

***IN THE HIGH COURT OF DELHI**

+Writ Petition (Civil) No. 2556/2010

%Date of decision: 26th August, 2010

EX.L/NK MAHABIR PRASAD Petitioner
Through Mr. A.K. Trivedi, Adv.

versus

UOI AND ORS Respondents
Through Ms. Kailash Golani, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE J.R. MIDHA

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

GITA MITTAL, J(Oral)

1. Rule DB.
2. With the consent of both parties and having regard to the short controversy involved in the present writ petition, the same is taken up for consideration.

The petitioner assails an order dated 11th March, 2010 passed by the respondents rejecting his application praying for

grant of compassionate allowance to him.

3. The facts giving rise to the petition are not only in a narrow campus but are admitted.

4. The petitioner was recruited into the Central Reserve Police Force on 19th January, 1971 in the post of Constable. The petitioner is stated to have absented without leave on 4th August, 1994 which he resumed on 23rd September, 1994 and again deserted the camp laws of the CRPF on 26th September, 1994 without permission. The respondents framed articles of charges against the petitioner and conducted a disciplinary inquiry against him. These proceedings culminated in imposing of the punishment of dismissal from service with effect from 28th October, 1995 upon the petitioner.

5. It is noteworthy that this order of dismissal was passed after the petitioner had rendered 23 years of service.

6. The petitioner appears to have waited 15 years to pass before he made a representation to the Directorate General of the CRPF on 27th November, 2009 requesting for grant of compassionate allowance from the date of his dismissal from service. The reason for the request and the explanation for the delay in making the representation are both explained on

grounds of poor economic conditions. This representation was considered and rejected by the Director General vide the order dated 11th March, 2010 on the ground that the petitioner had been dismissed after holding a disciplinary enquiry against him in accordance with the applicable rules and that the conduct of the petitioner disclosed that he was a “delinquent of disobedient nature and habitual of being absent”. The Director General had construed rule 41 of the Central Civil Service (Pension) Rules and arrived at a conclusion that compassionate allowance was admissible only in those cases where the delinquent had been honest and dedicated during the whole service period which was not so, so far as the petitioner was concerned.

Aggrieved by this rejection of his prayer for compassionate allowance, the petitioner has filed the present writ petition.

7. The writ petition has been opposed by Ms. Kailash Golani, learned counsel for the respondents again on the very ground on which the impugned order is premised. It is contended that compassionate allowance is not to be awarded as a matter of right and can be granted only after a careful consideration of the entire service record of the petitioner. In this regard, learned counsel has drawn our attention to the provisions of Rule 41 of

the Central Civil Service (Pension) Rules as well as the Government decisions and guidelines which govern exercise of discretion for award or grant of compassionate allowance.

8. We have considered the rival contentions. The respondents have also made available to us the entire service record of the petitioner. The record would disclose that the petitioner had served with the respondents for the period from 19th January, 1971 till termination of his services on 28th October, 1995 by the intervention of the order of dismissal. So far as his conduct during this period of 23 years is concerned, on account of satisfactory rendition of service on 1st July, 1985, the petitioner was promoted as a Lance Naik. He was awarded a censure on some count in 1986. There is also an entry of his having been suspended on 14th November, 1989 for absent without permission for 16 days. The record also discloses reversion of the petitioner to the post of Constable for a period from 16th April, 1990 to 15th April, 1991. However, the petitioner was restored to the rank of Lance Naik with effect from 16th April, 1991. There is no allegation against the petitioner till his absence without leave in the year 1994 which has been noted hereinabove which culminated in his being dismissed from

service with effect from 28th October, 1995.

9. As against this, the same service record of the petitioner shows that he was awarded a commendation in 1977 for his hard work. In 1981 and 1982, the petitioner was awarded cash rewards. Again in 1994 he was the recipient of a commendation for the work done and the performance of duties during a bye election. The petitioner was also awarded the 25th Independence Anniversary medal. The record also discloses that the petitioner was awarded the Sangram medal. The annual confidential reports of the petitioner show that his work has been continuously assessed as good. In fact, there are several remarks endorsing his honesty and hard work in the character and service roll of the petitioner which has been placed before us. The conduct of the petitioner for the purposes of award of compassionate allowance has to be evaluated by the authority considering such application taking a totality of the record into consideration and cannot be premised on isolated instances or specific instances of misconduct for which the employee concerned may have been penalized.

10. For the purposes of the present adjudication, we may usefully extract the applicable rule 41 of the Central Civil Service

(Pension) Rules which has been relied upon by both counsels before us :-

“41. Compassionate Allowance

(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 (Rupees three hundred and seventy-five) (Rupees three thousand five hundred from 1-1-2006.)”

11. Mr. Trivedi, learned counsel for the petitioner has also placed reliance on the government of India decision which has been captioned as Government Instruction Office Memo No. 3(2)-R-II/40 dated 22nd April, 1940 below Rule 41 in Swamy’s Compilation of the CCS(Pension) Rules and reads as follows :-

“(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."

12. Learned counsel for the petitioner has also placed reliance on judicial precedents reported at **1998 5 SLR 480 Anna Deoram Londhe (deceased by L.Rs) vs. State of Maharashtra : 2004 (3) SLR 485 Mithlesh Sharan Sharma vs. The State of Rajasthan & Ors.** and **2008 V AD(Delhi) 3 Shadi Ram (Ex.ASI) vs. Government of NCT of Delhi & Ors.** wherein the courts were concerned with record to the manner in which discretion to grant compassionate allowance had arisen for consideration.

13. We find that a Division Bench of the Bombay High Court in **Anna Deoram Londhe (deceased by L.Rs) vs. State of**

Maharashtra (supra) was called upon to consider the case of a petitioner who had been removed from service for misconduct on account of his conviction under section 325 of the Indian Penal Code. It was observed that such conduct was not connected with the discharge of his duties. The petitioner had put in more than 30 years of service and as such was found otherwise eligible for superannuation or retiring pension. It was held that merely because the petitioner was removed from service for such misconduct, that alone would not furnish a ground to deny him the benefit of compassionate pension. The court had set aside the order rejecting the application for compassionate pension of the employee and held that he was entitled to the compassionate pension. Consequential orders directing the respondents to pay the compassionate allowance to the legal heirs of the deceased employee were made.

14. The decision of the Rajasthan High Court in **2004 (3) SLR 485 Mithlesh Sharan Sharma vs. The State of Rajasthan & Ors.** (supra) is similar. In this case, the employee served as a sepoy since 17th November, 1949 till 17th April, 1979 when he was removed from service. As a result, this petitioner had served for approximately 30 years which was more than

qualifying service for pension. The court also noticed the fact that he was 75 years old on the date of consideration of the writ petition and might be burdened with numerous liabilities as being head of the family. It is noteworthy that the services of this petitioner had been also terminated on grounds of unauthorized absence from duty. In this background, the court had directed that it would be in the interest of justice to allow compassionate allowance on a special consideration to the petitioner.

15. At this stage, we may notice the authoritative pronouncement of a Division Bench of this court which is reported at **2008 V AD(Delhi) 3 Shadi Ram (Ex.ASI) vs. Government of NCT of Delhi & Ors.** (supra) which authoritatively lays down the applicable principles so far as the manner in which discretion for granting compassionate allowance in terms of rule 41 of the CCS(Pension) Rules and the Guidelines thereunder, has to be exercised. The observations and the findings of the court relevant for the present adjudication may usefully be extracted and read as follows :-

“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.

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."

(Outlining by us)

16. The Division Bench also considered the respondents' objection that the writ petition was grossly delayed in the following terms :-

“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 v. State of Kerala* 2001 (3) Ker 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 v. Union of India and Anr.*: (2004)IIILJ191Bom 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 v. General Manager, South Central Railways and Ors.*: 2007(3)ALD722 . However, in the case of *Idan Puri v. Union of India and 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."

17. In view of the principles laid down in the judicial pronouncements noted hereinabove especially the binding adjudication in **Shadi Ram (Ex. ASI) vs. Government of NCT of Delhi & Ors.** (supra), it is apparent that the respondents

could not have premised the rejection of grant of compassionate allowance to the petitioner herein solely on his absence from duty in the year 1994 for which he stood dismissed from service. We may note that Shadi Ram(supra) had been dismissed from service on allegations of having accepted illegal gratification, certainly a very serious charge. The judicial precedents noted above are concerned with the employees who have been involved in serious offences and yet were found deserving compassionate allowance.

18. We may note that the order of dismissal from service imposed by the respondents upon the petitioner was not assailed by him. There is no allegation of the petitioner ever having been involved in any misdemeanour or misconduct involving moral turpitude.

19. The petitioner states that he belongs to a poor family, is not highly educated and is suffering from social backwardness as well. He explains that he was therefore not in a position to avail any proper remedies. It is only during the visit of the Poorva Sainik Sewa Parishad, Rajasthan (Regd.) in his village that the petitioner had sought legal advice from them and was advised to approach the authorities for grant of compassionate allowance.

As a result of this advice the

petitioner approached an advocate who advised him to make a representation to the authorities for grant of the compassionate allowance.

It is averred that the petitioner and his wife have no land or property and are without any source of income to earn his day to day livelihood. He is passing hard days doing hard labour and surviving at the mercy of his relatives.

20. Learned counsel for the petitioner submits that on account of the intervention of the dismissal order, despite having been put in 23 years of pensionable service, the petitioner stands deprived of his monetary and retirement benefits. Furthermore for want of the finances as well as legal assistance, the petitioner was unable to take legal remedies to assail the order of dismissal and denial of the benefits of the fruit of his service.

21. We find that the petitioner had made the representation dated 27th November, 2009 to the Director General, CRPF. The office of the Director General forwarded the petitioner's representation under cover of a communication dated 4th January, 2010 to the Inspector General of Police, Middle Sector,

CRPF, Lucknow with the directions to examine and investigate the case as per the rules and to intimate the position to the petitioner and Director General, Headquarters, New Delhi by 4th February, 2010. It is pointed out by learned counsel for the petitioner that instead of informing the Director General as directed, the Deputy Inspector General of Police proceeded to examine the representation of the petitioner and rejected the same by the impugned order dated 11th March, 2010.

22. On an application of the principle laid down in the aforenoticed judgments, it has to be held that the respondents have erred in passing the order dated 11th March, 2010 and have failed to exercise discretion conferred upon them in accordance with law and the applicable rules. The respondents have failed to take into consideration the relevant factors relating to the service of the petitioner. The petitioner was dismissed from service as back as on 28th October, 1995 after 23 years of service and a long period of almost 15 years has passed since his dismissal. There is no material denial to the submissions relating to the petitioner's penury and financial hardship on the part of the respondents. The commendations, rewards and the positive comments about his service in the petitioner's ACRs have not

been taken into account. Nothing has been pointed out which would disentitle the petitioner in the light of the guidelines dated 22nd April, 1940.

23. We find that not only the respondents have failed to exercise the discretion but the consideration is not even by a person to whom the representation has been made by the petitioner. None of the facts and circumstances brought out by the petitioner in his representation and noted hereinabove nor the service record of the petitioner has been considered by the authority who has passed the order dated 11th March, 2010.

In this background, in the peculiar facts and circumstances of the case, we hold that the petitioner is entitled to award of compassionate allowance in terms of the applicable rules and guidelines.

24. In view of the above, we direct the respondents as follows :-

(i) The respondents shall make the appropriate order in accordance with rule 41 of the CCS(Pension) Rules of the amount and period for which the compassionate allowance is admissible to him within a period of eight weeks from today. The order which is passed shall be communicated to the petitioner immediately on the same being made.

(ii) The respondents shall effect payment of all arrears of the compassionate allowance to the petitioner and the amount which may be due to him within a period of four weeks thereafter.

This writ petition is allowed in the above terms.

Dasti to parties.

(GITA MITTAL)
JUDGE

(J.R. MIDHA)
JUDGE

AUGUST 26, 2010
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