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

+ W.P.(C) 8052/2016

EX CONST RAJWANT Petitioner
Through: Mr.S.M. Dalal, Advocate.

versus

UNION OF INDIA AND ORS Respondents
Through: Dr.Ashwani Bhardwaj with
Ms.Debajyoti Behuria, Advocates for
UI.

CORAM:
HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **14.09.2016**

1. In this writ petition the petitioner has challenged an order dated 13.10.2015 informing the petitioner that his prayer for Compassionate Allowance in terms of Rule 41 of the Central Civil Services (Pension) Rules, 1972 had not been recommended.
2. The short question involved in this writ petition is whether the petitioner is entitled as of right to Compassionate Allowance under the Central Civil Services (Pension) Rules.

3. The facts giving rise to this writ petition are very briefly enumerated hereinafter.

4. On 10.02.1990, the petitioner was appointed as a Constable of the Border Security Force. The petitioner claims to have served in high altitude areas in Jammu and Kashmir, Bengal, Assam and Tripura.

5. On 04.09.2002 when the petitioner was posted in the 68th Battalion at Ambassa, he allegedly abused Deputy Commandant of the Force and threatened to commit suicide to compel the said Deputy Commandant to hold a meeting.

6. Admittedly, a charge-sheet was issued to the petitioner. The petitioner pleaded guilty of the charges and was awarded sentence of dismissal from service with effect from 30.09.2002.

7. By an order dated 08.01.2003, the penalty of dismissal was set aside by the DIG, BSF because one of the offences with which the petitioner was charged, was of having abused one Shri Jai Singh Shimar, the Officiating Commandant, who constituted the Court which passed the order of dismissal. Thereafter *denovo* proceedings commenced before the Commandant A.K. Sharma in respect of the same offences. The petitioner again pleaded guilty, but took the *alibi* that domestic problems had made

him lose control over himself and that he now consumed alcohol.

8. The Commandant passed an order of dismissal of the petitioner from service with effect from 24.05.2003.

9. The petitioner challenged the order of dismissal by filing a writ petition bearing W.P.(C) No.6798/2006 in this Court. The petitioner contended that there was no provision under the Border Security Force Act and the rules framed thereunder, for conducting a denovo trial. The denovo trial was therefore a nullity.

10. By an order dated 23.03.2015, this Court dismissed the writ petition, after which the petitioner filed an appeal before the respondent No.2 for grant of Compassionate Allowance under Rule 41 of the CCS (Pension) Rules, 1972. By the order impugned in this writ petition, the application for compassionate allowance was not recommended.

11. Rule 41 of the CCS (Pension) Rules, 1972 is set out herein below for convenience:-

“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.”

12. A Government servant who is dismissed or removed from service forfeits his pension and gratuity. However, if a case is deserving of special consideration, the authority competent to dismiss or remove the Government servant from service may 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.

13. The key words in Rule 41(1) are ‘if the case is deserving of special consideration’. Compassionate allowance is not automatic. It is not to be allowed in each and every case.

14. Dr.Bhardwaj, learned counsel appearing on behalf of the respondent-authorities, drew the attention of this Court to the fact that the petitioner had served in the Border Security Force for 13 years, 3 months and 15 days. During his period of service of 13 years odd, he had got six punishment orders. The details of punishment as awarded to the petitioner are as hereunder:-

- (i) 28 days RI in force custody on 02.09.1998 under Section 20(c) of the BSF Act.

- (ii) 14 days RI in force custody on 17.05.1999 under Sections 26 and 41(c) of the BSF Act.
- (iii) Tried by SSFC on 31.01.2001 and awarded punishment of two months RI in force custody under Sections 40 and 26 of the BSF Act.
- (iv) 28 days RI in force custody on 19.11.2001 under Section 26 of the BSF Act.
- (v) 28 days RI in force custody on 02.08.2002 under Section 20(c) of the BSF Act.
- (vi) Tried by SSFC on 24.05.2003 and awarded punishment of dismissal from service under Sections 20(b) and 26 of the BSF Act.

15. It is true, and fairly admitted by the respondent-authorities, that the petitioner got eight good entries. However, his acts of indiscipline were, according to the respondents frequent and intense. He habitually abused seniors under the influence of alcohol. He even threatened his seniors and others.

16. We are not required to adjudge the correctness of the allegations against the petitioner which are not in issue in this writ petition. Significantly, in the earlier writ petition being W.P.(C) No.6798/2006 which had been filed in this Court challenging the order of dismissal, the attention of the Court had been drawn to the five earlier punishments that had been imposed on the petitioner.

This was not disputed. The question before us is whether the case of the petitioner is deserving of special consideration and whether the failure or refusal of the concerned respondent to recommend compassionate allowance was so arbitrary as to warrant interference of this Court.

17. Mr.Dalal, learned counsel appearing on behalf of the petitioner has cited judgements of this Court in **Mahabir Prasad (Ex.L/Nk) vs. UOI & Ors**, reported in *2010 VIII AD (Delhi) 260*, **Shadi Ram (Ex.ASI) vs. Government of NCT of Delhi & Ors.** reported in *2008 V AD (Delhi) 3* and the unreported decision of this Court dated 10.07.2014 in *W.P.(C) No.2139/2012 and CM Nos.4630/2012 & 5719/2012*, **Ex. Sub Paras Ram vs. The Union of India & Ors.** In the case of **Mahabir Prasad**, the allegation against the petitioner was of having absented him without leave on 04.08.1994 which he resumed on 23.09.1994. He again deserted the camp of the CRPF on 26.09.1994 without permission.

18. The learned Division Bench took note of the various punishments, but at the same time, recorded that the service records of the petitioner in that case showed that he had been awarded commendation in 1977 for his hard work. In 1981 and 1982, the petitioner in the aforesaid case had been awarded cash rewards. The petitioner in that case had been the recipient of the

commendations and also awarded 25th Independence Anniversary medal. In our view, the case of **Mahabir Prasad** (*supra*) is clearly distinguishable on facts.

19. In **Shadi Ram** (*supra*), the Court found that the petitioner 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 had also been given cash awards a number of times. The Court found that there was an element of decision making involved in disposing of an application for grant of compassionate allowance. The Court in effect and substance found that the relevant factors required for decision making had not been taken into effect.

20. There can be no doubt, as held in **Shadi Ram** (*supra*) that justice should be tempered with mercy. However, sentences in a judgement cannot be read out of context. The sentences are to be construed in the background of the facts in which the same had been rendered.

21. In **Parasram** (*supra*), the Division Bench held that in an application under Rule 41 of the CCS (Pension) Rules the competent authority would have to consider whether the case was deserving of special consideration. The “case” meant all the facts of the case as they existed on the date when

the application was made. The facts could not be circumscribed only to the charges leading to the punishment that might have been meted out. The Court observed that while the petitioner in that case had already been visited with the maximum punishment contemplated under the Rules for the offence for which he had been charged, the same could not be a ground for denial of compassionate allowance. The consideration had to be on compassionate grounds, which would entail appreciating the entire tenure, nature and merit of the service the petitioner had rendered. The consideration could not be constrained by, what could be termed as a perfunctory reappraisal/review of the final punishment meted out in the disciplinary proceedings. The Court held that compassionate consideration would encompass all circumstances prior to and after the punishment. It is an act of beneficence imbued in grace and unshackled by the cause for or the nature of the punishment.

22. On facts, it was found that the charges were of illegal gratification. The conviction was for disproportionate assets of Rs.93,000/- in case of the petitioner who had rendered service of 30 years. He had rendered meritorious service and reached the highest rank in his cadre through

promotion on merit. As held by the Division Bench of this Court in **Ex. Sub Paras Ram** (*supra*), the consideration has to be a proper consideration and conduct antecedent as well as subsequent is to be taken into account.

23. In this case, a consideration of the antecedent of circumstances, that is repeated punishments on the ground of misconduct and for acts of indiscipline do not render case of the petitioner deserving of special consideration. **Ex.Sub Paras Ram's** case was clearly distinguishable on facts. We find no grounds at all to interfere with the impugned order.

24. The writ petition is therefore, dismissed.

INDIRA BANERJEE, J

V. KAMESWAR RAO, J

SEPTEMBER 14, 2016/gm