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

\+ W.P.(C) 6294/2017

RAVI KUMAR BHARTI

..... Petitioner

Through: Mr. A.V. Malhotra, Adv. with Mr. K.G. Mishra, Adv.

versus

PUNJAB NATIONAL BANK

..... Respondent

Through: Mr. Rajesh Kumar Gautam, Adv.

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

O R D E R

% 21.08.2017

1. Despite a direction to file an affidavit within 10 days on July 25, 2017, the respondent-Bank has not filed the same. Be that as it may, as the issue involved need to be decided keeping in view the position of law as laid down by the Supreme Court in the case of ***Mahinder Dutt Sharma Vs. Union of India and Others (2014) 11 SCC 684,*** I have heard the learned counsel for the parties.

2. The present petition has been filed by the petitioner with the following prayers:

> *"It is therefore most humbly and respectfully prayed that this Hon'ble Court may kindly be pleased to:-*
> *a) direct respondent bank to grant compassionate allowance to petitioner as admissible under Regulation 31 of pension regulations.*
> *b) Pass any other and further order(s) which may be deemed to be just, fit & proper in favour of the Petitioner in the light of the facts & Circumstances of the case".*

3. It is noted from the writ petition that the petitioner was appointed in the respondent Bank on November 2, 1992. Between the period October 2001 to 2008, the petitioner was posted at different branches in Delhi. On December 18, 2008, the petitioner was posted at Circle Office Shimla. On January 10, 2009, the petitioner was placed under suspension and a charge sheet was issued to him on February 16, 2012. Pursuant thereto, on the basis of the findings of the Enquiry Officer, the Disciplinary Authority had vide order dated September 26, 2013 imposed a penalty of removal from service on the petitioner. On October 10, 2013, the petitioner has submitted an application for payment of compassionate allowance in terms of Regulation 31 of P.N.B. Employees' Pension Regulations, 1995. The Controlling Authority of the petitioner has submitted a proposal to the Head Office for

grant of compassionate allowance to the petitioner vide its order dated March 7, 2014. The petitioner also made request for payment of compassionate allowance vide his representations dated December 15, 2015, June 7, 2016 and January 4, 2017. As there was no response, the petitioner filed a writ petition being W.P.(C) 4237/2017, which was disposed of vide order dated May 16, 2017, directing the respondent to take final decision on the representation made by the petitioner on October 10, 2013. The competent authority has considered the representation and rejected the same vide order dated May 26, 2017.

4. The case of the petitioner for seeking compassionate allowance, primarily is that he and his wife are suffering from Cancer and they have two school going minor children and being the only bread earner, he be granted compassionate allowance. The competent authority, while considering his case, in terms of order dated May 26, 2017, has rejected the case of the petitioner, primarily noting certain omissions and commission on the part of the petitioner, which includes the following:

> *"4..............He recommended the enhancement of credit exposure to M/s Gurujee Trading Co. On 25.05.2017 from existing facility Rs. 91 lacs and again on 14.09.2007 from Rs.220 lacs to Rs. 300 lacs. The party had credit exposer of*

Rs.91 lacs on 25.05.2007 enhanced to Rs.300 lacs on 14.09.2007, it means within 4 months the credit exposer increased from Rs.91 lacs to Rs.300 lacs without any proper justification. He did not take care of irregularities pointed out by the auditor in his report and not mentioned the same in the proposal while recommending the enhancement.

He recommended limit of Rs.100 lacs to M/s Shivani Agro under Super Trade Scheme against mortgage of IP of aggregate realizable value of properties of Rs.159.92 lacs in violation of the bank's guidelines as the realizable value of the properties mortgaged was less than 150% of the limit sanctioned.

He did not obtain documents in the case of M/s Mansarovar Crockery as mentioned in letter dated 02.06.2006 of circle Office for takeover of account Copy of sanction letter and collateral securities held by Punjab & Sind Bank was not obtained. Further at the time of disbursement of the facility, an amount of Rs, 21 lacs was remitted to PSB as against their sanctioned limit of Rs.19.67 lacs without ascertaining the amount outstanding and without obtaining closure letter from them.

He while reviewing the credit facilities to M/s Mohit Traders did not obtain the latest income tax return of the party/proprietor/guarantor and did not obtain latest house tax receipt in respect of the property mortgaged with the Bank.

While recommending credit facility, he did not obtain copy of the dissolution deed as the party was initially enjoying ODIP facility and FCL (DA/DP) limit of Rs. 20 las in the name of M/s Dreamz Impes in which 2 of the 3 partners of M/S Mansarovar Crockery were partners.

Due to the grave lapses on his part, Bank had suffered huge loss.

5. Circle Office, Shimla simply recommended the case without analyzing the gravity of charges and loss suffered by the bank. Looking into the gravity of charges and huge loss suffered by the Bank, competent authority took the decision not to sanction compassionate allowance. It is the discretion of the competent authority to sanction Compassionate allowance under Regulation 31 of PNB Employees' Pension regulation 1995, looking into the merits of case. Moreover Regulation 22 (1) of PNB Employees' Pension regulations 1995 provides that Resignation or dismissal or removal or termination of an employee from the service of the Bank shall entail forfeiture of his entire service and consequently shall not qualify for pensionary benefits.

5. Similarly, the competent authority has referred to another case involving the petitioner and the details of the same have been narrated in para 6 of the impugned order, which I reproduce as under:-

6. The contention of the petitioner that compassionate allowance may be sanctioned to him is not tenable, as no proper justification was provided by Shri Bharti as to why the competent authority should allow compassionate allowance to him inspite of the fact that the charges are grave and proved beyond doubt during the departmental enquiry and bank suffered huge loss in the matter. Moreover the decision in respect of Charge Sheet dated 26.06.2013 pertaining to a/c M/s Scan Cables and wires Pvt. Ltd. BO: Shalimar Bagh and Charge Sheet dated 26.06.2013 pertaining to A/c R.K. Enterprises BO: Shalimar Delhi have been kept in abeyance. CBI case in the matter of M/s D.S. Enterprise, BO: Shalimar Bagh is also pending in CBI Court".

6. In para 7 of the impugned order, the Authority has also stated as under:

> *"7. He was transferred to Shimla Circle on 18.12.2008, but he did not join even for a single day at Shimla circle and remained absent for more than 4 ½ years which shows that petitioner had enough means".*

7. It is also noted that the petitioner was transferred to Shimla Circle on December 18, 2008. It seems that the petitioner, did not join the Shimla office and remained absent for four and a half years, which according to the competent authority, would reveal that he had sufficient means to sustain

himself. The law for granting compassionate allowance has been well settled by the Supreme Court in the case of ***Mahinder Dutt Sharma (supra)***. 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.*
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> *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”.*

8. 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".

9. In the case in hand, I note, except the fact that the petitioner has stated, he and his wife are suffering from Cancer and has two school going children, no further material has been brought on record, to show that the case of the petitioner is a deserving case for grant of compassionate allowance. In fact, the Regulation 31 of the P.N.B. Employees' Pension Regulations, 1995 vide (1) (ii) stipulates as under:

> ***"31. Compassionate Allowance***
> *1)............*
> *XXXX XXXX XXXX*
> *(ii) the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of the pension which would have been admissible to him on the basis of the qualifying service rendered up to the date of his dismissal, removal, or termination".*

10. The grounds on which the petitioner has claimed compassionate

allowance has been dealt with by the competent authority in paras 4, 6 and 7 of the impugned order, which have been reproduced/narrated above. Suffice to state, the competent authority has primarily relied upon the two serious misdemeanours committed by the petitioner, and held that the same would disentitle the petitioner, the compassionate allowance. I may also state here, para 14.2 (of para 14) of the judgment of the Supreme Court in the case of ***Mahinder Dutt Sharma (supra)*** would cover the case against the petitioner. The decision taken by the competent authority cannot be faulted.

11. In view of the discussion above, I do not think, it is a fit case where this Court should entertain the petition in exercise of its jurisdiction under Article 226 of the Constitution of India.

12. The petition is dismissed.

V. KAMESWAR RAO, J

AUGUST 21, 2017/*akb*