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

% *Date of Order : 23rd January, 2020*

+ W.P.(C) 2760/2019

RAJA RAM

..... Petitioner

Through Mr. Setu Niket & Mr. Sarvit Saini,
Advocates.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr. J.K. Singh, Standing Counsel for
Railways with Mr. Saurabh Sharma &
Mr. Amit Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The present petition is directed against order dated 30.08.2018 passed by the Central Administrative Tribunal ('Tribunal').
2. With the consent of the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.
3. The petitioner approached the Tribunal to challenge order dated 15.11.2011 passed by the respondents by which the representation of the petitioner for grant of compassionate allowance stood rejected.
4. The petitioner's case is that he was initially appointed as a cleaner with respondents on 22.10.1965. He earned regular promotions and was promoted as a driver in the year 1992. Due to deteriorating health, the petitioner came to suffer from a mental disorder and unintentionally remained absent from duty. On account of mental illness, the petitioner could also not participate in the inquiry proceedings, which were held

ex-parte and finally the petitioner was dismissed from service. As the petitioner was dismissed from service without any benefit of pension or gratuity, he made a representation for grant of compassionate allowance. The representation so made was also rejected by the respondents; and consequently the petitioner filed O.A No.4188/2013 before the Tribunal.

5. The main thrust of the arguments of learned counsel for the petitioner is that the petitioner has served the respondents for more than three-and-a-half decades and it was on account of his mental illness that he could not return to his job. He submits that although no supporting medical documents were supplied, this was also the reason that he did not participate in the inquiry proceeding. He has placed strong reliance on the decision rendered by Apex Court in *Mahinder Dutt Sharma v. Union of India*, (2014) 11 SCC 684.
6. Counsel submits that the petitioner does not fall in the extreme category for denial of compassionate allowance since the petitioner was not removed from service on account of any act of moral turpitude or dishonesty towards his employer. Counsel contends that it also cannot be said that the conduct of the petitioner was on account of any personal gain or that he intentionally harmed any third party.
7. On the other hand counsel for respondents submits that the absence of petitioner from work as also his absence from the inquiry proceedings was willful. He submits that the petitioner neither submitted any documents in support of his illness nor did he participate in the inquiry proceedings, which were therefore held ex-parte.

8. We have heard learned counsels for the parties and have considered their rival submissions.

9. Rule 65 of the Railway Services (Pension) Rules, 1993 reads as under :

“65. Compassionate Allowance :

- 1. A railway servant who is dismissed or removed from service shall forfeit 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.*
- 2. A compassionate allowance sanctioned under the proviso to Sub-rule (1) shall not be less than Rupees three hundred seventy-five rupees per mensem.”*

10. In the case of ***Mahinder Dutt Sharma*** (*supra*) cited by the petitioner, the Supreme Court has 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 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.

16. We shall now venture to apply the aforesaid criterion, to the facts and circumstances of the case in hand, and decipher therefrom, whether the appellant before this Court ought to have been granted compassionate allowance under Rule 41 of the Pension Rules, 1972. The appellant was punished by an order dated 17-5-1996 with dismissal from service. The accusations levelled against the appellant were limited to his unauthorised and wilful absence from service from 18-1-1995 to 4-12-1995 (i.e. for a period of 320 days, 18 hours and 30 minutes). The above order of punishment also notices that not taking stern action against the appellant, would create a bad impression on the new entrants in the police service. The punishing authority while making a choice of the punishment imposed on the appellant, also recorded, that the appellant's behaviour was

incorrigible. Thus viewed, there can be no doubt, that the order of dismissal from service imposed on the appellant was fully justified. For determining the question of compassionate allowance, so as to bring it within the realm of the parameters laid down in Rule 41 of the Pension Rules, 1972, it is first necessary to evaluate, whether the wrongdoing alleged against the appellant, was of a nature expressed in para 14 of the instant judgment. Having given our thoughtful consideration on the above aspect of the matter, we do not find the delinquency for which the appellant was punished, as being one which can be described as an act of moral turpitude, nor can it be concluded that the allegations made against the appellant constituted acts of dishonesty towards his employer. The appellant's behaviour was not one which can be expressed as an act designed for illegitimate personal gains from his employer. The appellant cannot also be stated to have indulged in an activity to harm a third-party interest, based on the authority vested in him, nor was the behaviour of the appellant depraved, perverted, wicked or treacherous. Accordingly, even though the delinquency alleged and proved against the appellant was sufficient for imposition of punishment of dismissal from service, it does not fall in any of the classifications/categories depicted in para 13 of the instant judgment. Therefore, the availability of compassionate consideration, even of a lesser degree should ordinarily satisfy the competent authority, about the appellant's deservedness for an affirmative consideration.

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18. *None of the authorities on the administrative side, not even the Tribunal or the High Court, applied the above parameters to determine the claim of the appellant for compassionate allowance. We are of the view that the consideration of the appellant's claim was clearly misdirected. All the authorities merely examined the legitimacy of the order of dismissal. And also, whether the delay by the appellant, in filing the appeal against the punishment order dated 17-5-1996, was legitimate. The basis, as well as the manner of consideration, for a claim*

for compassionate allowance, has nothing to do with the above aspects. Accordingly, while accepting the instant appeal, we set aside the order dated 25-4-2005 (passed by the Deputy Commissioner of Police, IInd Battalion, Delhi Armed Police, Delhi), rejecting the prayer made by the appellant for grant of compassionate allowance. The order passed by the Tribunal dated 28-2-2006, and the order passed by the High Court dated 13-11-2006 [Mohinder Dutt Sharma v. Union of India, WP (C) No. 14924 of 2006, order dated 13-11-2006 (Del)] , are also accordingly hereby set aside. Having held as above, we direct the competent authority to reconsider the claim of the appellant, for the grant of compassionate allowance under Rule 41 of the Pension Rules, 1972, based on the parameters laid down hereinabove.

11. We may also note that in the present case, the Tribunal has observed that even in the past the petitioner had been awarded penalties for various acts of mis-demeanor. The Tribunal having said so however, we find that this aspect has neither been elaborated nor discussed by the Tribunal; and cannot therefore be factored into the decision regarding grant of compassionate allowance.
12. In view of the above discussion, we are of the view that the aspects for denial of compassionate allowance to the petitioner, as set-out by the Supreme Court in the case of **Maninder Dutt Sharma** (*supra*) appear not to have been considered by the Tribunal nor by the respondents; and the respondents have not applied their mind as to whether the allegations made against the petitioner, who was proceeded *ex-parte* in the departmental inquiry proceedings, fall within the ambit of the grave and serious considerations illustrated by the Supreme Court in that case. Resultantly, we set-aside the order dated 15.11.2011 and allow the writ petition.

13. We direct the respondents to reconsider the claim of petitioner for grant of compassionate allowance based on the parameters laid-down in *Mahinder Dutt Sharma* (*supra*) within a period of eight weeks from the date of receipt of this order.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

JANUARY 23, 2020

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