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

\+ W.P.(C) 9134/2017

SURESH KUMAR ..... Petitioner

Through: Mr. Aakar Bhardwaj, Adv.

versus

THE DISTRICT & SESSIONS JUDGE AND ANR ..... Respondent

Through: Mr. Ankur Chhibber, Adv.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

% **17.10.2017**

1. The present petition has been filed with the following prayers:-

"It is therefore, most humbly prayed that this Hon'ble High Court may be pleased to:

a. In respect of the order dated 08.01.2014, consider the petitioner a case fit for special consideration for compassionate allowance.

b. Pass any order to sanction the petitioner with compensation pension.

c. Pass any other order or direction regarding any other monetary relief i.e. GPF, etc.

d. Pass any other order or direction in the nature of Certiorary/Mandamus or any other appropriate Writ in favour of the Petitioner.

Pass any other Order/s as this Hon'ble Court may deems fit and proper in the facts and circumstances of the present case."

2. The petitioner while working as Lower Division Clerk in the Office of the District & Sessions Judge, was issued a charge sheet on November 20, 2010. Suffice to state, all charges are relatable of his forging the signatures of learned ACMM-02. The petitioner submitted his reply to the charge sheet on December 01, 2010. On February 22, 2011, the petitioner was dismissed from service. The appeal filed by the petitioner before the Appellate Authority was also rejected. The dismissal was challenged by the petitioner before this Court, which dismissed the petition vide order dated January 08, 2014.

3. It is the case of the petitioner that he, vide his representation dated March 06, 2013 had made a claim for compassionate allowance in terms of Rule 41 of the CCS (Pension) Rules, in which he has stated as under:-

"The undersigned is 39 years old and studied till Senior Secondary from Chand Nagar Government School, Chaukhandi Gaon, Tilak Nagar, Delhi. The wife of the undersigned is a house-wife, who is 35 years old and has studied till 5th Class. The wife of the undersigned does not hold any technical knowledge such as tailoring etc and most part of the day is spent looking after four children and doing house-hold chores. The undersigned has two daughters and two sons. The

daughters namely Swati and Chayya are aged 11 years and 13 years respectively, whereas, the two sons, i.e Gaurav and Tinu are aged 6 years and 8 years respectively. The father and the mother of the undersigned live separately. The undersigned alongwith his wife and 4 children live in one room rental accommodation at Nihal Vihar, Nangloi, Delhi-110041. The monthly rent paid for the one room set is Rs.800/-. The monthly school fees of the three child is Rs.1,485/-, which is borne by the undersigned from his savings made during the employment. The fourth child is being provided with free education.

The undersigned has no source of income and neither the wife of the undersigned has any source of income. The undersigned and his wife do not look own any property in Delhi or in any part of India. The only source of income for the undersigned, his wife and the four children was the monthly income of the undersigned during his employment with your good-self. The dismissal of service may also come into way of the undersigned in finding of a private job.

After dismissal of service, the undersigned, his wife and four children are living a miserable life. The Family does not have any means of livelihood. There is an imminent danger of the children being suspended from the School on account of non-payment of School Fees. The undersigned does not have money event to provide the minimum daily nutrition to the young children. There is a constant feeling of remorse, depression, despair and anxiety in the undersigned and his Wife due to the *fear of a gloomy future.*

The undersigned and wife does not own any vehicle. The undersigned only has one bank account in which presently there is a sum of Rs.250/-. The wife of the undersigned and his four children have no bank account. The entire family has no fixed deposit or LIC. The guilt and repentance of the undersigned is driving the undersigned and his family members to sorrowful condition. The undersigned also does not have sufficient money to pay the monthly electricity bill, water bills other miscellaneous taxes etc. There is also an apprehension that the Landlord may ask the undersigned to vacate the tenanted one-room set due to non-payment of monthly rent and the undersigned alongwith his wife and four children will come on road."

4. The law for granting compassionate allowance is well settled by the Supreme Court in the case of ***Mahinder Dutt Sharma v. UOI and Ors 2014 (11) SCC 684.***. The Supreme Court in the said case, has, in paras 14 and 15 held 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 leveled and proved against the punished employee, does not fall in the realm of misdemeanour 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".*

5. In the said case, the Supreme Court has granted the compassionate allowance in favour of the petitioner therein, on the following findings:

"17. We shall only endeavour to delineate a few of the considerations which ought to have been considered, in the present case for determining whether or not, the appellant was entitled to compassionate allowance under Rule 41 of the Pension Rules, 1972. In this behalf it may be noticed, that the

appellant had rendered about 24 years of service, prior to his dismissal from service, vide order dated 17.5.1996. During the above tenure, he was granted 34 good entries, including 2 commendation rolls awarded by Commissioner of Police, 4 commendation certificates awarded by the Additional Commissioner of Police and 28 commendation cards awarded by the Deputy Commissioner of Police. Even though the charge proved against the appellant pertains to his unauthorized and willful absence from service, there is nothing on the record to reveal, that his absence from service was aimed at seeking better pastures elsewhere. No such inference is even otherwise possible, keeping in view the length of service rendered by the appellant. There is no denial, that the appellant was involved, during the period under consideration, in a criminal case, from which he was subsequently acquitted. One of his brothers died, and thereafter, his father and brother's wife also passed away. His own wife was suffering from cancer. All these tribulations led to his own ill-health, decipherable from the fact that he was suffering from hypertension and diabetes. It is these considerations, which ought to have been evaluated by the competent authority, to determine whether the claim of the appellant deserved special consideration, as would entitle him to compassionate allowance under Rule 41 of the Pension Rules, 1972".

6. Noting the averments made in the representation and the fact, the

charges against the petitioner are very serious in nature of forging the signatures of learned ACMM, the petitioner's case is not a deserving case for grant of compassionate allowance. Any order for grant of compassionate allowance would amount to giving premium to the petitioner despite such serious charges and surely this Court in exercise of jurisdiction under Article 226 would refrain itself from granting the prayers as made in the petition. The case against the petitioner is covered by the judgment of the Supreme Court in the case of ***Mahinder Dutt Sharma (supra)*** vide para 14.2 (of para 14).

7. The aforesaid judgment of the Supreme Court was recently followed by this Court in the case of ***Ravi Kumar Bharti v. Punjab National Bank W.P.(C) No. 6294/2017 decided on 21st August, 2017*** wherein this Court noting the serious charges against the petitioner therein had declined the grant of compassionate allowance.

8. The submission of the learned counsel for the petitioner that the order of the Office of the District & Sessions Judge dated May 16, 2014 is an unreasoned order, does not appeal to the Court, more so, when this Court having considered the grounds on which the compassionate allowance has been sought declined the prayers in terms of the aforesaid paras.

9. I do not find any merit in the petition. The same is dismissed.

V. KAMESWAR RAO, J

OCTOBER 17, 2017/*ak*