

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

% *Date of Decision : April 23, 2015*

+ **W.P.(C) 3657/2015**

DIN DAYAL YADAV Petitioner
Represented by: Mr.Nilansh Gaur, Advocate

versus

UNION OF INDIA & ANR. Respondents
Represented by: Mr.Ripu Daman Bhardwaj, CGSC
with Mr.T.P.Singh, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. The writ petitioner had joined CISF as a ministerial staff on March 14, 1984. He was removed from service because he became a deserter on June 18, 1990 and never joined back till, after declaring him a deserter, on May 28, 1991 the order removing him from service was passed.

2. In other words, though the penalty of removal from service has been passed after seven years, two months and fourteen days of the petitioner joining service, the actual period of service is six years and three months. Even this period of six years and three months is full of blemishes. The petitioner remained unauthorizedly absent for 23 days between February 6, 1985 to February 28, 1985, then again for a period of 95 days from January 24, 1989 to April 27, 1989, further again for 95 days from May 06, 1989 to August 09, 1989 and then again for a period of 22 days from April 24, 1990 to May 15, 1990.

3. The petitioner gave up the challenge to the penalty levied upon him when WP(C) No.511/2000 filed by him came up for hearing on November 26, 2012. The counsel for the petitioner on instructions told the Court that the petitioner would be satisfied if the competent authority of CISF was directed to consider the case of the petitioner for being sanctioned a compassionate allowance under Rule 41 of the CCS (Pension) Rules, which rule envisages sanction of a compassionate allowance to a Government servant who is dismissed or removed from service provided he could make out a case which was deserving of special consideration.

4. Rule 41 of the CCS (Pension) Rules, 1972 reads as under:-

“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 per mensem.”

5. The petitioner made a representation to the competent authority for a compassionate allowance to be sanctioned to him which has been rejected by the competent authority.

6. In the representation the petitioner has highlighted that he has two daughters aged 23 years and 21 years who are in the first year of their post graduation course at Balaji Institute in Faridabad and has one son aged 12 years who is a student of class-VII in Gangotri Public School. The

petitioner claimed in the representation that his share in the agricultural land owned by the family is only 3.5 bigha from which he earns Rs.5000/- per month. The petitioner disclosed that he lives in his family house in Faridabad. The petitioner claimed that his wife was unwell.

7. Rejecting the claim vide order dated May 11, 2013 the competent authority has held that since the petitioner did not have a good service record, his case would not merit a special consideration. The petitioner filed a review against the decision dated May 11, 2013 which has been disposed of by the Director General CISF vide order dated February 23, 2015 in which it has been highlighted that the petitioner actually worked for six years and four months before he deserted and even during the said limited period when he served he was inflicted with four penalties.

8. Learned counsel for the petitioner cited an unreported decision dated April 11, 2014 passed by the Supreme Court in CA No.2111/2009 Mahinder Dutt Sharma vs. UOI & Ors. to urge that in said decision the law had been succinctly stated by the Supreme Court for determining a claim for compassionate allowance under Rule 41 of the CCS (Pension) Rules, 1972.

9. In paragraph 13 of the opinion dated April 11, 2014, the Supreme Court has opined as under:-

“13. In our considered view, the determination of a claim based under Rule 41 of the Pension Rules, 1972, will necessarily have to be sieved through an evaluation based on a series of distinct considerations, some of which are illustratively being expressed hereunder:

(i) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of moral turpitude? An act of moral turpitude is an act which has an inherent quality of baseness, vileness or depravity with respect to a concerned person's duty towards another, or to the society in general. In criminal law, the phrase is used generally to describe a conduct which is

contrary to community standards of justice, honesty and good morals. Any debauched, degenerate or evil behaviour would fall in this classification.

(ii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act of dishonesty towards his employer? Such an action of dishonesty would emerge from a behaviour which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behaviour, which aims at cheating the employer. Such an act may or may not be aimed at personal gains. It may be aimed at benefiting a third party, to the prejudice of the employer.

(iii) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, an act designed for personal gains, from the employer? This would involve acts of corruption, fraud or personal profiteering, through impermissible means by misusing the responsibility bestowed in an employee by an employer. And would include, acts of double dealing or racketeering, or the like. Such an act may or may not be aimed at causing loss to the employer. The benefit of the delinquent could be at the peril and prejudice of a third party.

(iv) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, aimed at deliberately harming a third party interest? Situations hereunder would emerge out of acts of disservice causing damage, loss, prejudice or even anguish to third parties, on account of misuse of the employee's authority to control, regulate or administer activities of third parties. Actions of dealing with similar issues differently, or in an iniquitous manner, by adopting double standards or by foul play, would fall in this category.

(v) Was the act of the delinquent, which resulted in the infliction of the punishment of dismissal or removal from service, otherwise unacceptable, for the conferment of the benefits flowing out of Rule 41 of the Pension Rules, 1972? Illustratively, any action which is considered as depraved,

perverted, wicked, treacherous or the like, as would disentitle an employee for such compassionate consideration.”

10. A perusal of paragraph 13 of the opinion of the Supreme Court makes it clear that the five parameters of evaluation listed serially by the Supreme Court are only illustrative and not exhaustive, and we highlight the expression used by the Supreme Court : ‘*some of which are illustratively being expressed.*’

11. In other words, the wrong for which the Government servant was dismissed or removed from service would disentitle the Government servant to any compassionate allowance if the wrong was an act of moral turpitude, or an act of dishonesty towards the employer, or an act designed for personal gain, or an act aimed at deliberately harming a third party, or the act was otherwise unacceptable on account of depravity, perversity, wickedness, treacherousness or the like.

12. Finding that Mahinder Dutt Sharma had rendered service for 24 years during which he had earned 34 good entries including two commendation rolls, 4 commendation certificates and 28 commendation cards, noting that the penalty of dismissal from service imposed upon him was on account of unauthorized absent for 320 days, the Supreme Court held that Mahinder Dutt Sharma would be entitled to compassionate allowance.

13. At the heart of Rule 41 of the CCS (Pension) Rules, 1971 are the words ‘*if the case is deserving of special consideration*’. It would be difficult to put in a straight jacket all the parameters of what would constitute a case warranting special consideration.

14. The number of years one has served the nation, would be one parameter relevant to decide whether the case is deserving of a special consideration. Is this period of service without blemish or it is full of pockmarks. If this period is full of pockmarks, that would also be a relevant

fact. Have any commendation certificates or awards being obtained during the period of service. This would also be a relevant fact. What is the pecuniary status of the dismissed or removed Government servant. This would also be relevant.

15. Evaluated on the aforesaid factors of relevance, the petitioner would not be entitled to any compassionate allowance for the reason his actual service is six years and three months, with four periods of unauthorized absence in this period of 23 days, 95 days, 95 days and 22 days. The petitioner has spoken the half truth regarding his financial status evidence by the fact without any financial help he has been able to educate his daughters who are currently studying for a post graduation course in a private institute and the son of the petitioner is studying in a private public school. It is apparent that the petitioner has sufficient means to live a comfortable life.

16. Claim of petitioner for parity with Mahinder Dutt Sharma has been considered and rightly rejected by the reviewing authority in the order dated February 23, 2015.

17. There is no merit in the writ petition which is dismissed by without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 23, 2015
Mamta/skb