

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

+ **WP(C) 10131/2016**

Date of decision: 9th August, 2017

PARDEEP KUMAR Petitioner

Through: Mr.U.Srivastava, Adv.

versus

UNION OF INDIA & ORS. Respondents

Through: Ms.Shiva Lakshmi, CGSC with
Mr.Ruchir Ranjan Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAVIN CHAWLA

SANJIV KHANNA, J. (Oral)

The petitioner a Constable in Central Reserve Police Force (for short, 'the CRPF'), had suffered penalty of dismissal vide order dated 28th February, 2003. Statutory appeal and the revision petition challenging dismissal were rejected in 2006. The petitioner before dismissal had rendered more than 12 years of service.

2. The petitioner claims that he was injured in a bomb blast while posted with the 44th battalion CRPF at Kashmir and was downgraded to Category-B. Learned counsel for the respondents has however, disputed the aforesaid assertion.

3. Be that as it may, the petitioner had made an application seeking Companionate Allowance under Rule 41 of the Central Civil Service (Pension) Rules, 1972 on 12th April, 2016. The application has been rejected vide impugned order dated 29th April, 2016, which order for the sake of completeness is reproduced below:-

“Please refer to your application dated nil addressed to DG CRPF, New Delhi and J&K Zone Hqr, Jammu letter endt. No.R.XIII.21/2016-DA.1 (CR&Vig) dated 12.4.2016.

2) *In this connection it is to inform that after conducting a Departmental Enquiry on the charges of ‘willful OSL’ your were dismissed from service vide Commandant, 55 Bn order No.P.VIII.1/03-55-EC II dated 28/02/2003. Aggrieved with the decision of disciplinary authority, you had preferred an appeal to DIGP CRPF, New Delhi which was also rejected being devoid of merit vide their Order No.R.XIII.12-05/-EC.3 dated 13.01.2006. Subsequently, you had preferred a revision petition to IG N/S, CRPF which was considered but rejected vide this office Order No.R.XIII.3/2006-Adm.I dated 23.06.2006. Apart from the above, your mercy petition addressed to the DG CRPF has also been rejected vide Directorate General letter No.R.XIII.198/06-Pers.III (Legal) dated 07.02.2007.*

3) *As per CRPF rules you have already availed all departmental remedies/opportunities as outlined above. As per Rule-24 of CCS (Pension) Rules, dismissal or removal of a Government servant from a service or post entails forfeiture of his past service and therefore he is not entitled for any kind of pension irrespective number of years of service rendered by him. In view of above, your application*

in question addressed to DG has now no locus standi worth consideration. This is for you information please.”

4. Companionate Allowance is to be paid only when normal pension is not payable to an employee who has been dismissed or removed from service or for other reasons.

5. The ambit and scope of Rule 41 is no longer *res integra* and was examined and decided by the Supreme Court in ***Mahinder Dutt Sharma vs. Union of India & Ors.*** reported at **2014 (2) SCT 692**.

This decision after referring to Rule 41 of the Central Civil Service (Pension) Rules, 1972 observes and holds:-

“12) We are of the considered view, that the adjudication by the Courts below with reference to Rule 41 of the Pension Rules, 1972, is clearly misdirected. The Rule itself contemplates, payment of compassionate allowance to an employee who has been dismissed or removed from service. Under the punishment rules, above punishments are of the severest magnitude. These punishments can be inflicted, only for an act of extreme wrongdoing. It is on account of such wrongdoing, that the employee concerned, has already been subjected to the severest form of punishment. Sometimes even for being incorrigible. Despite that, the rule contemplates sanction of a compassionate allowance of, upto two-thirds of the pension of gratuity (or both), which would have been drawn by the punished employee, if he had retired on compassionate pension. The entire consideration upto the present juncture, by the Courts below, is directly or indirectly aimed at determining, whether the delinquency committed by the appellant, was sufficient and appropriate, for the infliction of the punishment of dismissal from service. This

determination is relevant for examining the veracity of the punishment order itself. That, however, is not the scope of the exercise contemplated in the present consideration. Insofar as the determination of the admissibility of the benefits contemplated under Rule 41 of the Pension Rules, 1972 is concerned, the same has to be by accepting, that the delinquency committed by the punished employee was of a magnitude which is sufficient for the imposition of the most severe punishments. As in the present case, unauthorized and willful absence of the appellant for a period of 320 days, has resulted in the passing of the order of dismissal from service. The punishment inflicted on the appellant, has been found to be legitimate and genuine, as also, commensurate to the delinquency of the appellant. The issue now is the evaluation of claim of the punished employee under Rule 41 of the Pension Rules, 1972.

13). In our considered view, the determination of a claim based under Rule 41 of the Pension 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 behavior 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 behavior which is untrustworthy, deceitful and insincere, resulting in prejudice to the interest of the employer. This could emerge from an unscrupulous, untrustworthy and crooked behavior, 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.

14). 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 leveled and proved against the punished employee, does not fall in the realm of misdemeanor illustratively categorized 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."

6. As the aforesaid parameters have not been taken into consideration while passing the impugned order, we have no option but to set aside the impugned order with the direction to the authorities to re-examine the application of the petitioner under Rule 41 of the Central Civil Service (Pension) Rules, 1972 in terms of parameters and criteria prescribed in the case of *Mahinder Dutt Sharma (supra)*.

7. Learned counsel for the petitioner has also drawn our attention to the decision of a Division Bench of this Court in *Ex. ASI Shadi Ram vs. Govt. of NCT of Delhi & Ors.* in WP(C) No.5544/2007 decided on 22.2.2008. The ratio of the said decision, if applicable, will also be taken into consideration by the Respondents.

8. Resultantly, the writ petition is partly allowed and the impugned order dated 29th April, 2016 is quashed and set aside. Respondents will pass a fresh order within a period of four months from the date a copy of this order is received by them. One of the reason why we have granted four months time, is to enable the petitioner to make a detailed representation highlighting why and

how he would be covered by the ratio of the decisions quoted above. No costs.

SANJIV KHANNA, J

NAVIN CHAWLA, J

AUGUST 09, 2017
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