



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

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Reserved on: May 30, 2022

Pronounced on: July 04, 2022

+ W.P.(C) 7067/2019

SMT SHIKSHA

..... Petitioner

Through: Mr. Ajit Kakkar, Advocate

Versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr. Manish Mohan, CGSC &
Mr. Devendra Kumar, Advocate
with Ms. Dimple, Officer (CISF)

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. The present petition has been filed by the petitioner seeking quashing of order dated 27.12.2018 vide which the competent authority rejected petitioner's mercy petition on the ground that her husband was "dismissed from service" on proven misconduct and thus she was not entitled to any pensionary benefits/relief; compensatory allowance from the date of dismissal of her deceased husband i.e. 24.11.1994 or in the alternative, from the date of her application dated 22.08.2008 or 05.10.2008.



2. According to the petitioner, her husband- late Naik Krishanpal Singh, was enrolled in the CISF as a Guard and was posted at Rihandnagar, Super Thermal Power Project in Uttar Pradesh. During the course of service, certain allegations were leveled against him and he was served with a charge sheet dated 15.01.1994. After conclusion of enquiry, he was dismissed from service on 24.11.1994. Thereafter, he filed various appeals against the charge sheet, suspension order and the dismissal order issued against him, however, each of these was rejected by the respondents. Lastly, he approached this Court by filing W.P.(C) 4133/1996, which, after being heard for some time, was dismissed in default.

3. Learned counsel appearing on behalf of petitioner submitted that after dismissal from service, late Naik Krishanpal Singh was working as a labour, however, during pendency of the aforesaid writ petition, he passed away. Having no source of income and responsibility to shoulder small children, petitioner herself worked as a labour for few days but since she was unable to meet daily needs, she filed a representation dated 22.08.2008 to the competent authority for grant of pensionary benefits. The said representation was dismissed vide order dated 02.09.2008 on technical grounds that the application was incomplete and lacked material details.



4. Learned counsel for petitioner urged that petitioner was working with CISF till the date of his dismissal, however, benefits of provident fund, gratuity, leave encashment and any other monetary benefit was not granted to him. It was submitted that for last more than 15 years, the petitioner has been following case of her deceased husband and has been working as daily wager and earning a meager amount of Rs.36,000/- annually and is now 60 years old and is unable to do labour work and maintain herself.

5. Learned counsel next submitted that petitioner had filed a mercy petition before the respondent on 05.10.2018, however, the same stood rejected vide order dated 27.12.2018 on the ground that her husband was dismissed from service and was not liable to receive any pensionary benefits. Learned counsel empathetically submitted that as per CCS Pension Rules, the competent authority may sanction compassionate allowance in special cases. Attention of this Court was drawn to Rule 41 of the CCS of the Pension Rules, 1972 in this regard and also to letter dated 30.03.2015 (Annexure P-5) written by Directorate General, Central Industrial Security Force, Ministry of Home Affairs to submit that compensatory allowance is payable in deserving cases. Reliance is also



placed upon decision of Hon'ble Supreme Court in *Mahinder Dutt Sharma Vs. Union of India*(2014) 11 SCC 684 to submit that when an employee is dismissed for reasons other than those involving moral turpitude dishonesty towards employer and loss to a third party, then such a punished employee's case may be considered for grant of compensatory allowance under Rule 41 of the CCS Pension Rules by the competent authority. Hence, it is prayed that respondents be directed to pay compensatory allowance to petitioner to enable her to meet her livelihood.

6. To the contrary, learned counsel appearing on behalf of respondents submitted that petitioner's husband was enrolled as Security Guard in the year 1972 and consequent upon being charge sheeted for misconduct and indiscipline in the year 1994, he was dismissed from service on 24.11.1994. The statutory appeal filed by petitioner's husband stood dismissed on 31st May/ 1st June, 1995. The writ petition preferred by the husband of petitioner also stood dismissed in default. According to respondents, petitioner's husband has been punished 18 times during his service tenure and since he was dismissed from service due to gross misconduct and indiscipline, he is not entitled to get pension. Furthermore, all his dues towards CGEGIS and RMS stood paid on his dismissal as final



payments.

7. To counter petitioner's reliance upon Hon'ble Supreme Court's decision in ***Mahinder Dutt Sharma (Supra)***, attention of this Court was drawn to Paras - 14 & 15 of the judgment to submit that petitioner's husband is not entitled to any pensionary benefit having been dismissed from service on account of moral turpitude for inflicting injury on the head of other personnel with rifle on 27/28.11.1993 while on duty.

8. In rebuttal, learned counsel appearing on behalf of petitioner had submitted that by this petition, petitioner is seeking compassionate allowance under Rule 41 of CCS Pension Rules, 1972 in lieu of 24 years of service rendered by her husband with respondent. It was submitted that consequent upon dismissal from service, rights of petitioner's husband with regard to pension and other benefits have been unlawfully forfeited by the respondents. Reliance was placed upon decision in ***D.S. Nakara and Ors. Vs. Union of India*** 1983 (1) SCC 305 in support of above submissions.

9. It was submitted that due to deteriorating economic condition, the petitioner is unable to sustain her livelihood and she is compelled to work as daily wager and respondents have unreasonably and unjustifiably



rejected her representation dated 05.10.2018 by the letter dated 27.12.2018. Learned counsel strenuously placed reliance upon decision in ***Mahender Dutt Sharma (Supra)*** to submit that the Hon'ble Supreme Court has not cited any specific definition of "deserving special consideration" and the same depends upon the merits of the case. In addition, reliance was also placed upon decision in ***State of Jharkhand & Ors. Vs. Jitendra Kumar Srivastava & Anr.*** (2013) 12 SCC 210 to submit that under Article 300A of the Constitution of India, by serving the nation, petitioner has to be considered as property of nation and thus, denial of pensionary and other benefits is unlawful and unjust.

10. Reliance was also placed upon decision of this Court in ***Major GS Sodhi Vs. Union of India*** JT 1992 (4) 337 wherein an army Officer, who was cashiered, was held entitled to entire pension and gratuity. Learned counsel also cited another decision of this Court in ***Ex ASI Shadi Ram Vs. Government of NCT of Delhi and Ors.*** 2008 SCC OnLine Del 1396 to submit that power to grant or refuse compassionate allowance cannot be exercised on the mere whim of the officer who is designated as competent authority.

11. Learned counsel further relied upon decision of Hon'ble Supreme



Court in *The State Bank of India and Ors. Vs. P. Soupramaniane* (2019) 18 SCC 135 to submit that respondents have deliberately invoked the acts of petitioner's husband within the acts of moral turpitude and the respondents have failed to find out if the acts of petitioner were intentional or due to certain situations having been aggravated by the acts of another person.

12. Lastly, learned counsel submitted that petitioner is living in distress economic conditions and grant of compassionate allowance under Rule 41 of the CCS Pension Rules, 1972 will help to make her livelihood and therefore, the present petition deserves to be allowed.

13. The submissions advanced by learned counsel appearing from both the sides were heard and the material placed on record as well as decisions cited have been considered by us. We find that the late Naik Krishanpal Singh had joined the services of respondents and he was charged for having assaulted a Head Constable using the rifle butt during plant checking in the year 1994 and consequently, he was dismissed from service vide order dated 24.11.1994. The appeal preferred by late Naik Krishanpal Singh against his dismissal order was dismissed by the competent authority, against which he had filed a writ petition [W.P.(C) 4133/1996] before this



Court, which though was dismissed in default on 05.04.2021 for non-appearance on his behalf, but only after expressing certain observations on merits therein. Pertinently, the said petition was filed by late Naik Krishanpal Singh against his dismissal order on merits; whereas the present petition has been filed by his wife upon rejection of her mercy petition seeking compassionate allowance on the ground that her husband had served respondent from the year 1972 till 1994, thereby rendered 24 years of service and that she is living under poor economic condition and therefore, her case falls under the category of “deserving special consideration” and, so, she is entitled to get the benefit of provisions of Rule 41 of CCS (Pension) Rules, 1972.

14. Upon perusal of material placed on record, we find that the copy of ‘dismissal from service’ order dated 31st May/ 1st June, 1995 has not been placed on record by either side. This Court is not going into the merits of the dismissal order, however, we find that the representation dated 22.08.2008 filed by petitioner to the respondents for grant of pensionary benefits, stood dismissed on mere technical grounds. Further, her mercy petition dated 05.10.2018 stood rejected by the respondents vide communication dated 27.12.2018 citing Rule 24 of CCS (Pension) Rules,



1972.

15. We have gone through the decisions relied upon by petitioner's counsel in support of her case. Reliance is placed upon Hon'ble Supreme Court's decision in *Mahinder Dutt Sharma (Supra)* wherein the petitioner having rendered 24 years of service was dismissed on the ground of incorrigible behaviour and unauthorized absence from duty and had even failed to participate in the enquiry proceedings and consequentially, his all-financial benefits were forfeited. The Supreme Court held that it is not possible to define the term 'deserving special consideration' and the circumstances deserving special consideration would ordinarily be unlimited, keeping in mind the unlimited variability of human environment. The Supreme Court while allowing the claim of petitioner held that the claim of petitioner was misdirected as all the authorities on the administrative side, Tribunal or even the High Court merely examined the legitimacy of the dismissal order, whereas the basis for determination of the compassionate allowance should have been whether the petitioner deserved 'special consideration' under the provisions of Rule 41 of the CCS (Pension) Rule, 1972. In the light of aforesaid observations of the Supreme Court, the objection of respondent that late Naik Krishanpal



Singh did not deserve any pensionary benefits does not survive for consideration.

16. In *D.S. Nakara (Supra)*, the Supreme Court dealt with the aspect of quantum and formula of pension payable at the time of superannuation. In *Jitendra Kumar Srivastava (Supra)*, the Supreme Court dismissed the appeal filed by Union of India against the order of the High Court granting full pensionary benefits to the respondent/official, 10% of which was withheld pending outcome of the departmental proceedings/ criminal case. In *Major G S Sodhi (Supra)*, the Supreme Court had dealt with the case of a Major, who was removed from service after court martial proceedings, and had alleged mala fide, bias and violation of rules of procedure. In *The State Bank of India and Ors. (Supra)*, the official who was working as Messenger, was dismissed from service on account of moral turpitude, was found to be not involved in the offence involving moral turpitude by the Supreme Court and was directed to be reinstated in service.

17. The decisions in *D.S. Nakara; Jitendra Kumar Srivastava; Major G S Sodhi* and *The State Bank of India (Supra)* are distinguishable on facts and, therefore, are not applicable to the case in hand.

18. Learned counsel for petitioner has also relied upon decision of a



Division Bench of this Court in *Ex ASI Shadi Ram (Supra)*, wherein an official of Delhi Police was dismissed from service on account of demand of illegal gratification and the Division Bench had elaboratively discussed applicability of Rule 41 of the Rules while observing as under:-

“9. *In support of his case before the Tribunal, the petitioner also relied upon the, "Guiding Principles for Grant of Compassionate Allowance", formulated by the Govt. of India in OM dated 22nd April 1940 for applying the aforesaid Rule 41 CCS (Pension) Rules, under which all applications for Compassionate Allowance are to be considered. This OM (which is hereinafter referred to as the "Guidelines") is reproduced below for convenience:*

Guiding principles for the grant of Compassionate Allowance It is practically impossible in view of the wide variations that naturally exist in the circumstances attending each case, to lay down categorically precise principles that can uniformly be applied to individual cases. Each case has, therefore, to be considered on its merits and a conclusion has to be reached on the question whether there were any such extenuating features in the case as would make the punishment awarded, though it may have been necessary in the interests of Government, unduly hard on the individual. In considering this question, it has been the practice to take into account not only the actual misconduct or course of misconduct which occasioned the dismissal or removal of



the officer, but also the kind of service he has rendered. Where the course of misconduct carries with it the legitimate inference that the officer's service has been dishonest, there can seldom be any good case for a Compassionate Allowance. Poverty is not an essential condition precedent to grant of a Compassionate Allowance, but special regard is also occasionally paid to the fact that the officer has a wife and children dependent upon him, though this factor by itself is not, except perhaps in the most exceptional circumstances, sufficient for the grant of a Compassionate Allowance.

G.I.F.D., Office Memo. No. 3 (2)-R-II/40, dated the 22nd April, 1940.

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13. The relevant portion of Rule 41 provides that the Competent Authority may, "if the case is deserving of special consideration, sanction a compassionate allowance..." . Nothing more is specified under the Rule. It is thus evident that the sole criterion is that the, "case", must be, "deserving of special consideration". The word, "case" here has clearly been used to denote, the 'state of affairs', or "the circumstances involved", [refer to the Concise Oxford Dictionary of current English, 8th edition], while the words, "deserving of" are defined as, "showing qualities worthy of...help etc"; and, "consideration," is defined as, "a fact or circumstance to be taken into



account" (the Shorter Oxford English Dictionary, 3rd Edition). Therefore, in the context, the phrase, "if the case is deserving of special consideration", can only mean that if the state of affairs or the circumstances involved bring out qualities that are worthy of help or assistance, the applicant should be granted Compassionate Allowance. For arriving at this conclusion, the field is left wide open for the Competent Authority. All that is required for the Competent Authority to entertain the matter, and to apply its mind thereto, is that the applicant must have been dismissed from service and his pension and gratuity forfeited. In particular, there is nothing whatsoever in Rule 41 to suggest that the application of any officer who has been dismissed for misconduct involving dishonesty, is to be rejected peremptorily."

19. Pertinently, the decision relied upon by petitioner's counsel in ***Ex ASI Shadi Ram (Supra)***, has also been relied upon by another Division Bench of this Court in ***Ex.L/NK Mahabir Prasad Vs. Union of India and Ors.***(2010) SCC OnLine Del 2909, wherein the official, who was dismissed from service on account of unauthorized absence from duty after 23 years of service, had sought compassionate allowance on the ground that he belonged to a poor and backward family, had no land and source of income for his livelihood and the Division Bench had allowed the appeal under the provisions of Rule 41 of CCS (Pension) Rules, 1972.

20. In the present case, while deliberating upon the mercy petition filed by the petitioner, the respondents seem to have ignored Rule 41 of the CCS



(Pension) Rule, 1972 governing the grant of compassionate allowance including deemed entitlement of compensation pension to a government servant who has been dismissed from service. The provisions of Rule 41 read 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 compensation pension. (2) A compassionate allowance sanctioned under the proviso to sub-rule (1) shall not be less than the amount of Rupees three thousand five hundred per mensem.”

21. We now proceed to analyse the applicability of provisions of Rule 41 to the case in hand to find out as to whether this case falls under the category of ‘special consideration’ or not.

22. It is not disputed that there has been as many as 18 instances of misdemeanour by late Naik Krishanpal Singh, however, it is also not disputed that he was dismissed from service on 31st May/ 1st June, 1995, and by then, he had already rendered 24 years of service with the



respondents. He had also challenged order of his dismissal by filing representation and appeal before the competent authority. He had also filed a Writ Petition before this Court, during pendency whereof he expired on 10.10.2000 and the said petition was dismissed in default (for non-appearance) on 05.04.2011. In the meanwhile, on 22.08.2008, petitioner, wife of deceased late Naik Krishanpal Singh, filed a representation before the competent authority seeking pensionary benefits, which was dismissed by the respondent vide order dated 02.09.2008 on technical grounds that the application was incomplete and lacked material details. Thereafter, she also filed a mercy petition on 05.10.2018, which also stood rejected vide order dated 27.12.2018 on the ground that her husband was dismissed from service and was not liable to receive any pensionary benefits. Time and again petitioner, the widow of late Naik Krishanpal Singh, has been running pillar to post to get relief for her survival and that of her family. The present petition was filed in the year 2019. As on the filing of the present petition, petitioner, widow of late Naik Krishanpal Singh is aged 60 years old and is said to be living in distress economic condition. The case of petitioner is purely covered by the judgment rendered by this Court in case of *Ex/ASI Shadi Ram, (Supra)* and *Ex.L/NK Mahabir Prasad*



(*Supra*). Thus, we find that case of petitioner deserved ‘special consideration’ under the provisions of Rule 41 of CCS (Pension) Rules, 1972.

23. Consequently, the respondents are directed to grant compassionate allowance to the petitioner from the date of filing of the present petition with consequential benefits thereof, as well as clear the arrears thereto, within four weeks.

24. With directions as aforesaid, the present petition is accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

JULY 04, 2022

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