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

Judgment delivered on: 01.09.2023

+ W.P.(C) 10160/2023

PADAM SINGH CHAUHAN

..... Petitioner

versus

UNION OF INDIA AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rakesh Kumar Shukla, Advocate

For the Respondents: Mr. Ankur Yadav, Senior Panel Counsel with Mr. Vivek Nagar, GP for UOI

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner was recruited as A Head Constable (GD) in Border Security Force in the year 1989 and had completed 10 years of continuous service upto 03.08.2000 when he was dismissed from service.

2. Petitioner seeks a direction to the respondents to consider granting petitioner compassionate allowance under Rule 41 of the CCS Pension Rules.



3. Issue notice. Notice is accepted by learned counsel appearing for the respondent who submits that there is a delay of 23 years in making a request for grant of compassionate allowance.
4. We are of the view that in case compassionate allowance is granted, the same would give rise to a recurring cause of action.
5. Rule 41 of CCS Pension Rules reads as under:

41. Compassionate allowance.-

(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 superannuation pension.

(2) The competent authority shall, either on its own or after taking into consideration the representation of the Government servant, if any, examine whether any compassionate allowance is to be granted and take a decision in this regard in accordance with the proviso to sub-rule (1) not later than three months after the date of issue of the order imposing the penalty of dismissal or removal from service.

(3) The competent authority shall consider,-

(a) each case of dismissal and removal from service on its merit to decide whether the case deserves of special consideration for sanction of a compassionate allowance and, if so, the quantum thereof.



(b) *the actual misconduct which occasioned the penalty of dismissal or removal from service and the kind of service rendered by the Government servant.*

(c) *in exceptional circumstances, factors like family members dependent on the Government servant along with other relevant factors.*

(4) *Where an order imposing the penalty of dismissal or removal from service was issued before the date of commencement of these rules and the competent authority, at that time, did not examine or decide whether or not any compassionate allowance was to be granted in that case, that authority shall take a decision in this regard not later than six months from the date of commencement of these rules.*

(5) *No compassionate allowance shall be sanctioned after the expiry of the aforesaid period of six months, to a Government servant on whom a penalty of dismissal or removal from service was imposed before the date of commencement of these rules.*

(6) *A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of minimum pension under rule 44.*

6. Petitioner's challenge to the dismissal from service has been already rejected and petitioner now seeks grant of compassionate allowance.

7. Through the consequence of dismissal or removal from service is automatic forfeiture of pension and gratuity, however, it is open to the competent authority to sanction compassionate allowance in cases deserving of special consideration.



8. In view of the above, we dispose of this petition with a direction to the respondents to consider the petition as a representation of the petitioner for consideration in terms of proviso to Rule 41 of the CCS Pension Rules.

9. The order be passed preferably within a period of 8 weeks from today. The order be communicated to the petitioner.

10. The petition is disposed of in the above terms.

11. It is clarified that this Court has neither considered nor commented upon the merits of the claim of the petitioner. It would be open to the respondents to consider the request of the petitioner in accordance with law on its own merit withing being influenced by anything stated on merits in this order.

12. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

MANOJ JAIN, J

SEPTEMBER 1, 2023

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