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

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Date of Decision:13.02.2019

% W.P.(C) 1444/2019

GOVT. OF NCT OF DELHI AND ORS. Petitioner

Through: Mrs. Avnish Ahlawat, St. Counsel,
GNCTD (Services) with Mr. N.K.
Singh and Ms. Palak Rohmetra, Advs.

versus

SMT. RAJ KUMARI AND ANR. Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE A.K. CHAWLA

VIPIN SANGHI, J. (ORAL)

C.M. No. 6621/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

W.P.(C) 1444/2019 & C.M. No. 6620/2019

1. The GNCTD has preferred the present petition to assail the order dated 28.08.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No. 1884/2017. The Tribunal, by the impugned order, has allowed the said Original Application preferred by

the respondent – the widow and daughter of the deceased Government servant, late Raj Kumar Singh wherein they had sought grant of Compassionate allowance under Rule-41 of CCS (Pension) Rules, 1972. They had assailed the rejection of the said claim before the Tribunal. The Tribunal found that the respondent's husband had about 18 years of satisfactory service. He was dismissed from service after holding an inquiry on account of his unauthorised absence. It was found that he was a habitual absentee. The Tribunal has relied upon the decision in ***Mahinder Dutt Sharma v. UOI & Ors.***, (2014) 11 SCC 684, wherein the Supreme Court has laid down some of the considerations which should be kept in mind while considering the claim for grant of Compassionate Allowance under Rule-41 of CCS (Pension) Rules, 1972.

2. The relevant extract from ***Mahinder Dutt Sharma*** (supra) reads as follows:

“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.

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 the 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 unauthorised and wilful 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.”

3. Rule 41(1) of the CCS(Pension) Rules, 1972 reads as follows:

“(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.”

4. From the above it would be seen that though there is no vested right in a dismissed or removed government servant to demand, as a matter of right, that he be granted Compassionate Allowance, and it lies within the discretion of the Government to grant the same upon examination of the facts of each case, the exercise of that discretion has to be based on relevant, germane and reasonable considerations. Where the conduct of the government servant is not found to be dishonest, corrupt, or involving moral turpitude, and the conduct of the Government servant does not qualify as base; suffering from the depravity, or; dishonesty, and where he is not found to have acted with a design to make personal gains by involving himself in acts of corruption, fraud or personal profiteering, his claim may be favourably considered.

5. In the present case, since the conduct of the late husband of the respondent was not found to be of the kind which would attract rejection of the claim for Compassionate Allowance, the Tribunal has allowed the same. No doubt, the respondent's husband was habituated to remain unauthorisedly absent. He suffered the consequence thereof as he was dismissed from service. There was no other allegation of corruption, or dishonesty or conduct involving moral turpitude made against him. The whole premise on which the Rule- 41 is based, is that the Government is empowered, coupled with the duty to act fairly in the matter of grant of Compassionate Allowance, to the dismissed or removed employee. The rejection of the claim for Compassionate Allowance in the present case is solely based on the habituated unauthorized absence of the respondent's husband. That is not a reason good enough to deny Compassionate Allowance as the case is not of a kind elaborated in *Mahinder Dutt Sharma* (supra).

6. In these circumstances, we are not inclined to interfere with the impugned order.

7. Dismissed.

VIPIN SANGHI, J.

A.K. CHAWLA, J.

FEBRUARY 13, 2019

N.Khanna