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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (S) No.2515 of 2013

Nago Rao Temburkar, S/o Shri Sakharam Temburkar, aged about 47 years, R/o C/o R.S. Wadhwa, Sonu Kirana Stores, Opposite Railway Station, Ward No.10, Rajnandgaon, District Rajnandgaon (C.G.)

---- Petitioner

Versus

1. The Central Bank of India, Through its General Manager (HRD), Central Office, Chandermukhi, Neriman Point, Mumbai 400 021.

2. Zonal Manager Cum Appellate Authority, Central Bank of India, First Floor, Block-C, Bombay Marg, G.E. Road, Raipur.

3. Regional Manager Cum Disciplinary Authority, Central Bank of India, Shri Deep, 4 South Avenue, Raipur Cooperative Housing Society, Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Ashok Patil, Advocate.
For Respondents: Mr. B.D. Guru and Mr. Anuroop Panda, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/08/2021

1. Proceedings of this matter have been taken-up through video conferencing.

2. The petitioner herein calls in question legality, validity and correctness of the impugned order dated 20-4-2009 by which the petitioner's application for payment of compassionate allowance and pension has been rejected. The petitioner has also sought writ for payment of pension and gratuity.

3. A departmental proceeding was instituted against the petitioner, who was the then Assistant Manager of Central Bank of India and thereafter, the petitioner was inflicted with penalty of dismissal from

service by the disciplinary authority by order dated 24-2-1998 and his appeal was also dismissed by order dated 22-6-1998 and writ petition against that order has also been dismissed by this Court by order dated 7-11-2005 passed in W.P.No.4749/1999. Thereafter, the petitioner made an application for grant of compassionate allowance as per Regulation 31 of the Central Bank of India (Employees') Pension Regulations, 1995 (for short, 'the Regulations of 1995') and also claimed pension. By the impugned order, the petitioner has been communicated that he is not entitled for pension as well as also not entitled for compassionate allowance in view of the gross misconduct of embezzlement of cash of depositors / borrowers and he is also not entitled for pension in view of Regulation 4(j) of the Central Bank of India Officer Employees' (Discipline and Appeal) Regulations, 1976. It is the case of the petitioner that his case for compassionate allowance has not been considered strictly in the light of Regulation 31 of the Regulations of 1995 and relevant factors laid down by the Supreme Court in the matter of **Mahinder Dutt Sharma v. Union of India and others**[1] have also not been considered and simply in one line it has been dismissed. It has also been pleaded that only 20% of the gratuity amount has been given and rest of the amount has not been given.

4. Return has been filed opposing the writ petition stating inter alia that the petitioner has been dismissed from service by the disciplinary authority and the order of the disciplinary authority has been affirmed by the appellate authority as well as by this Court in the writ petition preferred by the petitioner and looking to the grave misconduct of embezzlement of cash of depositors / borrowers, the petitioner is not

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entitled for compassionate allowance in terms of Regulation 31 of the Regulations of 1995, as such, he is not entitled for any claim.

5. Mr. Ashok Patil, learned counsel appearing for the petitioner, would submit that though the petitioner was dismissed from service, yet, he is entitled for pension in terms of Regulation 31 of the Regulations of 1995 which has not been considered by the respondent Bank in its proper perspective and his application has been rejected on the ground that he was found guilty of grave misconduct of embezzlement of cash of depositors / borrowers which runs contrary to the decision of the Supreme Court in **Mahinder Dutt Sharma** (supra). He would further submit that though the petitioner is entitled for full amount of gratuity, yet, only 20% of the gratuity amount has been given to him and rest of the amount has been withheld for no reasons and therefore he is entitled for remaining / balance amount of gratuity and as such, appropriate writ / writ(s) / direction be issued to the respondent Bank.

6. Mr. Anuroop Panda, learned counsel appearing for the respondents, would submit that the petitioner's case for grant of compassionate allowance has rightly been rejected by the Bank looking to the grave misconduct of embezzlement of cash of depositors / borrowers. He would further submit that the petitioner has never raised any issue of gratuity before the competent authority, otherwise, it could have been considered and appropriate order could have been passed qua the amount of gratuity which the petitioner is claiming, as such, the writ petition deserves to be dismissed.

7. I have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

8. It is not in dispute that the petitioner was dismissed from service by order dated 24-2-1998 finding the charges proved against him against which he preferred an appeal which has also been dismissed and order of the disciplinary authority affirmed by the appellate authority has been confirmed by this Court in the writ petition filed by the petitioner.

9. It is the case of the petitioner that despite having been dismissed from service, yet, he is entitled for compassionate allowance as per Regulation 31 of the Regulations of 1995 which states as under: -

> "**31. Compassionate Allowance -**
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> 1. An employee, who is dismissed or removed or terminated from service, shall forfeit his pension:
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> Provided that the authority higher than the authority competent to dismiss or remove or terminate him from service may, if
>
> (i) such dismissal, removal, or termination is on or after the 1st day of November, 1993, and
>
> (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 to the date of his dismissal, removal or termination.
>
> 2. The Compassionate Allowance sanctioned under the proviso to sub-regulation (1) shall not be less than the amount of minimum pension payable under Regulation 36 of these regulations."

10. A careful perusal of the aforesaid provision would show that despite dismissal or removal from service and forfeiture of pension, the authority higher than the authority competent to dismiss or remove or terminate the concerned bank officer from service may, if such dismissal, removal, or termination is on or after the 1st day of November, 1993 and if the case is deserving of special consideration,

that authority can sanction 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. This provision contained in Regulation 31 of the Regulations of 1995 is *pari materia* to Rule 41 of the Central Civil Services (Pension) Rules, 1972.

11. Rule 41 of the Central Civil Services (Pension) Rules, 1972 which is *pari materia* to the instant Regulation i.e. Regulation 31 of the Regulations of 1995 came up for consideration before the Supreme Court in **Mahinder Dutt Sharma** (supra) in which their Lordships of the Supreme Court laid down the consideration of the factors underlying therein in paragraph 13 as under: -

> "13. 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, the 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 up to two-thirds of the pension or gratuity (or both), which would have been drawn by the punished employee if he had retired on compassionate pension. The entire consideration up to 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."

Thereafter, their Lordships also considered, if the case is deserving of special consideration and observed as under in paragraph 14: -

> "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:-
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> 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.
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> 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.
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> 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.
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> 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."

12. Reverting to the facts of the present case in the light of the decision of their Lordships of the Supreme Court in **Mahinder Dutt Sharma** (supra) in which their Lordships have delineated the parameters and the factors to be considered while considering the claim of the concerned employee officer, who has been dismissed or removed from service, for compassionate allowance, it is quite vivid that in the instant case, the impugned order would show that the competent authority has only considered the fact that the petitioner has been subjected to punishment of severest magnitude and thereby rejected his case for compassionate allowance, whereas it ought to have considered the relevant factors in determining the entitlement of the employee of the benefit of compassionate allowance under the rule, but it has not considered and it has been rejected summarily without

application of mind. Merely because the petitioner has been subjected to severe punishment upon the departmental proceeding, his request for compassionate allowance cannot be rejected that too by non-speaking and unreasoned order. Accordingly, the impugned order dated 20-4-2009 to this extent is set aside. The matter is remitted to the respondent Bank to consider the case of the petitioner for compassionate allowance in accordance with law keeping in view the principle of law laid down by the Supreme Court in **Mahinder Dutt Sharma** (supra) by a reasoned and speaking order within 45 days from the date of receipt of a copy of this order. The petitioner is at liberty to submit additional representation.

13. Now, the question of payment of gratuity comes in. It is the case of the petitioner that 20% of the gratuity amount has been disbursed to him and rest of the amount has not been disbursed to which he is fully entitled, whereas it is the case of the respondent Bank that the petitioner has never approached the respondent Bank for grant of remaining amount of gratuity and if proper application is made, it will be considered in accordance with law. Payment of gratuity to the officer of the Bank is governed by Regulation 46 of the Central Bank of India (Officers') Service Regulations, 1979 (for short, 'the Regulations of 1979') which states as under: -

> "**46. Gratuity**:
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> (1) Every officer, shall be eligible for gratuity on:-
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> a) Retirement
>
> b) Death
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> c) Disablement rendering him unfit for further service as certified by a Medical Officer approved by the bank.
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> d) Resignation after completing ten years of continuous

service; or

e) Termination of service in any other way except by way of punishment after completion of 10 years of service.

(2) The amount of Gratuity payable to an officer shall be one month's pay for every completed year of service, subject to a maximum of 15 months pay.

Provided that where an officer has completed more than 30 years of service, he shall be eligible by way of gratuity for an additional amount at the rate of one half of a month's pay for each completed year of service beyond 30 years.

Provided further that pay for the purpose of Gratuity for an officer who ceases to be in service during the period 1.7.1993 to 31.10.1994 shall be with regard to scale of pay as specified in sub-regulation (1) of Regulation 4.

Provided also that pay for the purpose of Gratuity of an officer who ceased to be in service during the period 1.4.1998 to 31.10.1999 shall be with regard to scale of pay as specified in sub-regulation (2) of Regulation 4."

14. Since the issue of gratuity has not been decided by the respondent Bank, the matter is left open and it is for the petitioner to claim the amount of gratuity either in accordance with the provisions contained in the Regulations of 1979 or under the provisions of the Payment of Gratuity Act, 1972. If any application for payment of gratuity is made by the petitioner either before the Bank or before the controlling authority under the Payment of Gratuity Act, 1972, same will be considered and decided within two months from the date of receipt of application by reasoned and speaking order, as the case is old one and the petitioner has been terminated from the service of the Bank on 24-2-1998. However, the question of pension has not been pressed by learned counsel for the petitioner and in that view of the matter, the issue of pension is not being considered by this Court.

15. The writ petition is allowed in part to the extent indicated herein-

above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

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