

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP- 27736 of 2017 (O&M)

Reserved on 17.10.2022

Pronounced on: 28.10.2022

Union of India and others

...Petitioners

Versus

Davinder Kumar Gandhi and another

....Respondents

**Coram : HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present : Mr. Anil Chawla, Advocate for the petitioners

Mr. Akash Mehta, Advocate for

Mr. Munish Gupta, Advocate for respondent No. 1

JAGMOHAN BANSAL, J.

1. The instant petition under Article 226 of the Constitution of India is directed against order dated 13.7.2017 of Central Administrative Tribunal Chandigarh Bench, Chandigarh (for short "Tribunal") whereby learned Tribunal has directed the petitioners-Union of India to grant compassionate allowance to the respondent-Davinder Kumar Gandhi.

Brief Facts:

2. The brief facts emerging from record are that respondent joined Postal Department on 1.7.1980 and on account of charges of sexual harassment, his services were terminated vide order dated 8.7.2010

(Annexure R-1). The respondent preferred an appeal before appellate

authority seeking setting aside of dismissal order dated 8.7.2010. The appellate authority vide order dated 27.9.2010 dismissed appeal of the respondent who unsuccessfully assailed appellate order before revisionary authority. The revisionary authority dismissed revision petition on 25.2.2015 and respondent preferred review petition which also came to be dismissed vide order dated 29.2.2016. The respondent, on the one hand availed channel of departmental appeal and on the other hand, preferred an original application before the Tribunal which came to be dismissed vide order dated 20.10.2010. The respondent unsuccessfully challenged dismissal order before this Court as well Hon'ble Supreme Court.

This Court dismissed CWP No. 4689 of 2011 on 16.3.2011 and Hon'ble Supreme Court dismissed Special Leave Petition on 2.9.2013. After exhausting all available original and appellate remedies, the respondent served a legal notice dated 2.5.2016 (Annexure A-4) seeking grant of compassionate allowance as available under Rule 41 of CCS (Pension) Rules, 1972 (for short "1972 Rules"). The Senior Superintendent Post Offices, Jalandhar Division, Jalandhar, examined claim of the respondent and vide its report dated 6.6.2016 recommended sanction of compassionate allowance. The Director of Accounts (Postal) Kapurthala, on the sole ground that disciplinary authority did not sanction compassionate allowance, vide order dated 31.8.2016 (despatched on 1.9.2016), rejected claim of the respondent. Feeling aggrieved from the action of postal authorities, the respondent filed Original Application No. 60/33/2017 before learned Tribunal which came to be allowed vide impugned order dated 13.7.2017. Learned Tribunal, after considering Rule 41 of 1972 Rules and

CCS (CCA) Rules, 1965 (for short “1965 Rules”) turned down contention of the Union of India that respondent is not entitled to compassionate allowance since it was not sanctioned by disciplinary authority and the reasoning that sanction of compassionate allowance would amount to alteration of order of disciplinary authority which is not permissible in law. Learned Tribunal directed the petitioners to grant compassionate allowance within a period of 15 days from the date of receipt of sanction.

Contention of the petitioners

3. Learned counsel for the petitioners would contend that grant of compassionate allowance amounts to alteration/modification of order passed by disciplinary authority. The respondent had been dismissed in 2010 and at that point of time disciplinary authority did not sanction compassionate allowance, thus, respondent had no vested or otherwise right to claim compassionate allowance after the expiry of six years from the date of dismissal. As per Rule 29 of 1965 Rules, original order of disciplinary authority cannot be altered or reviewed by disciplinary authority of same rank. The order passed by disciplinary authority had already been upheld by higher authorities. Thus, order of disciplinary authority cannot be altered. The disciplinary authority at the time of dismissal did not deem it appropriate to grant compassionate allowance. Thus, respondent has no right to claim compassionate allowance.

Contention of respondent

4. Learned counsel for respondent contended that respondent was pursuing his remedies as were available in the law which exhausted in the year of 2016. Thus, after exhausting all appellate remedies, the respondent

approached competent authority to consider his claim for compassionate allowance. The competent authority sanctioned compassionate allowance, however, the Director of Accounts (Postal), Kapurthala had wrongly declined claim of the respondent. The scope and ambit of 1972 Rules is quite different. It is undisputed that question of pension or compassionate allowance arises on account of superannuation, voluntary retirement or termination of services, however, it is beyond the mandate of 1972 Rules to contend that compassionate allowance should be sanctioned only at the time of order of dismissal. The object of compassionate allowance is to save an employee from starvation and destitution.

5. Having scrutinized record of the case and having heard learned counsel for both sides, we find that following questions arise for our consideration:-

- (i) Whether an employee, who at the time of dismissal, was not granted compassionate allowance by the disciplinary authority, can claim the same at a later point of time?
- (ii) Whether proceedings under Rule 41 of CCS (Pension) Rules, 1972 are independent from disciplinary proceedings under CCS (CCA) Rules, 1965?

6. The conceded position emerging from record is that the respondent worked in the Postal Department for more than 30 years. No departmental or criminal proceedings were initiated against respondent except proceedings of sexual harassment which resulted into termination of respondent. The respondent was dismissed from service in the year 2010 and till 2016, he pursued his legal remedies in the form of appeal, revision,

review, writ petition etc. The remedies availed of by respondent were permissible in law. The respondent approached competent authority seeking compassionate allowance after exhausting all legal remedies. The competent authority sanctioned compassionate allowance, however, Director of Accounts (Postal), Kapurthala ordered to decline claim of the respondent on the sole ground that disciplinary authority has not sanctioned compassionate allowance. No order qua compassionate allowance was passed at the time of dismissal. The petitioners have found respondent ineligible only on the ground that disciplinary authority did not grant compassionate allowance at the time of dismissal and if allowed would amount to alteration of order of dismissal.

7. In view of conceded position, we proceed to answer above framed questions.

(i) Whether an employee, who at the time of dismissal, was not granted compassionate allowance by the disciplinary authority, can claim the same at a later point of time?

7.1 The disciplinary proceedings are initiated and concluded under 1965 Rules. An employee on his retirement is entitled to benefit of gratuity and pension as permissible under Gratuity Act and Pension Rules. Rule 41 of 1972 Rules has been inserted to save an employee from starvation and destitution. Rule 41 of 1972 Rules reads as:-

“(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].

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

7.2 From the perusal of above quoted Rule, it is quite evident that a government servant who has been dismissed or removed from service though shall get forfeited his pension and gratuity yet the authority competent to dismiss may sanction compassionate allowance not exceeding two thirds of pension or gratuity or both. 1972 Rules are independent from 1965 Rules. There is nothing in Rule 41 of 1972 Rules throwing light to come across that power to sanction compassionate allowance must be exercised at the time of dismissal from service. The Rule simply says that an authority competent to dismiss may sanction compassionate allowance. The Rule does not say that competent authority must exercise power of dismissal and power to sanction compassionate allowance in the same breath. The Rule further does not require any application.

In view of mandate of Rule 41 of 1972 Rules, we are of the considered opinion that disciplinary authority may, at the time of passing an order of dismissal of an employee, sanction compassionate allowance, however, non-grant of compassionate allowance would not deprive an employee from lodging his claim at later point of time. If the competent authority while dismissing an employee directs that employee is not entitled to compassionate allowance, the employee would be debarred from claiming compassionate allowance unless order of denial is set aside by appellate

authority. Non-consideration of compassionate allowance at the time of dismissal of an employee cannot be deemed to be rejection of claim. In the absence of denial of claim of compassionate allowance, an employee is free to lodge his claim. The delay in lodging the claim would certainly deprive the employee from compassionate allowance for the period he has not lodged his claim. In the case in hand, the disciplinary authority, at the time of dismissal of respondent, did not advert with question of compassionate allowance. The right of respondent qua compassionate allowance was neither declined nor allowed. The respondent after exhausting his remedies against dismissal order lodged his claim for compassionate allowance in 2016. The effect of lodging claim in 2016 entails him denial of claim for the period from 2010 to 2016.

7.3 The respondent was pursuing his remedies against dismissal order as were permissible in law, thus, it even cannot be held that there was delay or laches on the part of respondent. It cannot be heard or expected from an employee that as soon as he is dismissed from service, he would lodge his claim for compassionate allowance because it may amount to acceptance of dismissal order. An employee has every right to challenge dismissal order and till the conclusion of appeal or other proceedings against dismissal order, an employee has right to expect that his dismissal would be set aside. If there is delay in lodging the claim, there is no loss to employer whereas employee would be deprived of compassionate allowance for the period during which he did not lodge his claim. It is apt to mention here that it is prerogative of disciplinary authority to sanction compassionate allowance either from the date of dismissal or from any

subsequent date because rules are silent on this aspect. In the admitted facts, it can be concluded that an employee who had not lodged his claim for a substantial period i.e. six years, he is not entitled to compassionate allowance for the said period. Delay in lodging claim has prejudiced the respondent and there is no loss to appellants/Union of India.

Conclusion:

In view of our above discussion and findings, we are of the considered opinion that in the absence of specific denial of benefit of compassionate allowance at the time of dismissal of an employee, the right of employee is not forfeited. An employee who has been dismissed may lodge his claim at a subsequent point of time. We further make it clear that if there is unexplained delay of substantial period, the authorities may be justified in declining claim of an employee. In the case in hand, the employee was pursuing his remedies against order of dismissal from 2010 to 2016 and after losing at all stages, he filed his claim in 2016, thus, there is no loss of time in the hands of respondent rather it is respondent who has lost his claim for the period from 2010 to 2016.

(ii) Whether proceedings under Rule 41 of CCS (Pension) rules, 1972 are independent from disciplinary proceedings under CCS (CCA) Rules, 1965?

7.4 The disciplinary proceedings are initiated and ultimately concluded under 1965 Rules. There is no categorical Rule in 1965 Rules which provides for compassionate allowance. It is 1972 Rules which categorically provide for denial of pension in case of dismissal of an employee as well as grant of compassionate allowance. The question of pension and compassionate allowance come into play no sooner did an

employee attains age of superannuation or he is terminated or dismissed from services. The questions of voluntary retirement, superannuation and dismissal from service are dealt with by 1965 Rules. The Rules extending benefit of pension or compassionate allowance comes into play as soon as an employee is superannuated or dismissed. Though 1972 Rules are consequential to existence of an event contemplated by 1965 Rules, however, it cannot be concluded that 1972 Rules are not independent and power vested under 1972 Rules cannot be exercised after exercise of power under 1965 Rules. There is nothing in 1972 Rules which provides that power to grant compassionate allowance must be exercised while exercising power of dismissal. Power to dismiss an employee is an independent power and it is vested by 1965 Rules whereas power to deny or grant compassionate allowance is vested by 1972 Rules. The disciplinary authority is not duty bound to deny or grant compassionate allowance while passing order of dismissal.

It is undisputed fact that order of dismissal passed by disciplinary authority can be set aside by an appellate or revisionary authority and an officer of the rank of disciplinary authority cannot alter, revoke or set aside order of disciplinary authority. If while passing dismissal order, the disciplinary authority declines claim of compassionate allowance, no authority except appellate authority or revisionary authority can set aside an order of denial of compassionate allowance, however, if no order qua denial of compassionate allowance is passed by disciplinary authority, a subsequent officer of the rank of disciplinary authority is quite competent to pass an order granting or denying benefit of compassionate

allowance.

Conclusion

In view of above discussion and findings, we are of the considered opinion that an order granting compassionate allowance does not amount to altering or revoking order of dismissal provided disciplinary authority while passing dismissal order has not adverted with question of compassionate allowance. In the absence of findings returned by a disciplinary authority qua compassionate allowance while passing dismissal order, competent disciplinary authority would be quite competent to pass an order with respect to sanction of compassionate allowance.

8. In view of our answers to the above questions, we are of the considered opinion that present writ petition is bereft of merit and deserves to be dismissed. Accordingly, writ petition is dismissed and petitioners are directed to make payment towards compassionate allowance to the respondent. The respondent is entitled to interest from the date of order passed by learned Tribunal. The petitioners shall pay arrears with interest @ 6% per annum from the date of order i.e. 13.7.2017 passed by learned Tribunal.

We would hasten to add that neither in the order impugned before learned Tribunal nor learned counsel for the petitioners during the cause of argument has raised any ground for denial of compassionate allowance except as adverted by us hereinabove. There is no denial on the part of petitioners to the submissions relating to the respondent's penury and financial hardship. Thus, we have not adverted with any other issue which may or may not be relevant for the determination of eligibility of respondent

to compassionate allowance.

Pending miscellaneous application(s), if any, shall stand disposed of.

(G.S.SANDHAWALIA)
JUDGE

(JAGMOHAN BANSAL)
JUDGE

28.10.2022

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes