronger, or more valid by the dismissal of his challenge to the same, by the Courts. Nor does it thereby get elevated to a status which disentitles the officer to the grant of Compassionate Allowance, in case he were to apply

for the same, years later.

20. It is possible that the learned Tribunal has given weight to the fact of the rejection of the petitioner's challenge to his dismissal by the courts for an altogether different reason. By saying that there may be myriad circumstances warranting the conclusion that there were extenuating features that make the punishment awarded unduly hard on the individual, the Guidelines, in effect, require the Competent Authority to apply its mind to the merits, as well as the circumstances of the dismissal order, and if it feels that the punishment was imposed on shaky evidence, or in haste, or that it suffered from some other infirmity, then, this might also form the basis for it to grant Compassionate Allowance. It may be that it is in the light of this understanding, that the learned Tribunal might have felt that, since the courts have examined the order of dismissal passed in this case and upheld the same, at least these types of circumstances cannot be said to exist. Having noted this possibility, I have to say that firstly, the Tribunal has not said anything even approximating this reasoning. Secondly, even if it did indeed mean this, it was encroaching upon the arena of decision making on the merits of the petitioner's application for grant of Compassionate Allowance, which is the province of the Competent Authority alone under the rules. Therefore, for that reason also, the conclusion of the Tribunal, that the petitioner's application deserves peremptory rejection because his dismissal has attained, "finality", or because

it has been, “confirmed”, by the courts, has to be set aside.

21. Going further, I find that the Tribunal has felt that while rejecting the petitioner’s application for Compassionate Allowance, the Competent Authority, i.e., respondent 3 herein, was correct in ignoring the petitioner’s plea that he was poverty stricken and that there was a wife and son dependant on him because the petitioner’s dismissal had been, “affirmed” and had attained, “finality” due to the failure of his challenge to the same before the courts. In the preceding paragraphs, I have already concluded that the finding of, “confirmation”, “affirmation” and, “finality” that the learned Tribunal has relied upon, and applied, to decide this case, are erroneous. I am, therefore, not repeating them. However, in this context I must add that under the Guidelines, the importance given to poverty, as a factor in deciding an application for Compassionate Allowance, is not in any way linked to any, “affirmation” or “confirmation” of the applicant’s misconduct that led to his dismissal, by the courts. I however feel that in view of the treatment accorded to this aspect of the matter by the learned Tribunal, it has become necessary for me to interpret this part of the Guidelines also, and I am proceeding to do so in the following paragraphs.

22. The portion of the Guidelines, which refers to the poverty of the applicant, and the treatment to be accorded to such a plea, is as follows;

“Poverty is not an essential condition precedent to

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.”

This portion of the said Guidelines attempts to explain, and also to clarify, some of the guiding principles that should be applied by the authorities in deciding such cases. Unfortunately, it is not happily worded. It seems to be saying a number of things in the same sentence. I therefore consider it appropriate to break up this sentence into intelligible portions for the purpose of arriving at its true import and meaning. This I am proceeding to do in the following manner;

(i). The first part of the above portion states, “ poverty is not an essential condition precedent to grant of a compassionate allowance,..”. Here, the word,” poverty”, according to the concise Oxford English dictionary, (8th edition) is a noun, meaning, “the state of being poor; want of the necessities of life.” and the expression, “condition precedent”, is best described by Black’s law dictionary to mean, “ an act or event, other than a lapse of time, that must exist or occur before a duty to perform something promised arises.” It has also been described as a provision which delays the vesting of a right until the happening of an event (refer Osborne's concise law dictionary, 6th edition). Therefore, by saying that, “poverty is not an essential condition precedent..”, it simply means that it is not necessary, or essential, that in every

case, before a decision is taken to grant Compassionate Allowance, it must invariably be established that the applicant is extremely poor and in want of the necessities of life, i.e., that he is poverty stricken.

(ii) The same sentence then goes on to state, "... but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him,...", this expression, when read together with the first part analysed above, can only mean that although poverty is not a condition precedent for the grant of Compassionate Allowance, the fact that the applicant has a wife and children dependent upon him, is sometimes given, "special regard", while taking a decision. This is said to have happened, "occasionally", i.e., when the occasion demands. A fair reading of this portion can only lead one to conclude that on occasion, when it is felt necessary to do so, special regard is given to the fact that the applicant has a wife and children dependent on him.

(iii). The concluding portion of this sentence says, "...though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a compassionate allowance." this, when read together with the aforementioned proceeding portions, to my mind, can only mean that the applicant's need to support a wife and children, who are dependent on him, in the absence of any other pressing reasons, is usually not considered sufficient by itself to justify the grant of Compassionate Allowance. In other words, Compassionate

Allowance is usually not granted in cases where the request is based solely on the need to support a dependent wife and children, excepting in the most unusual or compelling circumstances.

In the light of the above analysis, I feel that this sentence simply means that it is not as if in every case, for the applicant to be granted Compassionate Allowance, he must necessarily be poverty stricken. However, sometimes, when the occasion so demands, the fact that the applicant also has a wife and children dependent upon him, is given some weightage by the authorities in arriving at their decision. At the same time, unless there are some very exceptional circumstances warranting it, the decision to grant Compassionate Allowance cannot be based solely on this factor alone. There is however, nothing to warrant the conclusion reached by the Tribunal that where the applicant's challenge to his dismissal from service has failed before the courts, the fact of the applicant being poverty stricken, or having a dependant wife and children, can never be considered as a ground for grant of Compassionate Allowance.

As I have said, this portion of the Guidelines is not happily worded. Perhaps that is the reason why the learned Tribunal was misled into erroneous conclusions regarding that portion. I have therefore endeavored to clarify it and to set down its true scope and intent as I find it.

23. Another aspect that has obviously escaped the attention of

the learned Tribunal is that while the Guidelines are to be utilised in the manner of all guidelines, that is, to guide the deciding authority in applying Rule 41 of the CCS (Pension) Rules with a view to promoting uniformity in its application while minimizing subjectivity and arbitrariness; they cannot be interpreted and applied in such a way as to either override or whittle down the scope and applicability of the rule itself. Rule 41 has statutory force, while the aforesaid Guidelines do not. I have already analysed the scope and meaning of both Rule 41 as well as the Guidelines issued on 22.4.1940 for its application. The interpretation placed upon the Guidelines by the learned Tribunal has the effect of restricting the application and scope of Rule 41. It excludes all officers who were dismissed or removed from service for misconduct which had an element of dishonesty from the purview of the said rule peremptorily. It also tends to exclude those officers whose challenge to their dismissal has failed before the courts and the dismissal orders are upheld, on the ground that their misconduct thus stands confirmed or affirmed. For these reasons also, I feel that the construction placed by the learned Tribunal on the Guidelines is not sustainable.

24. In view of the above conclusions which I have drawn, I feel that the learned Tribunal's opinion that, simply because the applicant was dismissed from service for a single act of misconduct which demonstrated an element of dishonesty, his poverty or the existence of dependent wife and children, or even

his service record, cannot be taken into consideration, is erroneous and cannot be sustained.

25. Before departing from this aspect, it is necessary to point out that it is essentially the function of the Commissioner of Police, or his delegate, to weigh the relevant factors and then take the appropriate decision. I however find that even though the impugned order of respondent 3 is completely silent on these aspects, the learned Tribunal has gone into a long and involved assessment of some of the merits of the petitioner's case. It has gone on to discuss the state and extent of his family, and some, but not all of the other relevant circumstances that ought to have been considered by the Commissioner of Police, or his delegate, in the first place. On the merits, it is the Competent Authority that is required to take a decision. The role of the Tribunal is confined to deciding whether the Commissioner of Police, or his delegate, has applied himself properly and has taken into account all relevant factors whilst deciding petitioners application for grant of Compassionate Allowance in the light of Rule 41 of the CCS (pension) Rules, 1972 and the Guidelines dated 22/4/1940. I find that instead of confining itself in this manner, the learned Tribunal has erroneously ventured upon the decision-making process, thereby taking over the role of the Authority empowered to decide the application. It has stepped into the shoes of the Competent Authority and has tried to substitute its own decision for that of the said Authority. This is something it cannot do, inter

alia, for the reason best elucidated by the maxim **Rerum ordo confunditur, si unicuique jurisdictio non servetur** – The order of things is confounded if everyone keeps not within his jurisdiction. It is only in those cases where all the relevant factors happen to be before the court, and the court feels that, regardless of who decides the matter, the circumstances can admit of only one possible outcome, that the court sometimes proceeds to record its own decision thereon with a view to save time and effort on what has clearly been rendered an unnecessary exercise. The instant case is not such a case because the factors that have to be examined and weighed are numerous and all the relevant facts for taking such a decision are not before this Court. The outcome is not inevitable here. Even the quantum of Allowance, as well as the period from which it may be admissible, can vary. For all this, the Competent Authority designated under the rules must apply its mind and, in law, the thinking of the Tribunal on the subject cannot be substituted for that of the Authority. Furthermore, because it had concluded that the element of dishonesty in the incident that led to his dismissal, as well as the fact that his challenge thereto had been dismissed by the courts, warranted peremptory dismissal of his application for Compassionate Allowance; the Tribunal has in fact not even examined the petitioner's service record & other relevant circumstances, before choosing to pronounce on the merits of his case in place of the Competent Authority. For this reason also,

the impugned order is unsustainable.

26. During the course of arguments before the Tribunal, the respondents defended the impugned order rejecting the grant of Compassionate Allowance by bringing to the notice of the Court numerous facts and circumstances which were not noticed anywhere in the impugned order. This was objected to by the petitioner on the ground that the impugned order of rejection must either stand or fall on the reasons expressed in the order itself, and further additional reasons should not be permitted to be adduced to support the conclusion reached by respondent No. 3 in rejecting the petitioner's application.

27. In support of this contention, counsel for the petitioner cited a decision of the Supreme Court of India in ***Mohinder Singh Gill & Anr. versus The Chief Election Commissioner & Anr.***, reported as AIR 1978 Supreme Court 851. He cited this authority for the proposition that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons mentioned there. It cannot be supplemented by fresh reasons placed before the court either on affidavit, or in any other way. Otherwise an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. In reaching this conclusion, the Supreme Court referred to its own, earlier, observations in ***Gordhandas Bhanji*** (AIR 1952 SC 16) which are as follows:-

“Public orders publicly made, in exercise of a statutory

authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they had addressed and must be construed objectively with reference to the language used in the order itself.”

The above dictum applies with full force to the case at hand, and I do not agree with the conclusion of the learned Tribunal in paragraph 14 of its judgment that, although reference to the said case by the petitioner, “is well taken”, “however, once the order is before the court and there are pleadings argued on both sides taking additional grounds as well, it may not be fair to ignore them in adjudicating upon the matter.” No cogent legal reasoning is offered, nor has any precedent been cited by the Tribunal for adopting this approach in the matter. Furthermore, this approach adopted by the learned Tribunal, which clearly entailed taking into consideration the supplemental reasons put forward by the Competent Authority in support of the impugned order, which were not there in its original order, flies in the face of settled law as laid down by the Supreme Court of India in ***Mohinder Singh Gill***’s case [supra].

28. Before the Tribunal, the petitioner also relied upon the judgment of the Tribunal’s coordinate bench at Chandigarh in the case of ***Shri Ram Krishan Hooda v Union of India & others*** [AISL] 1997(1)(CAT) 562] as a precedent showing that in case relevant factors such as, the kind of service rendered, poverty of

the dependent family, etc., have not been considered by the concerned authority while making up his mind to disallow Compassionate Allowance, the Authority should be directed to reconsider the matter. Unfortunately, the learned Tribunal has chosen to disregard this decision on the ground that the same is not relevant to the issue because **Hooda's** case [supra] was dealing with an applicant who had been dismissed from service due to his conviction in a case of murder, whereas in the instant case, the misconduct which led to the applicant's dismissal, relates to dishonesty. By this, the Tribunal has implied that the two stand on different footing, and that if the incident of misconduct that prompted the authorities to dismiss an officer now seeking Compassionate Allowance under Rule 41, was murder, the Authority is obliged to consider his application in the light of the kind of service rendered by him, poverty of the dependent family, etc, but in the case of a dismissal that was the result of an incident that had an element of dishonesty, such as that of the petitioner, where he allegedly extorted Rs. 1000/-, such considerations are barred, and therefore irrelevant to the issue. If this reasoning is taken a step further, it means that if the petitioner had murdered Kundan Singh instead of merely extorting a thousand rupees, as he is stated to have done, and if he were to apply for Compassionate Allowance on his dismissal from service thereafter for that reason, the Authority would be obliged consider all the relevant circumstances, including his

service record etc. I do not agree with this line of reasoning. The learned Tribunal has proceeded on a completely wrong footing in this regard and reached an astounding result. The approach of the learned Tribunal has resulted in a decision which in effect concludes that as an incident of misconduct disentitling the dismissed officer to Compassionate Allowance, the act of murder is not as grievous as an act of dishonesty, since the latter disentitles the applicant to consideration of his past service record, his straitened circumstances, or the fact that he has a family dependent upon him or that there are any other extenuating features which would persuade the authority concerned to conclude that although the officers dismissal was warranted, it has been unduly hard on the individual concerned; but the former does not. It appears to me that this conclusion with regard to the inapplicability of the decision in **Hooda's** case [supra] has been prompted by the conviction of the learned Tribunal that the Guidelines debar such considerations peremptorily if the incident upon which the applicant's dismissal is based involves dishonesty. As I have already concluded, the learned Tribunal has misconstrued the scope and application of the said Guidelines inasmuch as, while the authority is required to also take into account, "the kind of service he has rendered", in both cases; however, in the case of dismissal based on a, "course of misconduct", the Competent Authority is invited to decide whether the aforesaid, "course of misconduct" is of such a nature

as to warrant a legitimate inference that the officer's service has been dishonest. If it is so, then, the Guidelines say, there can seldom be any good case for Compassionate Allowance which, as I have concluded above, merely means that the chances of the Competent Authority finding that there is a case for granting Compassionate Allowance nevertheless, are rare. However, in a case where the dismissal is based on an isolated incident of misconduct, involving dishonesty, even such a peremptory caution is not there in the Guidelines. I daresay that since due application of mind to all the relevant circumstances is the norm, for the Competent Authority to find that a case for Compassionate Allowance is made out in the case of an officer dismissed for a murder most foul, or some equally reprehensible conduct, would also be rare indeed.

For all these reasons, I am of the view that in deciding the issue before it, the approach of the coordinate bench Of the Central Administrative Tribunal, Chandigarh, in **Ram Krishan Hooda's** case [supra] ought to have commended itself to the Tribunal in deciding the matter.

29. Going further, I find that the case of **Anna Deoram Londhe v State of Maharashtra**, reported as, 1998(5) SLR 480, which was also relied upon by the petitioner before the Tribunal has been dealt with in a cursory fashion by the learned Tribunal. This is a decision of a division bench of the Bombay High Court wherein the court was considering the applicability of Rule 101 of

the Maharashtra Civil Services (Pension) Rules, 1982, to an application for Compassionate Pension moved by an officer who was removed from service for misconduct after more than 30 years of service. This removal was prompted by his conviction for an offence under Section 325 of the Indian Penal Code. In that case also, the petitioner challenged the rejection of his application on the ground that the concerned authority had not applied its mind to his application in the manner required under the relevant rules. It was contended that the impugned order in that case demonstrated a clear lack of reasoning for the rejection. A reading of this authority shows that the only reason assigned for the rejection of the applicant's representation for Compassionate Pension was that the applicant was convicted of an offence under Section 325 of The Indian Penal Code, which was considered to be a serious offence. In that case also, the relevant rules required that the, "government may, if the case is considered deserving of special treatment, sanction the grant" of a Compassionate Pension to the applicant. This is similar to the relevant provision under Rule 41 of the CCS (Pension) Rules which provides that the Competent Authority may, " if the case is deserving of special consideration, sanction a compassionate allowance.....", to the applicant. The two are in *pari materia*. It is apparent that in applying the two, similar considerations have to be kept in mind by the Government, or the Competent Authority, as the case may be. In that case, the High Court of Bombay had concluded that

the respondent ought to have considered the representation of the petitioner to assess whether the case is deserving of a special consideration for grant of pension independently of the fact of his having been convicted of an offence under Section 325 IPC. Since that was not done, the impugned order refusing Compassionate Pension was set aside. Since I have found the relevant provisions that arose for examination by the Bombay High Court to be in *Pari Materia* with the Rule dealing with the grant of Compassionate Allowance in this case, therefore I have no hesitation in concluding that the ratio of the decision in ***Anna Deoram Londhe's*** case [supra], would be applicable to the present case also.

30. A reading of paragraphs 10 and 11 of the impugned judgment shows clearly the confusion in the mind of the learned Tribunal resulting from a failure to appreciate the meaning of the aforesaid Government of India Guidelines issued on 22/4/1940, as well as the nature of the jurisdiction being exercised by it, which is limited to the examination of the order passed by the Competent Authority on 24th of February 2006, and to decide whether or not relevant factors had been considered by the said Authority and, once it concluded that this had not been done, it's only option was to remand the matter to the authority to be decided afresh.

31. In addition to this, the learned Tribunal has also upheld the impugned order of the third respondent on the ground that the

petitioner has applied for grant of Compassionate Allowance nearly 17 years after his dismissal, and that such a long lapse of time, demonstrates that the petitioner has managed to survive all this while without pension, and therefore he could not possibly require this allowance henceforth. In other words, the fact of the petitioner applying after nearly 17 years, has persuaded the Tribunal to conclude that the penalty of dismissal, and the consequent forfeiture of his pension and gratuity, was not unduly hard on him. To my mind, this is a completely erroneous approach. People manage to survive the most oppressive circumstances in life. That does not mean that since their adverse circumstances have not actually killed them, and they have managed to somehow survive, therefore it must be presumed that the circumstances through which they have passed have not been unduly harsh. Similarly, simply because the petitioner managed to stay alive all these years after his dismissal bereft of pension and gratuity, doesn't automatically warrant the conclusion that the punishment was not unusually harsh on him. It is entirely possible that the applicant has struggled all these years to make ends meet and felt ashamed to beg for a Compassionate Allowance, but his current circumstances have reduced him to such a state that he had no alternative but to throw himself at the mercy of his former employer's compassion. It is also conceivable that for some years after his dismissal, the petitioner was not so badly off, and that his condition has

deteriorated only much later.

32. In ***Thankappan Nair Vs. State of Kerala 2001 (3) ILR Kerala 464 (W. A. No.2966/2000)*** decided on 03.10.2001, the Division Bench of High Court of Kerala thought fit to direct reconsideration of a dismissed officer's request for Compassionate Allowance for which he had applied 28 years after this dismissal. Similarly a Division Bench of Bombay High Court in ***R.S.Sharma Vs. Union of India & Another (2004) III LLJ 191 Bom*** directed reconsideration of a dismissed officer's request for Compassionate Allowance for which he had applied 11 years after his dismissal. Only recently, in a case where the dismissed officer happened to apply for Compassionate Allowance 30 years after his dismissal, the Andhra Pradesh High Court has set aside the order rejecting his application and directed reconsideration, see ***Md. Abdul Samad Vs. General Manager, South Central Railways and ors. 2007 (3) ALD 722.*** However, in the case of ***Idan Puri Vs. Union of India & Ors. RLW (2007) 1 Raj 471,*** a Single Judge of the Rajasthan High Court thought fit to reject a petition challenging refusal to grant Compassionate Allowance to a dismissed officer on the ground that his claim was hit by delay and laches because he had applied for the same nearly 20 years after his dismissal. Be that as it may, as I have already concluded, it was inappropriate on the part of the learned Tribunal to have stepped into the shoes of the Competent Authority to decide whether the

applicant's case is deserving of special consideration warranting the sanction of Compassionate Allowance. By the same line of reasoning, these questions are not for this Court to decide. Suffice to say that it is open to the Competent Authority to apply itself to every aspect and, while taking a decision on the matter, there is nothing to prevent the Competent Authority from fixing not only the quantum of allowance, but also the date from which it will be payable.

33. I also agree with the submission of the petitioner's counsel that the punishment of dismissal from service is employed only in the most grievous cases of misconduct by an officer, and the provision contemplating the grant of Compassionate Allowance can be invoked only by someone who have been dismissed from service. It is obvious that conduct that leads to an officer's dismissal is bound to be of a kind that tends to tarnish the image of his employer. After all, that is also one of the reasons for his dismissal. For the Competent Authority to thereafter say that he doesn't deserve Compassionate Allowance because he lowered his employer's image by the very act, or acts, that led to his dismissal, is to render the provision otiose. Furthermore, in the light of foregoing analysis of Rule 41 as well as the Guidelines, the issue before the Competent Authority is only whether the punishment imposed has been unduly hard on the officer. That is the point of view from which the whole thing is to be examined. That the dismissed officer's conduct has tarnished the image of

the Force is irrelevant to the issue at hand. Such an approach on the part of the Competent Authority shows a lack of understanding of the object and purpose of the rule and the circumstances under which it is invoked.

34. I might add that, in my view, there is an element of decision-making involved in disposing of an application for grant of Compassionate Allowance. As the title suggests, it is an application seeking a, “compassionate” allowance. It is a plea whereby the authorities might be moved to show “compassion” for a former employee in straitened circumstances. I need hardly add that justice tempered with mercy always has a lasting effect. Furthermore, even in decisions taken by an Administrative Authority, there must be an element of uniformity and rationality. The power to grant or refuse Compassionate Allowance cannot be exercised on the mere whim of the officer who is designated as the Competent Authority at the relevant time.

35. For all the aforesaid reasons, the impugned Judgment of the Tribunal dated 24/5/2007 passed in OA number 1005/06 is set aside. The decision of the Competent Authority dated 24th of February 2006, is quashed. The Competent Authority is directed to reconsider the petitioner’s application dated 16/2/2005 seeking the grant of Compassionate Allowance in the light of the provisions of Rule 41 CCS (Pension) Rules, the Guidelines dated 22/4/1940, the observations and the conclusions reached by this Court, and to pass a speaking order thereon within one month

from today. It should take an independent decision in the matter, without being influenced by any observations of the Tribunal on the merits of the aforesaid application of the petitioner.

36. Parties are left to bear their own costs.

SUDERSHAN KUMAR MISRA, J

February 22, 2008
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