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

+ W.P.(C) 6529/2016

MANJU SINGH Petitioner
Through Mr. Ankur Chhibber, Advocate.

versus

UNION OF INDIA AND ORS Respondent
Through Mr. S.S. Sejwal, Law Officer, CRPF.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE PRATHIBA M. SINGH

ORDER

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26.05.2017

The petitioner, who is a widow of late Ajit Singh, had applied for Compassionate Allowance under Rule 41 of the Central Civil Services (Pension) Rules, 1972.

2. By the impugned order dated 3rd June, 2016, the request of the petitioner has been rejected. For the sake of convenience, we would like to reproduce the order dated 3rd June, 2016, which reads as under:-

“To

Smt. Manju Singh
W/o Force No.015081135
Ct/GD Late Ajit Singh
Vill. Karmanakhas, Tehsil Mehem

Distt. Rohtak, Haryana
PIN Code 124112

Sub: Compassionate Allowance.

Refer above mater, it is to inform you that you husband Force No.015081135 Ct/GD Late Ajit Singh was dismissed from service during a departmental enquiry. Therefore, you husband was dismissed from service and your husband was not found capable to get Compassionate Allowance by the Disciplinary Authority.

2. Therefore, in lieu of the above and as per rules, no action is required on your getting compassionate allowance by this office.”

3. The petitioner states that she being a widow aged 30 years with two minor daughters is entitled to Compassionate Allowance. Her husband, it is pointed out, was a Constable in the Central Reserve Police Force (CRPF) since 16th March, 2001 and was dismissed from service on 1st November, 2011.

4. We do not think that the impugned order can be sustained as it does not take notice of the relevant rule relating to Compassionate Allowance. The issue is no longer *res integra* and is covered by the decision of the Supreme Court in ***Mahinder Dutt Sharma Vs. Union of India and Ors.***, (2014) 11 SCC 684, wherein after referring to the relevant rules, the Supreme Court had laid down as under:-

“14. 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:

14.1. (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.

14.2. (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.

14.3. (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.

14.4. (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.

14.5. (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.

15. While evaluating the claim of a dismissed (or removed from service) employee, for the grant of compassionate allowance, the rule postulates a window for hope, "... if the case is deserving of special consideration...". Where the delinquency leading to punishment falls in one of the five classifications delineated in the foregoing paragraph, it would ordinarily disentitle an employee from such compassionate consideration. An employee who falls in any of the above five categories, would therefore ordinarily not be a deserving employee, for the grant of compassionate allowance. In a situation like this, the deserving special consideration, will have to be

momentous. It is not possible to effectively define the term “deserving special consideration” used in Rule 41 of the Pension Rules, 1972. We shall therefore not endeavour any attempt in the said direction. Circumstances deserving special consideration, would ordinarily be unlimited, keeping in mind unlimited variability of human environment. But surely where the delinquency levelled and proved against the punished employee, does not fall in the realm of misdemeanour illustratively categorised in the foregoing paragraph, it would be easier than otherwise, to extend such benefit to the punished employee, of course, subject to availability of factors of compassionate consideration.

5. The impugned order is accordingly set aside with an order of remand to appropriate authority to consider the claim of Compassionate Allowance in terms of Rule 41 as elucidate and explained by the Supreme Court in the aforesaid paragraphs. The said exercise would be completed within three months from the date a copy of this order is received.
6. The writ petition is disposed of without any order as to costs.

SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.

MAY 26, 2017
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