

\$~39(2021)

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

% *Decision delivered on: 28.10.2021*

+ **W.P.(C) 12294/2021 & CM Nos. 38597-98/2021**

HODIL SINGH

..... Petitioner

Through : Mr. Pranav Kaashyap and Mr. Abhay  
Kishore, Advs.

versus

GOVT OF NCT OF DELHI & ANR.

..... Respondents

Through : Mrs. Avnish Ahlawat, Standing  
Counsel with Mrs. Tania Ahlawat and  
Mr. Nitesh Kumar Singh, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE TALWANT SINGH**

[Physical Court Hearing]

**RAJIV SHAKDHER, J. (ORAL):**

**CM No.38598/2021**

1. Allowed, subject to just exceptions.

**W.P.(C) 12294/2021 & CM No.38597/2021** *[Application filed on behalf of  
the petitioner for placing on record additional documents]*

2. This writ petition is directed against the order dated 30.08.2019,  
passed by the Central Administrative Tribunal [in short 'the Tribunal'] in  
O.A.No.4343/2017.

3. The petitioner had approached the Tribunal, as he was aggrieved by  
the rejection of the representation made by him to the respondents for grant  
of compassionate allowance, under Rule 41 of the Central Civil Services

(Pension) Rules, 1972 [in short 'the 1972 Pension Rules']. This was the second time; the petitioner had approached the Tribunal.

3.1 In the first round, the Tribunal had directed the respondents, vide order dated 06.10.2017, passed in O.A. No.1212/2016, to reconsider the representation of the petitioner for grant of compassionate allowance. For the sake of convenience, the operative part of the said order is extracted hereafter:

*"....I find that Annexure A-1 order is not at all a speaking order. The Issue raised by the applicant in his Annexure A-3 representation dated 02.02.2016 have not at all been dealt with in the order. Such an order cannot stand scrutiny of law. I, therefore, set aside Annexure A-1 order dated 02.03.2016 passed by the respondents and remit the matter to the respondents with a direction to consider the aforesaid representation of the applicant and decide it within three months from the date of receipt of a copy of this order, by passing a reasoned and speaking order...."*

3.2. Thus, the representation dated 02.02.2016 made by the petitioner [which was sketchy and rather cryptic] was considered, as directed by the Tribunal. The relevant part of the said representation is extracted hereafter:

*"....."*

- 1. That the applicant is Ex. Constable of Delhi Police who has wife and one minor child dependant on him.*
- 2. That the applicant was suffering from some disease due to which he could [not] attend his duty. However, he was dismissed from the service vide order dated 19.07.2011 on the charges of absence but the issue of grant of compassionate allowance that was required to be considered was not considered.*
- 3. That the applicant came to know from the judgment of supreme court in case of Mohinder Dutt Sharma versus Union of*

*India, 2014 (11) SCC 541 that in the similar facts and circumstances the petitioner therein was directed to be granted compassionate allowance. The case of the applicant is squarely covered by this judgment. Therefore, the applicant is also submitting the present representation for grant of compassionate allowance on humanitarian grounds as provided in rule 41 of CCS (Pension) rules since there is no earning member in the house of the applicant.*

5 [4]. That the applicant is filing the present representation, on the following grounds :

A. *Because the applicant is a poor person having no source income whereby he could support his wife and one minor child who are dependant on him.*

B. *Because the applicant has no moveable/immoveable property on which he can fall back for support in these mitigating circumstances. Therefore the applicant is liable to be granted compassionate allowance on humanitarian grounds....”*

3.3. The above-mentioned representation was considered by the respondents, and the same was rejected, via a speaking order dated 14.11.2017.

4. Mr Pranav Kaashyap, who appears on behalf of the petitioner, says that, the petitioner is placed in difficult circumstances, and, therefore, relief under Rule 41 of the 1972 Pension Rules ought to have been granted.

5. To be noted, what is not denied by the counsel for the petitioner is that, the petitioner was absent from duty, without authorized leave between the following periods:-11.08.2009 and 09.10.2009; 17.10.2009 and 14.12.2009, and 16.03.2010 to 16.06.2010.

5.1. Because the petitioner did not join duty, disciplinary proceedings were commenced against him. It is not disputed by Mr. Kaashyap that the

petitioner did not participate in the proceedings conducted by the inquiry officer.

5.2. Resultantly, the disciplinary authority, after giving the petitioner an opportunity to file a reply; an opportunity which the petitioner did not avail, dismissed him from service, on 19.07.2011.

6. As is evident from the representation made by the petitioner, he has stated that he was absent from duty [a period which fell between 2009 and 2010], as he had been afflicted with "some disease". The petitioner has curiously not adverted to the nature of the disease in his representation, although, in the O.A. filed before the Tribunal, he has averred that he was suffering from "mental illness". The record concerning the mental illness was, evidently, not filed by the petitioner before the Tribunal.

6.1. That being said, this cannot be a decisive factor in reaching a conclusion as to- whether or not, the petitioner's plea for grant of compassionate allowance should be allowed. Circumstances which arise post the issuance of the dismissal order would have ordinarily no relevance when a decision is required to be taken by the concerned authority under the provisions of Rule 41 of the 1972 Pension Rules.

6.2. Pertinently, for the first time, before this court, the petitioner has placed on record, the death certificates of his son and his brother. As per these certificates, the petitioner's son had died on 01.01.2011, and his brother died on 16.07.2011.

6.3. According to us, while these are grave personal losses that the petitioner has suffered, this does not explain the reason as to, why he did not approach the Tribunal till 2016. In other words, no explanation is provided as to how he and his family eked out a living in the interregnum i.e.,

between July 2011 and 2016.

6.4. Furthermore, in the representation dated 02.02.2016, none of these aspects were mentioned by the petitioner. The grounds alluded to by the petitioner in the said representation revolved around, absence of assets and income, as also, the fact that he had to look after the needs of his wife and minor child.

6.5. As alluded to above, there was almost a five [5] year gap in the petitioner approaching the Tribunal for grant of relief, under Rule 41 of the 1972 Pension Rules<sup>1</sup>. The observations made in the order dated 14.11.2017, passed by the respondents, whereby the petitioner's representation was rejected, inter alia, touches upon this aspect of the matter:-

*".....He submitted his representation for grant of Compassionate Allowance under Rule-41 of CCS(Pension) Rules-1972 in the month of February-2016 while he was dismissed from the force on 19.07.2011 that is after a gap period of about 4 1/2 years. If he had not sufficient means of livelihood, how would he and his family have survived for a considerable period of more than four years. Thus, the plea of poverty taken by Constable (Exe.) Hodil Singh, No. 3025/PCR in his representation, has no merit ....."*

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<sup>1</sup> **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 <sup>1</sup>[compensation pension].

(2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of <sup>2</sup>[Rupees three hundred and seventy-five] per mensem.

7. There is, thus, no material on record which would persuade us to conclude that this is a case deserving of "special consideration" for grant of compassionate allowance. The time gap between the order of dismissal, and the date, when the petitioner approached the Tribunal for the first time, is an impediment which the petitioner has not been able surmount because of lack of tenable explanation.

7.1. The date on which action is instituted in the Tribunal and its proximity with events, which affects one's capacity to earn and maintain self and family, are, perhaps, indices which can help the concerned authority in determining whether or not compassionate allowance ought to be granted in a given case. In this case, except for bald averments, there is nothing on record which would have us reach a conclusion different from that of the Tribunal.

8. The reliance placed on the judgement of the Supreme Court rendered in *Mahinder Dutt Sharma vs. Union of India and Ors.* (2014) 11 SCC 684 does not appear to be apposite, given the facts and circumstances obtaining in the instant case.

8.1. In *Mahinder Dutt Sharma* case, the Supreme Court observed, quite categorically, that the reasons for dismissal from service need not burden the concerned administrative authority, while dealing with a representation for grant of compassionate allowance, unless it is a case which falls in the excepted category. The exceptions carved out by the Supreme Court [i.e., the cases where the order of dismissal can be taken into account, while considering the application for compassionate allowance] will apply to those cases, where the dismissal or removal from service was brought about on account of :-

- i. an act of moral turpitude; or
- ii. an act of dishonesty directed towards the employer; or
- iii. actions which were designed to serve personal gains or actions which were aimed at deliberately harming a third party; or
- iv. an action, which otherwise would make it unacceptable to confer the benefits which ought to flow under rule 41 of the 1972 Pension Rules.

8.2. In sum, the attempt should be to look beyond the order of dismissal/removal from service i.e., the circumstances in which the representationist is placed, save and except where reason(s) for dismissal are those, which are referred to hereinabove.

8.3. Furthermore, as per the dicta laid down in ***Mahinder Dutt Sharma*** case, where the representationist is able to demonstrate that, before the act of delinquency which led to his dismissal, his service record was exceptional—that should weigh with the authority dealing with the plea for grant of compassionate allowance.

8.4. Although, in ***Mahinder Dutt Sharma*** case, the appellant was dismissed from service due to unauthorised absence from duty, his career record prior to the period of absenteeism was exemplary. The appellant, in that case, during his service, spanning 24 years had been 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.

8.5. In the instant case, neither has anything exceptional been brought on record with respect to the service profile of the petitioner, nor has the petitioner provided material particulars, *vis-a-vis* his financial wherewithal.

8.6. Besides this, the important distinction is that, in the *Mahinder Dutt Sharma* case, the Supreme Court found that, the concerned authority had taken into account irrelevant considerations, while disposing of the appellant's application under Rule 41 of the 1972 Pension Rules for grant of compassionate allowance i.e., took into account the reasons which formed the basis for passing the order of dismissal. It is this error which, ultimately, persuaded the Supreme Court to remand the matter to the concerned authority. However, in the instant case, the concerned authority, as indicated above, has addressed itself, *inter alia*, to the relevant aspects, while disposing of the petitioner's application under Rule 41 of the 1972 Pension Rules for grant of compassionate allowance.

8.7. Therefore, the judgement rendered in *Mahinder Dutt Sharma* case on facts, is distinguishable.

9. Therefore, for the foregoing reasons, we are not inclined to interfere with the impugned order.

10. The writ petition is, accordingly, dismissed. Consequently, pending application shall also stand closed.

11. The case papers shall stand consigned to record.

**RAJIV SHAKDHER, J**

**TALWANT SINGH, J**

**OCTOBER 28, 2021/aj**

[Click here to check corrigendum, if any](#)